

Rulemaking File  
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Sales and Use Tax

Regulation 1590, *Newspapers and Periodicals*

*OAL Approval*

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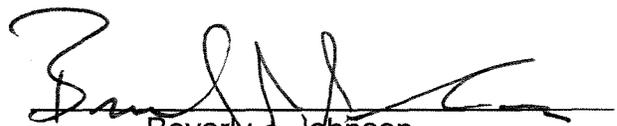
## State of California Office of Administrative Law

<p><b>In re:</b> Board of Equalization</p> <p><b>Regulatory Action:</b></p> <p>Title 18, California Code of Regulations</p> <p><b>Adopt sections:</b> <b>Amend sections:</b> 1590 <b>Repeal sections:</b></p>	<p><b>NOTICE OF APPROVAL OF REGULATORY ACTION</b></p> <p><b>Government Code Section 11349.3</b></p> <p><b>OAL Matter Number: 2016-0706-01</b></p> <p><b>OAL Matter Type: Regular (S)</b></p>
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This rulemaking by the State Board of Equalization amends section 1590 in title 18 of the California Code of Regulations to provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content. This regulatory action establishes that on and after October 1, 2016, it is presumed that fifty-three percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2016.

Date: August 16, 2016

  
Beverly A. Johnson  
Deputy Director

For: Debra M. Cornez  
Director

Original: David J. Gau  
Copy: Richard Bennion

**OFFICE OF ADMINISTRATIVE LAW**

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**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: August 18, 2016  
RE: Return of Rulemaking Materials *LW*  
OAL Matter Number 2016-0706-01  
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Newspapers and Periodicals."

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

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

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

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

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

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

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

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

**DO NOT DISCARD OR DESTROY THIS FILE**

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

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

Enclosures

## 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-2016-0419-01	REGULATORY ACTION NUMBER 2016-0706-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2016 JUL -6 A 9:07  
OFFICE OF  
ADMINISTRATIVE LAW

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

AUG 16 2016

1:45 PM

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2016-18-2	PUBLICATION DATE 4/29/2016	

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Newspapers and Periodicals	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1590
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) _____

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 	DATE July 5, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 16 2016

Office of Administrative Law

**Final Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1590**

**1590. Newspapers and Periodicals.**

(a) Definitions.

(1) "Newspaper." The term "newspaper" as used herein conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(2) "Periodical." The term "periodical" as used herein is limited to those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them.<sup>1</sup> Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. An annual report of a corporation which is substantially different in style and format from the corporation's quarterly reports is not part of a series with the quarterly reports. The term "periodical" does not include books complete in themselves, even those that are issued at stated intervals, for example, books sold by the Book-of-the-Month Club or similar organizations, so-called "pocket books," a new one of which may be issued once a month or some other interval, or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include shopping guides or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.

(3) "Ingredient or Component Part of a Newspaper or Periodical." The term "ingredient or component part of a newspaper or periodical" includes only those items that become physically incorporated into the publication and not those which are merely consumed or used in the production of the publication. For example, newsprint and ink are ingredients of a newspaper; however, a photograph does not become an ingredient or component part of a newspaper or periodical merely because the image of the photograph is reproduced in the publication.

Handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical.

(4) "Publisher." "Publisher" means and includes any person who owns the rights to produce, market, and distribute printed literature and information.

(5) "Distributor." "Distributor" means any person who acquires newspapers or periodicals for subsequent distribution to retailers or newspaper carriers.

(6) "Newspaper Carrier." "Newspaper carrier" means any person who acquires newspapers from a publisher or distributor to deliver to consumers. The term includes a hawker. A "hawker" is an individual who sells single copies of newspapers to passersby on a street corner or other trafficked area. "Newspaper carrier" does not include persons selling newspaper or periodicals from a fixed place of business.

(7) "Third Party Retailer." "Third party retailer" means and includes any person who sells at retail subscriptions to newspapers and periodicals who is not the publisher of the newspapers or periodicals. Typically, third party retailers solicit subscriptions in a single offering for a large number of different publications, require that payment be made to the account of the third party retailer, and undertake to resolve subscription problems. The term includes persons commonly known as direct mail, school, paid during service, cash, catalog, and telephone agents. "Third party retailer" does not include persons who solicit renewals of subscriptions on behalf of individual publishers.

(8) "Mixed Newspaper Subscription." "Mixed newspaper subscription" means and includes a subscription for a tangible newspaper combined with a subscription for the right to access digital content.

(9) "Digital-Only Subscription Rate." "Digital-only subscription rate" means the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.

(10) "Print-Only Subscription Rate." "Print-only subscription rate" means the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.

(b) Application of Tax.

(1) In General. ~~Effective July 15, 1991,~~ The sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.

Tax does not apply to sales of tangible personal property to persons who purchase the property for incorporation as a component part of a newspaper or periodical which will be sold notwithstanding that the purchaser is not the seller of the newspaper or periodical.

See Regulation 1574 (18 CCR 1574) for the application of tax to sales through vending machines and Regulation 1628 (18 CCR 1628) for the application of tax to transportation charges.

(2) ~~Distributions of Newspapers and Periodicals Without Charge. Effective October 2, 1991,~~ Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.

Newspapers and periodicals distributed on a voluntary pay basis shall be considered as distributed without charge. Newspapers and periodicals are distributed on a voluntary pay basis when payment is requested from the consumer but is not required.

(3) ~~Subscriptions. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

~~(A) Exempt Subscriptions. Effective November 1, 1992,~~ Tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.

~~Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).~~

(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.

2. This presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation

greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.

(C) Reporting Subscription Sales. Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

(4) Membership Organizations. Generally, tax applies to sales of newspapers and periodicals by membership organizations. If the price is separately stated, tax applies to that amount. If the price is not separately stated, the measure of tax is the fair retail selling price of the publication.

The application of tax to distributions of newspapers and periodicals by nonprofit organizations is provided at subdivision (b)(5). The application of tax to sales of periodicals by subscription is provided at subdivision (b)(3).

(5) Nonprofit Organizations.

(A) Internal Revenue Code Section 501(c)(3) Organizations. ~~Effective November 1, 1991, until October 31, 1992, tax does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible personal property which becomes an ingredient or component part of any such newspaper or periodical, regularly issued at average intervals not exceeding three months only as to issues and~~ distributed under either of the following circumstances:

1. The issues are distributed to the organization's members in consideration of the organization's membership fee; or
2. The issues are of a newspaper or periodical which neither receives revenue from, nor accepts, any commercial advertising.

~~Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.~~

For purposes of this subdivision, any governmental entity established and administered for the purposes provided in Internal Revenue Code Section 501(c)(3) shall be considered to be an organization that qualifies for tax exempt status under that section.

(B) Other Nonprofit Organizations. ~~Effective November 1, 1991, tax does not apply to the sale or use of any newspaper or periodical regularly issued at average intervals not exceeding three months and~~ distributed by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of ~~or~~ any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:

1. The issues are distributed to the organization's members in consideration, in whole, or in part, of the organization's membership fee;

2. The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than ten percent of the membership fee attributable to the period for which the newspaper or periodical is distributed, whether the publication is printed within or without this state. The cost of printing shall be determined as follows.

The cost of printing includes costs of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical (e.g., ink and paper) and costs of labor to print the newspaper or periodical. The cost of printing does not include costs not attributable to actual printing, such as costs of special printing aids, typography, and preparation of layouts.

If the organization contracts with an outside printer to print the newspaper or periodical, the organization shall obtain and retain documentation segregating the costs of printing from the printer's other charges.

If the organization is the printer of the newspaper or periodical, the cost of printing includes the aggregate of the cost of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical; labor of printing, including fringe benefits and payroll taxes; and other costs attributable to the actual printing of the newspaper or periodical.

If an organization has published the newspaper or periodical for a period exceeding twelve months and the method of printing has not changed, the organization may elect to consider the cost of printing for a reporting period to be equal to the amount paid or incurred for the same reporting period for the previous fiscal or calendar year.

(6) Newspaper Carriers. A newspaper carrier is not a retailer. The publisher or distributor for whom the carrier delivers is the retailer of the newspapers delivered. The publisher or distributor shall report and pay tax measured by the price charged to the customer by the carrier.

(7) Consumption of Property. Tax applies to the sale to or use by a newspaper or periodical publisher of tangible personal property consumed in the manufacturing process. Tax does not apply to the cost of tangible personal property lost or wasted in the manufacturing process when that property was purchased for the purpose of incorporation into a newspaper or periodical to be sold or to be distributed in accordance with subdivision (b)(2).

~~(8) Fixed Price Contracts. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

(98) School Catalogs and Yearbooks. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.

Tax applies to charges for the preparation of such publications made to public or private schools, county offices of education, school districts, or student organizations by printers, engravers, photographers and the like.

(c) Exemption Certificates.

Any seller claiming a transaction as exempt from sales tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8 should timely obtain an exemption certificate in writing from the purchaser. The exemption certificate will be considered timely if obtained by the seller at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property.

(1) Certificate A. Certificate to be used for purchases of tangible personal property for incorporation into newspapers or periodicals for sale in accordance with subdivisions (b)(1) or (b)(3), above.

(2) Certificate B. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed without charge in accordance with subdivision (b)(2), above.

(3) Certificate C. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3) in accordance with subdivision (b)(5)(A), above.

(4) Certificate D. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations in accordance with subdivision (b)(5)(B), above.

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for  
incorporation into a newspaper or periodical for sale

---

(Name of Purchaser)

---

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of \_\_\_\_\_  
the following:

That I hold valid seller's permit  
No. \_\_\_\_\_  
issued pursuant to the Sales and  
Use Tax Law.

That I do not hold a seller's permit  
issued pursuant to the Sales and Use  
Tax Law. I do not sell any tangible  
personal property for which a permit  
is required.

Initial one of the following:

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase from

\_\_\_\_\_

(Name of Vendor)

will become a component part of the newspaper or periodical\*

\_\_\_\_\_ and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified above or  
used other than for retention, demonstration, or display while holding it for sale in the regular  
course of business, I am required by the Sales and Use Tax Law to report and pay any applicable  
sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient  
or component part of newspapers or periodicals that are  
distributed free of charge

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of  
the following:*

That I hold valid seller's permit  
No. \_\_\_\_\_  
issued pursuant to the Sales and  
Use Tax Law.

That I do not hold a seller's permit  
issued pursuant to the Sales and Use  
Tax Law. I do not sell any tangible  
personal property for which a permit  
is required.

*Initial one of the following:*

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing\*

\_\_\_\_\_ which is regularly issued at average intervals not exceeding three months and distributed without  
charge by me. The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of  
the property purchased for any other purpose I am required by the Sales and Use Tax Law to  
report and pay tax, measured by the purchase price of the such property.

Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_\_\_

(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate C

California Sales Tax Exemption Certificate

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organization which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

~~Initial one of the following:~~

~~That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.~~

~~That the purchaser does not hold a permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.~~

Initial one of the following:

\_\_\_\_\_ That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing\*

which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

~~The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors.~~

~~The publication does not receive revenue from or accept any commercial advertising.~~

The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors.

       The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate D

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

Initial one of the following:

       That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

       That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in the business of selling or publishing\*

\_\_\_\_\_  
which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

<sup>1</sup> This definition is based upon Business Statistics Organization Inc. v. Joseph, 299 N.Y. 443, 87 N.E. 2d 505, and Houghton v. Payne, 194 U. S. 88, 48 L.Ed. 888.

Note: Authority cited: Section 7051, Revenue and Taxation Code; Reference: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, ~~6362.3~~, 6362.7 and 6362.8, Revenue and Taxation Code.

nism<sup>3</sup> based on findings by the International Agency for Research on Cancer are not met for the spectrum of chemicals covered by the broad class “nitrite in combination with amines or amides.”

Nitrite in combination with amines or amides will be considered for possible listing by the CIC at its next meeting scheduled for **Tuesday, November 15, 2016**. At this meeting the CIC may also consider whether a subset of chemicals of this class have been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer. The meeting will be held in the Sierra Hearing Room at the CalEPA Headquarters building, 1001 I Street, Sacramento, CA. The meeting will begin at 10:00 a.m. and will last until all business is conducted or until 5:00 p.m. The agenda for the meeting will be provided in an upcoming public notice published in advance of the meeting.

OEHHA announces the availability for public review of the hazard identification document entitled: “Evidence on the Carcinogenicity of Nitrite in Combination with Amines or Amides”. The CIC will consider this document in making any listing decisions at its November 15, 2016 meeting. Copies of the document are available from OEHHA’s website at the following address: <http://www.oehha.ca.gov/prop65.html>. The document may also be requested from OEHHA’s Proposition 65 Implementation Office by calling (916) 445-6900.

This notice marks the beginning of a 45-day public comment period on OEHHA’s hazard identification document. **OEHHA must receive comments and any supporting documentation by 5:00 p.m. on Monday, October 10, 2016.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov). Please include “2016 Nitrite in combination with amines or amides” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

Mailing Address:  
Michelle Ramirez  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-12B  
Sacramento, California 95812-4010

Street Address:  
1001 I Street  
Sacramento, California 95814  
Fax: (916) 323-2265

Please be aware that OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address and e-mail may be available to third parties.

OEHHA will organize and index the comments received and forward the information to the CIC members prior to the meeting at which the chemicals will be considered. Comments received during the public comment period will be posted on the OEHHA web site in advance of the meeting. Electronic files submitted should not have any form of encryption.

If you have any questions, please contact Michelle Ramirez at [Michelle.Ramirez@OEHHA.ca.gov](mailto:Michelle.Ramirez@OEHHA.ca.gov) or (916) 445-6900.

## 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# 2016-0803-02  
BALDWIN HILLS CONSERVANCY  
Conflict-of-Interest Code

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

Title 2  
AMEND: 59000  
Filed 08/17/2016  
Effective 09/16/2016  
Agency Contact: Avril Labelle (323) 290-5270

File# 2016-0706-01  
BOARD OF EQUALIZATION  
Newspapers and Periodicals

This rulemaking by the State Board of Equalization (BOE) amends section 1590 in Title 18 of the California Code of Regulations to provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content. This regulatory action establishes that on and after October 1,

<sup>3</sup> See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25306.

2016, it is presumed that fifty-three percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content.

Title 18  
 AMEND: 1590  
 Filed 08/16/2016  
 Effective 10/01/2016  
 Agency Contact: Richard Bennion (916) 445-2130

File# 2016-0701-02  
 BOARD OF FORESTRY AND FIRE PROTECTION  
 SRA Fire Prevention Fund Grant Program

This action overhauls the SRA Fire Prevention Grant Fund Program creating greater eligibility criteria, specification for qualifying projects, grant conditions, map requirements, evaluation criteria, evaluation procedures, application standards, budget standards, and other related requirements.

Title 14  
 ADOPT: 1666.0, 1666.1, 1666.2, 1666.3, 1666.4, 1666.5, 1666.6, 1666.7, 1666.8, 1666.9, 1666.10, 1666.11, 1666.12, 1666.13, 1666.14, 1666.15, 1666.16 AMEND: 1665.2 REPEAL: 1665.8  
 Filed 08/15/2016  
 Effective 10/01/2016  
 Agency Contact: Edith Hannigan (916) 653-2928

File# 2016-0706-05  
 BOARD OF OCCUPATIONAL THERAPY  
 Application

This action by the Board of Occupational Therapy revises the Initial Application for Licensure (Form ILA — Rev 8/2012) incorporated by reference in section 4110 of title 16 of the California Code of Regulations to add provisions mandated by Business and Professions Code sections 30 and 114.5. The revised form will have a new revision date of “Rev. 7/2016.”

Title 16  
 AMEND: 4110  
 Filed 08/15/2016  
 Effective 10/01/2016  
 Agency Contact: Heather Martin (916) 263-2294

File# 2016-0629-04  
 BOARD OF PHARMACY  
 Advanced Practice Pharmacist — Certification Programs

This rulemaking by the Board of Pharmacy (Board) adopts section 1730.2 in Title 16 of the California Code of Regulations regarding Advanced Practice Pharmacist certification, in furtherance of the Board’s continued efforts to implement Senate Bill 493. In this rule-

making, the Board is including general clinical pharmacy to the relevant areas of practice which satisfy one requirement needed for recognition as an advanced practice pharmacist.

Title 16  
 ADOPT: 1730.2  
 Filed 08/10/2016  
 Effective 08/10/2016  
 Agency Contact: Lori Martinez (916) 574-7917

File# 2016-0705-01  
 COMMISSION ON TEACHER CREDENTIALING  
 Teaching Permit for Statutory Leave

This regulatory action by the Commission on Teacher Credentialing creates a new Teaching Permit for Statutory Leave, which will provide local education agencies an additional option for staffing statutory leave assignments that extend beyond current Emergency Substitute Teaching Permit service limitations.

Title 5  
 ADOPT: 80022 AMEND: 80025.3  
 Filed 08/16/2016  
 Effective 08/16/2016  
 Agency Contact: Erin Skubal (916) 323-9596

File# 2016-0721-02  
 DEPARTMENT OF BUSINESS OVERSIGHT  
 DBO — Conflict-of-Interest code

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

Title 10  
 AMEND: 250.30  
 REPEAL: 5.2000, 5.2001  
 Filed 08/10/2016  
 Effective 09/09/2016  
 Agency Contact: Bret Ladine (916) 322-5858

File# 2016-0713-03  
 DEPARTMENT OF CORRECTIONS AND REHABILITATION  
 Level IV 180/270 Housing Criteria

This rulemaking action makes permanent emergency regulation changes which established standards and procedures for the proper housing of Level IV inmates in accordance with individual case factors.

Title 15  
 AMEND: 3375.1, 3377  
 Filed 08/11/2016  
 Effective 08/11/2016  
 Agency Contact: Laura Lomonaco (916) 445-2217

Rulemaking File Index

Title 18. Public Revenue

Sales and Use Tax

Regulation 1590, *Newspapers and Periodicals*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Business Tax Committee Minutes, January 26, 2016](#)
  - Minutes
  - Chief, Tax Policy Division memo dated January 15, 2016
  - BTC Agenda
  - Formal Issue Paper Number 15-012
  - Exhibit 1 Revenue Estimate
  - Exhibit 2 Text Regulation 1590
  - Exhibit 3 Letter from the California Newspaper Publisher Association dated November 3, 2015
4. [Reporter's Transcript Business Taxes Committee, January 26, 2016](#)
5. [Estimate of Cost or Savings, May 9, 2016](#)
6. [Economic and Fiscal Impact Statements, April 19, 2016](#)
7. [Notice of Publications](#)
  - Form 400 and Notice, Publication Date April 19, 2016
  - Email sent to Interested Parties, April 19, 2016
  - CA Regulatory Notice Register 2016, Volume No. 18-Z
8. [Notice to Interested Parties, April 19, 2016](#)

The following items are exhibited:

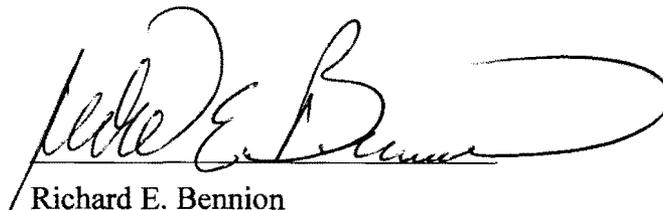
  - Notice of Hearing
  - Initial Statement of Reasons
  - Proposed Text of Regulation 1590
  - Regulation History
9. [Statement of Compliance](#)
10. [Reporter's Transcript, Item F2, June 14, 2016](#)
11. [Draft Minutes, June 14, 2016, and Exhibits](#)
  - Notice of Proposed Regulatory Action
  - Initial Statement of Reasons
  - Proposed Text of Regulation 1590
  - 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 July 5, 2016, 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.

July 5, 2016

A handwritten signature in black ink, appearing to read "Richard E. Bennion", with a large, sweeping flourish at the end.

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

**Final Statement of Reasons for  
Proposed Amendments to California Code of Regulations,  
Title 18, Section 1590, *Newspapers and Periodicals***

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) 1590, *Newspapers and Periodicals*, on June 14, 2016. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1590 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 June 14, 2016, to comment on the proposed regulatory action.

The factual basis, specific purposes, and necessity for, the problem to be addressed by, and the anticipated benefit from the adoption of the proposed amendments to Regulation 1590 are the same as provided in the initial statement of reasons.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

The adoption of the proposed amendments to Regulation 1590 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1590 or the proposed amendments to Regulation 1590.

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 1590 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public 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 regulatory action is 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 new businesses or expand businesses currently doing business in the State of California; and
- Will not affect the benefits of Regulation 1590 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulation 1590 may affect small business.

#### No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulation 1590 does not impose a mandate on local agencies or school districts.

#### Public Comments

The Board did not receive any written public comments regarding the proposed regulatory action, and no interested parties appeared at the public hearing on June 14, 2016, to comment on the proposed regulatory action.

#### Determination Regarding Alternatives

By its motion on June 14, 2016, the Board determined that no alternative to the proposed amendments to Regulation 1590 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 other provisions of law.

The Board did not reject any reasonable alternative to proposed amendments to Regulation 1590 that would lessen any adverse impact the proposed regulatory 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.

**Updated Informative Digest for the State Board of Equalization's  
Adoption of Proposed Amendments to California Code of Regulations,  
Title 18, Section 1590, *Newspapers and Periodicals***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1590, *Newspapers and Periodicals*, on June 14, 2016. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1590 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 June 14, 2016, to comment on the proposed regulatory action.

There have not been any changes to the applicable laws or the effects of, the objective of, and anticipated benefit from the adoption of the proposed amendments to Regulation 1590 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.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) 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.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its

customers and remit it to the Board, and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

“Tangible personal property” means “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.” Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal property is transferred incidental to the provision of the services. (Reg. 1501) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A “mixed transaction,” in contrast, is a transaction in which “the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other).” (*Dell, Inc. v. Superior Court (Dell)* (2008) 159 Cal.App.4th 911, 925.) If a transaction is a “mixed transaction,” each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board’s Legal Department have previously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a “reasonable” and “fair” allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].) (Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. See Reg.

5700.) In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board's Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and non-taxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15, 1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of "periodical" which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590 implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a "newspaper" is a publication that is "commonly understood to be a newspaper" and is "printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest." (Reg. 1590, subd. (a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

#### Effects, Objective, and Benefit of the Proposed Amendments to Regulation 1591

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell, supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the

digital services and the printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such subscriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested

parties did not agree with the nontaxable percentage in the draft amendments and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable presumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week.

Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would consider adding a “safe harbor” provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper’s digital-only subscription rate by the sums of the newspaper’s print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper’s nontaxable percentage and then averaged all twenty-seven (27) newspapers’ nontaxable percentages together. (Attachment A to the initial statement of reasons contains the redacted data and calculations.) The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that “sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper

Subscription.” In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers’ average nontaxable percentages. (Attachment B to the initial statement of reasons contains BTC staff’s calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA’s and BTC staff’s calculations, and interested parties’ presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect the average nontaxable percentage of newspaper retailers’ lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers’ lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer’s business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1 establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2 explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A to the initial statement of reasons.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define “digital-only subscription” and

“print-only subscription” for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board’s January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff’s amendments to Regulation 1590 discussed above to address the issue discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff’s proposed amendments added definitions for the terms “mixed newspaper subscription,” “digital-only subscription rate,” and “print-only subscription rate” to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in “the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the “presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent.”

Furthermore, as discussed above, BTC staff’s proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation’s reference note because the statute’s provisions are only applicable to early 1990’s transactions.

In addition, BTC staff’s proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with

lines that can be initialed and checked, respectively. Staff's proposed amendments deleted the outdated references to "19" from the exemption certificates' date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff's proposed amendments deleted the word "the" from the phrase "measured by the purchase price of *the* such property" (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff's proposed amendments inserted the word "seller's" before the word "permit" in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller's permit, as opposed to some other type of permit. Staff's proposed amendments inserted "the" before "business" in the phrase "engaged in business of selling or publishing" in Exemption Certificate D to make the phrase grammatically correct. Staff's proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or periodical "which is regularly issued at average intervals not exceeding three months" to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA's support for staff's proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary to have the effect and accomplish the objective of addressing the issue with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions, establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content, and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary to have the effects and accomplish the objectives of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1590 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that specifically prescribe the application of the sales and use tax to sales and purchases of newspapers and periodicals. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1590 or the proposed amendments to Regulation 1590.



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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State Controller

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Executive Director

January 15, 2016

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Regulation 1590, *Newspapers and Periodicals*, which will be presented at the Board's January 26, 2016 Business Taxes Committee meeting. The proposed amendments clarify the application of tax to subscriptions of newspapers that include or combine access to digital content.

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 January 26, 2016** in Room 121 at the address shown above.

Sincerely,

Susanne Buehler, Chief  
Tax Policy Division  
Sale 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)  
Ms. Kari Hammond, Board Member's Office, Third District

Ms. Shellie Hughes, Board Member's Office, Third District  
Ms. Camille Dixon, 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. Brian Wiggins, Board Member's Office, First District  
Mr. Cary Huxsoll, Board Member's Office, First District  
Mr. Alfred Buck, 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  
Ms. Lizette Mata, Board Member's Office, Second District  
Mr. Russell Lowery, Board Member's Office, Fourth District  
Mr. Ted Matthies, Board Member's Office, Fourth District  
Ms. Lisa Renati, Board Member's Office, Fourth District  
Mr. Clifford Oakes, Board Member's Office, Fourth District  
Mr. Ramon Salazar, State Controller's Office (MIC 73)  
Ms. Cynthia Bridges (MIC 73)  
Mr. Randy Ferris (MIC 83)  
Mr. David Gau (MIC 101)  
Ms. Lynn Bartolo (MIC 43 or 57)  
Mr. Todd Gilman (MIC 70)  
Mr. Wayne Mashihara (MIC 47)  
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)  
Mr. Scott Claremon (MIC 82)  
Ms. Kirsten Stark (MIC 50)  
Mr. Marc Alviso (MIC 101)  
Mr. Chris Lee (MIC 101)  
Ms. Laureen Simpson (MIC 70)  
Ms. Karina Magana (MIC 47)  
Mr. Bradley Miller (MIC 92)  
Mr. Bill Benson (MIC 67)  
Mr. Robert Wilke (MIC 50)  
Ms. Tracy McCrite (MIC 50)

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

<p><b>Action 1 – Agreed Upon Items</b></p> <p>Agenda, pages 2-8.</p>	<p><b>Alternative 1</b></p> <p>Approve and authorize publication of proposed amendments to Regulation 1590 as agreed upon by the California Newspaper Publishers Association (CNPA) and staff.</p> <p style="text-align: center;">OR</p> <p><b>Alternative 2</b></p> <p>Do not approve proposed amendments to Regulations 1590.</p>
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**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 – Agreed Upon Items</b></p>	<p><i>(Only the proposed amendments are provided. Staff has omitted other subdivisions or sections of the regulations that are not being amended.)</i></p> <p><b>Regulation 1590, Newspapers and Periodicals</b></p> <p>Reference: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, <del>6362.3</del>, 6362.7, and 6362.8, Revenue and Taxation Code</p> <p>(a) Definitions.</p> <p><u>(8) "Mixed Newspaper Subscription." "Mixed newspaper subscription" means and includes a subscription for a tangible newspaper combined with a subscription for the right to access digital content.</u></p> <p><u>(9) "Digital-Only Subscription Rate." "Digital-only subscription rate" means the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.</u></p> <p><u>(10) "Print-Only Subscription Rate." "Print-only subscription rate" means the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.</u></p> <p>(b) Application of Tax.</p> <p>(1) In General. <del>Effective July 15, 1991,</del> <u>The sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.</u></p> <p>(2) Distributions of Newspapers and Periodicals Without Charge. <del>Effective October 2, 1991,</del> <u>Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.</u></p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><del>(3) Subscriptions. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.</del></p> <p><del>Effective November 1, 1992, t</del></p> <p><u>(A) Exempt Subscriptions.</u> Tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.</p> <p><del>Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).</del></p> <p><u>(B) Mixed Newspaper Subscriptions.</u> <u>In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.</u></p> <p><u>1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.</u></p> <p><u>2. This presumption may be overcome by evidence demonstrating to the satisfaction of the board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.</u></p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><u>(C) Reporting Subscription Sales.</u> Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.</p> <p>(5) Nonprofit Organizations.</p> <p>(A) Internal Revenue Code Section 501(c)(3) Organizations. <del>Effective November 1, 1991, until October 31, 1992,</del> <del>tax</del> does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible personal property which becomes an ingredient or component part of any such newspaper or periodical; <u>regularly issued at average intervals not exceeding three months</u> <del>only as to issues</del> <u>and distributed under either of the following circumstances:</u></p> <p><del>Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.</del></p> <p>(B) Other Nonprofit Organizations. <del>Effective November 1, 1991,</del> <del>tax</del> does not apply to the sale or use of any newspaper or periodical <u>regularly issued at average intervals not exceeding three months and distributed</u> by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of or any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:</p> <p><del>(8) Fixed Price Contracts. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.</del></p> <p>(98) School Catalogs and Yearbooks. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>(c) Exemption Certificates.</p> <p align="center">Certificate A</p> <p align="center">California Sales Tax Exemption Certificate</p> <p align="center">Sales of tangible personal property for incorporation into a newspaper or periodical for sale</p> <hr/> <p align="center">(Name of Purchaser)</p> <hr/> <p align="center">(Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p> <p><i>Initial one of the following:</i></p> <p>____ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.</p> <p>I further certify that the tangible personal property described herein which I shall purchase from</p> <hr/> <p align="center">(Name of Vendor)</p> <p>will become a component part of the newspaper or periodical *</p> <hr/> <p>and sold as a component part of the publication.</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, 19 _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p>* Insert name and type of newspaper or periodical</p> <p align="center">Certificate B</p> <p align="center">California Sales Tax Exemption Certificate</p> <p align="center">Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed without charge</p> <p>_____</p> <p align="center">(Name of Purchaser)</p> <p>_____</p> <p align="center">(Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><i>Initial one of the following:</i></p> <p>____ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.</p> <p>I further certify that I am engaged in the business of publishing *</p> <p>_____</p> <p>which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from</p> <p>_____</p> <p align="center">(Name of Vendor)</p> <p>will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of the such property. Description of property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, 19 _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p align="center">* Insert name and type of newspaper or periodical</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p align="center">Certificate C</p> <p align="center">California Sales Tax Exemption Certificate</p> <p>Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)</p> <hr/> <p align="center">(Name of Purchaser)</p> <hr/> <p align="center">(Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p> <p><i>Initial one of the following:</i></p> <p>___ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>___ That the purchaser does not hold a <u>seller's</u> permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.</p> <p>I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing *</p> <hr/> <p><u>which is regularly issued at average intervals not exceeding three months.</u></p> <p>The tangible personal property described herein which I shall purchase from</p> <hr/> <p align="center">(Name of Vendor)</p> <p>will be sold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>____ The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors,</p> <p>____ The publication does not receive revenue from or accept any commercial advertising.</p> <p>I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, 19 _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p>* Insert name and type of newspaper or periodical</p> <p align="center">Certificate D</p> <p align="center">California Sales Tax Exemption Certificate</p> <p align="center">Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations</p> <p>_____</p> <p align="center">(Name of Purchaser)</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p align="center">_____ (Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p> <p><i>Initial one of the following:</i></p> <p>____ That the purchaser holds valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>____ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.</p> <p>I further certify that the purchaser is a nonprofit organization which is engaged in <u>the</u> business of selling or publishing *</p> <p>_____</p> <p><u>which is regularly issued at average intervals not exceeding three months.</u></p> <p>The tangible personal property described herein which I shall purchase from</p> <p>_____</p> <p align="center">(Name of Vendor)</p> <p>will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:</p> <p>(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.</p> <p>(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.</p> <p>I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting  
Proposed Amendments to Regulation 1590, Newspapers and Periodicals**

<b>Action Item</b>	<b>Staff and Industry's Proposed Regulatory Language</b>
	<p>the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, 19 _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p>* Insert name and type of newspaper or periodical</p>

Issue Paper Number 15-012



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

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## **Regulation 1590, *Newspapers and Periodicals***

### **I. Issue**

Whether the Board should amend Regulation 1590, *Newspapers and Periodicals*, to clarify the application of tax to subscriptions of newspapers that include or combine access to digital content.

### **II. Alternative 1 - Staff Recommendation**

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1590, as set forth in Exhibit 2. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that, beginning October 1, 2016, fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent. Staff's amendments are supported by the California Newspaper Publishers Association (CNPA).

### **III. Other Alternative(s) Considered**

Do not approve the proposed amendments to Regulation 1590.

## IV. Background

### General

California imposes a sales tax measured by a retailer's gross receipts from the retail sale of tangible personal property inside this state, unless the sale is specifically exempt from taxation by statute. While the sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in California, the retailer may collect tax reimbursement from the customer if the contract of sale so provides. When sales tax does not apply, use tax is imposed upon the consumer, measured by the sales price of property purchased from a retailer for the storage, use, or other consumption of the property in California, unless specifically exempted or excluded from taxation by statute.

A sale includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. In general, gross receipts and sales price mean the total amount of the sale, including, among other things, any services that are a part of the sale. Tangible personal property is personal property that may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. It is presumed that all gross receipts are subject to the tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he or she accepts a resale certificate from the purchaser.

While tax is imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. Further, charges primarily for the provision of services that include the incidental transfer of tangible personal property are not subject to tax if the true object of the transaction is to obtain the provision of services. On the other hand, in transactions where services are inextricably intertwined as a part of the sale of tangible personal property, the entire charge is subject to tax because the true object of the transaction is to obtain the tangible personal property. For example, the true object in purchasing a sculpture is acquisition of the finished product, and thus the transaction is taxable without reduction for charges for any service (such as labor) required to make the product.

A "mixed transaction," in contrast, is a transaction in which the goods and services are distinct and each is a significant object of the transaction. If a transaction is a "mixed transaction," each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. In determining the relative values of the two portions, the Board has required that a "reasonable" and "fair" allocation of the value of the taxable and nontaxable portions be made.

### Regulation 1590

Regulation 1590 provides guidance with respect to the application of tax to newspapers and periodicals<sup>1</sup>, including those sold under a subscription. A newspaper is a publication that is printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest. A periodical is a term used to describe those publications that appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. In addition, each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there

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<sup>1</sup> Staff recognizes that subscriptions for tangible periodicals may also include the right to access digital content. However, staff does not believe clarifying amendments are warranted regarding the allocation between taxable and nontaxable amounts for periodicals. This is because most periodicals are exempt from tax in their entirety pursuant to Regulation 1590, subdivision (b)(3) because they appear at least four times, but not more than 60 times each year.

must be some connection between the different issues of the series in the nature of the articles appearing in them. Furthermore, each issue must be sufficiently similar in style and format to make it evident that it is one of a series. Since July 15, 1991, the sales of newspapers and periodicals have been subject to tax, unless otherwise exempt.

### *Subscriptions*

Regulation 1590, subdivision (b)(3) explains that effective November 1, 1992, tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. Subdivision (b) further provides that each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sales transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

## **V. Discussion**

For purposes of this discussion, the term "printed newspapers" is used to describe those newspapers that appear more than 60 times a year and are, therefore, not exempt from tax under Regulation 1590, subdivision (b)(3). Historically, newspaper publishers have provided printed newspapers, which were physically distributed to their customers. However, as technology and reader preferences have evolved, newspaper publishers are now offering other types of products, including access to digital online editions of the newspapers. Often, the access to the digital online content includes material that is not otherwise provided with a printed publication alone, such as: expanded articles, additional photographs, and mobile applications. The digital content may be offered as a stand-alone product or combined with a subscription for printed newspaper delivery. Furthermore, the subscription packages may vary in the content and frequency of delivery (for example, daily print and daily access to digital content, weekend print and daily access to digital content, or daily access to digital content only).

### Mixed Newspaper Subscriptions

Digital content offered as a stand-alone product through remote telecommunications in which no tangible personal property is transferred to the customer is not subject to tax. However, when both printed newspapers and access to digital content is provided for a single price, the print and digital content are each a significant object of the transaction and have a significant value to the customer. Accordingly, the amount paid by the customer for the mixed subscription should be allocated between the value of the taxable and nontaxable portions in a fair and reasonable manner. Staff recognizes that in a mixed subscription, the relative value of each part of the transaction tends to vary from customer to customer and may also vary over time as subscriptions are renewed or new offers or promotions are made available. The price of a customer's subscription package can be based on several factors, including but not limited to, the length of the contract, the frequency of paper delivery, the distance of delivery of the newspaper, the negotiated pricing by the customer or the newspaper, etc. The pricing can vary from customer to customer and may also vary over time for the same customer. This variance makes it difficult to allocate the subscription cost between taxable and nontaxable amounts in a fair, reasonable, and consistent manner. In addition there appears to be little consistency in how the industry prices mixed newspaper subscriptions.

### Interested Parties Comments

In the Initial Discussion Paper, staff proposed a thirty-eight (38) percent nontaxable allocation with the remaining sixty-two (62) percent as the taxable allocation of a mixed newspaper subscription. Interested parties were supportive of a specified percentage but also wanted to add a rebuttable presumption. Staff requested input from interested parties on other alternatives to this allocation with backup data to support

alternate suggestions and examples of documentation they would provide for the rebuttable presumption such that a seller could apply alternate percentages if supported by unique facts and circumstances.

In the Second Discussion Paper, staff introduced a proposal to use two different percentages for mixed newspaper subscriptions: one for subscriptions with print copies distributed four days or more per week and one for subscriptions with print copies distributed three days or less per week. Staff met with interested parties on September 29, 2015, to discuss these proposed amendments. During the meeting, interested parties stated they were not in support of two percentages. Following the interested parties meeting, staff received comments from Mr. James Ewert on behalf of the CNPA, in a letter dated November 3, 2015 (Exhibits 3 & 4). CNPA explained that two rates would be considerably burdensome and complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board of Equalization (BOE) and that they do not support this approach.

CNPA also asserted that staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription does not accurately reflect rapidly changing developments in the industry. CNPA presented a list of twenty-seven (27) newspapers they surveyed demonstrating a nontaxable allocation range from forty-four (44) percent to sixty-three (63) percent and an overall average of fifty-three (53) percent. CNPA provided staff with a copy of their data and calculations. To compute the allocation percentage, CNPA divided the digital-only subscription rate by the sum of the print-only subscription rate and the digital-only subscription rate for various subscription frequencies. They then averaged these percentages together for each newspaper publisher and then averaged all twenty-seven (27) newspapers together. CNPA claims that many newspapers are decreasing the frequency of their print products and relying more on digital content. For these reasons, CNPA proposes that "sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the nontaxable portion of a Mixed Newspaper Subscription."

When reviewing the data provided by CNPA, staff noted that the calculated percentage was not weighted by the number of subscribers. Staff believes a weighted average computation is a fair and reasonable allocation method because it takes into account the size of the newspaper publishers, so as not to give disproportionate weight to smaller publishers that tend to have higher digital percentages. Staff used the average allocation percentages provided by CNPA and obtained the number of subscribers<sup>2</sup> for each newspaper to calculate a weighted average percentage for the nontaxable allocation. CNPA is in agreement with this nontaxable allocation.

Staff's findings result in an average of approximately fifty (50) percent for the nontaxable allocation. The newspapers surveyed are the more commonly known newspapers and likely represent a majority of the readership in the state but these newspapers do not represent the majority of all newspapers offered. With staff's current data at fifty (50) percent, and evidence that the percentage is trending upwards, staff believes that by the time the regulation is approved, fifty-three (53) percent is reflective of where the industry average will be.

#### *Rebuttable Presumption*

Staff understands that there is great variance within the newspaper industry with respect to pricing models and product offerings. Staff's objective is to establish a percentage that accurately reflects a fair and reasonable means to allocate between the taxable and nontaxable values of a mixed newspaper subscription for the industry as a whole. A specified percentage would be administered more efficiently, allowing for greater clarity for newspaper publishers and their customers. However, staff recognizes that some newspaper publishers will have higher nontaxable percentages based on their actual subscription

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<sup>2</sup> Subscriber number data obtained from the Gale Directory of Publications and Broadcast Media (151<sup>st</sup> edition).

prices. Accordingly, staff proposes adding a rebuttable presumption so that newspaper publishers may document a higher nontaxable allocation percentage based on specific facts for their business.

If the taxpayer chooses, they may overcome the presumption established in subdivision (b)(3)(B)1, by providing evidence demonstrating to the satisfaction of the BOE that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. Records must be maintained in accordance with Regulation 1698, *Records*, to support any nontaxable allocation percentage greater than fifty-three (53) percent. Staff and CNPA have agreed to add definitions in the regulation of what constitutes a "digital-only subscription" and a "print-only subscription" for purposes of the rebuttable presumption.

#### *Prospective Basis for Amendments*

Under Revenue and Taxation Code section 7051, "[t]he board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect." In other words, when the Board wishes to limit the retroactive effect of a regulation, or amendments thereto, it is authorized to do so, and would accomplish it by taking affirmative action in the regulatory process by means of specifying an operative date for the amendments. Staff recommends that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application beginning October 1, 2016, so that retailers of such subscriptions are notified well in advance and can modify any record-keeping or billing systems as needed.

#### Other Proposed Amendments

##### *Newspapers and Periodicals Distributed by 501 (c)(3) and Other Nonprofit Organizations*

During the process of drafting the proposed amendments discussed above, staff noted an inconsistency in Revenue and Taxation Code (RTC) section 6362.8 and Regulation 1590 (b)(5)(B). To ensure consistency with the statute, staff proposes to amend Regulation 1590 subdivision (b)(5)(B) to specify that the exemption with respect to other nonprofit organizations only applies to those newspapers and periodicals that are "regularly issued at average intervals not exceeding three months." Staff further proposes to clarify this "interval requirement" in the related exemption certificates (Certificates C and D).

#### Effective Dates and Obsolete Guidance

In order to increase the readability and relevance of the guidance in Regulation 1590, staff proposes amendments throughout the regulation to eliminate the effective dates that are no longer relevant and any guidance that has become obsolete due to the passage of time. This includes deleting section 6362.3 from the regulation's reference section as it relates to guidance in Regulation 1590 (b)(3) with respect to subscriptions prepaid prior to July 15, 1991.

## **VI. Alternative 1 - Staff Recommendation**

### **A. Description of Alternative 1**

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1590, as set forth in Exhibit 2. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent.

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**B. Pros of Alternative 1**

- Taxpayers will have a specific percentage to allocate between the taxable and nontaxable amounts in a mixed newspaper subscription.
- Taxpayers may establish a greater allocation percentage by producing evidence sufficient to rebut the presumption.
- Creates consistency with respect to the application of tax to mixed newspapers subscriptions, which makes administration and compliance easier.
- A prospective date will ensure publishers are notified in advance and can modify recordkeeping systems as needed.

**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 regulatory change.

**E. Operational Impact of Alternative 1**

Staff will publish the proposed amendments to Regulation 1590 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**

Amendments to Regulation 1590 will provide clarity to newspaper publishers regarding the application of tax to subscriptions for newspapers that include or combine access to digital content. Newspaper publishers can use the specified percentage or a rebuttable presumption to demonstrate a nontaxable allocation greater than fifty-three (53) percent.

**H. Critical Time Frames of Alternative 1**

None.

**VII. Other Alternatives**

**A. Description of Alternative 2**

Do not amend Regulation 1590.

**B. Pros of Alternative 2**

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

**C. Cons of Alternative 2**

Newspaper publishers will have to make difficult and time-consuming calculations based on a formula to allocate tax to mixed subscriptions of newspapers.

**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**

None.

**H. Critical Time Frames of Alternative 2**

None.

**Preparer/Reviewer Information**

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

Current as of: January 4, 2016

**REVENUE ESTIMATE**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



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## **Regulation 1590, Newspapers and Periodicals**

### **I. Issue**

Whether the Board should amend Regulation 1590, *Newspapers and Periodicals*, to clarify the application of tax to subscriptions of newspapers that include or combine access to digital content.

### **II. Alternative 1 - Staff Recommendation**

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1590, as set forth in Exhibit 2. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent. Staff's amendments are supported by the California Newspaper Publishers Association (CNPA).

### **III. Other Alternative(s) Considered**

Do not approve the proposed amendments to Regulation 1590.

## **Background, Methodology, and Assumptions**

### **Alternative 1 – Staff Recommendation**

There is nothing in the staff recommendation that would impact revenue. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent.

### **Other Alternatives Considered**

There is nothing in Alternative 2 that would impact revenue.

## **Revenue Summary**

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

Other alternatives considered – alternative 2 does not have a revenue impact.

## **Preparation**

Mr. Bill Benson, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate has been reviewed by Mr. Mark Durham, Manager, 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 January 5, 2016.

## Regulation 1590. Newspapers and Periodicals.

Reference: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.3, 6362.7, and 6362.8, Revenue and Taxation Code.

### (a) Definitions.

(1) "Newspaper." The term "newspaper" as used herein conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(2) "Periodical." The term "periodical" as used herein is limited to those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them.\* Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. An annual report of a corporation which is substantially different in style and format from the corporation's quarterly reports is not part of a series with the quarterly reports. The term "periodical" does not include books complete in themselves, even those that are issued at stated intervals, for example, books sold by the Book-of-the-Month Club or similar organizations; so-called "pocket books," a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include shopping guides or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.

(3) "Ingredient or Component Part of a Newspaper or Periodical." The term "ingredient or component part of a newspaper or periodical" includes only those items that become physically incorporated into the publication and not those which are merely consumed or used in the production of the publication. For example, newsprint and ink are ingredients of a newspaper; however, a photograph does not become an ingredient or component part of a

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\* This definition is based upon *Business Statistics Organization, Inc. v. Joseph*, 299 N.Y. 443, 87 N.E. 2d 505, and *Houghton v. Payne*, 194 U.S. 88, 48 L.Ed 888.

newspaper or periodical merely because the image of the photograph is reproduced in the publication.

Handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical.

(4) "Publisher." "Publisher" means and includes any person who owns the rights to produce, market, and distribute printed literature and information.

(5) "Distributor." "Distributor" means any person who acquires newspapers or periodicals for subsequent distribution to retailers or newspaper carriers.

(6) "Newspaper Carrier." "Newspaper carrier" means any person who acquires newspapers from a publisher or distributor to deliver to consumers. The term includes a hawker. A "hawker" is an individual who sells single copies of newspapers to passersby on a street corner or other trafficked area. "Newspaper carrier" does not include persons selling newspapers or periodicals from a fixed place of business.

(7) "Third Party Retailer." "Third party retailer" means and includes any person who sells at retail subscriptions to newspapers and periodicals who is not the publisher of the newspapers or periodicals. Typically, third party retailers solicit subscriptions in a single offering for a large number of different publications, require that payment be made to the account of the third party retailer, and undertake to resolve subscription problems. The term includes persons commonly known as direct mail, school, paid during service, cash, catalog, and telephone agents. "Third party retailer" does not include persons who solicit renewals of subscriptions on behalf of individual publishers.

(8) "Mixed Newspaper Subscription." "Mixed newspaper subscription" means and includes a subscription for a tangible newspaper combined with a subscription for the right to access digital content.

(9) "Digital-Only Subscription Rate." "Digital-only subscription rate" means the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.

(10) "Print-Only Subscription Rate." "Print-only subscription rate" means the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.

(b) Application of Tax.

(1) In General. ~~Effective July 15, 1991,~~ The sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.

Tax does not apply to sales of tangible personal property to persons who purchase the property for incorporation as a component part of a newspaper or periodical which will be sold notwithstanding that the purchaser is not the seller of the newspaper or periodical.

See Regulation 1574 (18 CCR 1574) for the application of tax to sales through vending machines and Regulation 1628 (18 CCR 1628) for the application of tax to transportation charges.

(2) Distributions of Newspapers and Periodicals Without Charge. ~~Effective October 2, 1991,~~ Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.

Newspapers and periodicals distributed on a voluntary pay basis shall be considered as distributed without charge. Newspapers and periodicals are distributed on a voluntary pay basis when payment is requested from the consumer but is not required.

(3) Subscriptions. ~~The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

~~Effective November 1, 1992,~~ t

(A) Exempt Subscriptions. Tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.

~~Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).~~

(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.

2. This presumption may be overcome by evidence demonstrating to the satisfaction of the board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation

greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.

(C) Reporting Subscription Sales. Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

(4) Membership Organizations. Generally, tax applies to sales of newspapers and periodicals by membership organizations. If the price is separately stated, tax applies to that amount. If the price is not separately stated, the measure of tax is the fair retail selling price of the publication.

The application of tax to distributions of newspapers and periodicals by nonprofit organizations is provided at subdivision (b)(5). The application of tax to sales of periodicals by subscription is provided at subdivision (b)(3).

(5) Nonprofit Organizations.

~~(A) Internal Revenue Code Section 501(c)(3) Organizations. Effective November 1, 1991, until October 31, 1992, tax does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible personal property which becomes an ingredient or component part of any such newspaper or periodical; regularly issued at average intervals not exceeding three months only as to issues and distributed under either of the following circumstances:~~

1. The issues are distributed to the organization's members in consideration of the organization's membership fee; or
2. The issues are of a newspaper or periodical which neither receives revenue from, nor accepts, any commercial advertising.

~~Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.~~

For purposes of this subdivision, any governmental entity established and administered for the purposes provided in Internal Revenue Code Section 501(c)(3) shall be considered to be an organization that qualifies for tax exempt status under that section.

~~(B) Other Nonprofit Organizations. Effective November 1, 1991, tax does not apply to the sale or use of any newspaper or periodical regularly issued at average intervals not exceeding three months and distributed by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of or any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:~~

1. The issues are distributed to the organization's members in consideration, in whole, or in part, of the organization's membership fee;
2. The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than ten percent of the membership fee attributable to the period for which the newspaper or periodical is distributed, whether the publication is printed within or without this state. The cost of printing shall be determined as follows.

The cost of printing includes costs of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical (e.g., ink and paper) and costs of labor to print the newspaper or periodical. The cost of printing does not include costs not attributable to actual printing, such as costs of special printing aids, typography, and preparation of layouts.

If the organization contracts with an outside printer to print the newspaper or periodical, the organization shall obtain and retain documentation segregating the costs of printing from the printer's other charges.

If the organization is the printer of the newspaper or periodical, the cost of printing includes the aggregate of the cost of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical; labor of printing, including fringe benefits and payroll taxes; and other costs attributable to the actual printing of the newspaper or periodical.

If an organization has published the newspaper or periodical for a period exceeding twelve months and the method of printing has not changed, the organization may elect to consider the cost of printing for a reporting period to be equal to the amount paid or incurred for the same reporting period for the previous fiscal or calendar year.

(6) Newspaper Carriers. A newspaper carrier is not a retailer. The publisher or distributor for whom the carrier delivers is the retailer of the newspapers delivered. The publisher or distributor shall report and pay tax measured by the price charged to the customer by the carrier.

(7) Consumption of Property. Tax applies to the sale to or use by a newspaper or periodical publisher of tangible personal property consumed in the manufacturing process. Tax does not apply to the cost of tangible personal property lost or wasted in the manufacturing process when that property was purchased for the purpose of incorporation into a newspaper or periodical to be sold or to be distributed in accordance with subdivision (b)(2).

~~(8) Fixed Price Contracts. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

(98) School Catalogs and Yearbooks. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks

prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.

Tax applies to charges for the preparation of such publications made to public or private schools, county offices of education, school districts, or student organizations by printers, engravers, photographers and the like.

(c) Exemption Certificates. Any seller claiming a transaction as exempt from sales tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8 should timely obtain an exemption certificate in writing from the purchaser. The exemption certificate will be considered timely if obtained by the seller at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property.

(1) Certificate A. Certificate to be used for purchases of tangible personal property for incorporation into newspapers or periodicals for sale in accordance with subdivisions (b)(1) or (b)(3), above.

(2) Certificate B. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed without charge in accordance with subdivision (b)(2), above.

(3) Certificate C. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3) in accordance with subdivision (b)(5)(A), above.

(4) Certificate D. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations in accordance with subdivision (b)(5)(B), above.

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for  
incorporation into a newspaper or periodical for sale

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I  
do not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase  
from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the newspaper or periodical \*

\_\_\_\_\_  
and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified  
above or used other than for retention, demonstration, or display while holding it for sale in  
the regular course of business, I am required by the Sales and Use Tax Law to report and  
pay any applicable sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\* Insert name and type of newspaper or periodical

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed without charge

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing \*

\_\_\_\_\_  
which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of the such property.  
Description of property to be purchased:

\_\_\_\_\_  
Date: \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\* Insert name and type of newspaper or periodical

Certificate C

California Sales Tax Exemption Certificate

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

| \_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing \*

| which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be sold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

\_\_\_\_ The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors,

\_\_\_\_ The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

**Issue Paper 15-012**  
**Staff's Proposed Amendments to Regulation 1590**

Date: \_\_\_\_\_, 19 \_\_\_\_\_

---

(Signature of Purchaser or Authorized Agent)

---

(Title)

\* Insert name and type of newspaper or periodical

Certificate D

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

---

(Name of Purchaser)

---

(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_ That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in the business of selling or publishing \*

---

which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

---

(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of property to be purchased:

---

---

Date: \_\_\_\_\_, 19 \_\_\_\_\_

---

(Signature of Purchaser or Authorized Agent)

---

(Title)

\* Insert name and type of newspaper or periodical



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION  
CNPA Services, Inc.

2701 K Street Sacramento, CA 95816 ♦ Ph: 916.288.6000 ♦ Fax: 916.288.6002 ♦ www.cnpa.com

November 3, 2015

Susanne Buehler, Chief  
Tax Policy Division,  
Sales and Use Tax Department  
State Board of Equalization  
450 N Street  
Sacramento, California 94279-0092

**RE: Proposal to Amend Regulation 1590, Newspapers & Periodicals**

Dear Ms. Buehler:

On behalf of the California Newspaper Publishers Association, I am submitting the following comments regarding the proposal to amend Regulation 1590, Newspapers and Periodicals as provided in the Second Discussion Paper. Please note the proposed language for Mixed Newspaper Subscriptions contained in this submission replaces the language we proposed in our October 14, 2015 letter to the Board.

At the recent Interested Parties Meeting (IPM) in September, we provided to BOE staff a list of twenty seven (27) newspapers (whose frequency of publication was either daily or several times per week) that we surveyed to obtain their subscription rate information. After obtaining the rates for the various types of print and digital subscriptions offered by each of the 27 newspapers, we averaged those rates for each publication.

Applying the same methodology that was approved by the Board when it issued its initial Private Letter Ruling (PLR), we determined the print and digital allocations for each of the 27 publications. The non-taxable digital allocations ranged from a low of 44% to a high of 63% with the average being 54% across all 27 newspapers.

We testified at the September IPM, however, that 54% does not accurately reflect rapidly changing developments in the industry. Many newspapers, to remain viable, are decreasing the frequency of their print products and relying on more robust digital content posting on their websites. For this reason, we think that 60% is a more accurate percentage for purposes of establishing the rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription. Moreover, by using 60% as the figure for the rebuttable presumption (which CNPA believes may still be conservative), it would be less likely that the stakeholders will be back before the BOE in the next year or two to seek an adjustment.

CNPA Comments re: Proposal to Amend Regulation 1590

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Page 2

In the Second Discussion Paper issued by BOE staff prior to the September IPM meeting, staff proposed bifurcating Mixed Newspaper Subscriptions into two categories – one that would include print products that are distributed four (4) days or more per week and the other that would include print products that are distributed three (3) days or less per week. Additionally, the proposal would establish two different percentages to be used as the rebuttable presumption for each category.

As we stated at the IPM, CNPA thinks the proposal to create two categories and two rates would be considerably burdensome and unnecessarily complicated for newspapers (as well as BOE staff) to calculate with little, if any, benefit to newspapers or the state. CNPA would not support this approach.

CNPA identified what may be an inadvertent omission in the proposed language on page 3 of Exhibit 1 of the Second Discussion Paper, Regulation 1590 (b)(3)(B). The proposal currently reads:

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt) and the right to access digital content is not subject to the tax.”

CNPA urges staff to incorporate the following language in its proposed amendments to regulation 1590 (additions in italics) to reflect current practices with regard to those newspapers who utilize Regulation 1628 when reporting to the BOE:

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt *or excluded*) and the right to access digital content is not subject to the tax.”

The following proposed language incorporates the cumulative changes CNPA has proposed regarding amendments to Regulation 1590 in the Initial and Second Discussion Papers as well as language that establishes the presumption and includes the standard and documentation for overcoming it. (additions in italics, deletions in ~~strikeout~~):

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt *or excluded*) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, ~~in which tangible copies are distributed four days or more per week, it is presumed that~~ *sixty-two (62) forty (40)* percent of the charge for the mixed newspaper subscription is regarded as the taxable measure ~~from the sale of and tax applies to that amount; and~~ *and the remaining* ~~thirty-eight (38) sixty (60)~~ *sixty (60)* percent is *presumed to be the* nontaxable sale of the right to access the digital content.

CNPA Comments re: Proposal to Amend Regulation 1590

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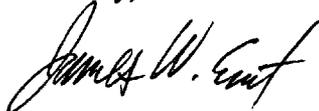
Page 3

~~2. For sales of mixed newspaper subscriptions made on and after October 1, 2016, in which tangible copies are distributed three days or less per week, forty-eight (48) percent of the charge for the mixed newspaper subscription is regarded as the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-two (52) percent is regarded as the nontaxable sale of the right to access the digital content."~~

2. *For sales of mixed newspaper subscriptions made on and after October 1, 2016, a taxpayer may submit data that shows the non-tangible portion of a mixed subscription is greater than the percentages provided in subdivision (B)(1). The data shall include, but is not limited to, the taxpayer's individual home subscription and digital delivery rates.*
3. *If a taxpayer submits data described in subdivision (B)(2), the home subscription delivery rates shall be added to the digital delivery rate, the sum of which shall then be divided by the digital rate to determine if the mixed subscription is greater than sixty (60) percent."*

CNPA thanks the Board and its staff for the opportunity to participate in the process of developing this regulation. If you have any questions please don't hesitate to contact me at your earliest convenience.

Sincerely,



James W. Ewert  
CNPA General Counsel

cc: Dean Eckenroth, CNPA President, Publisher *The Coronado Eagle and Journal*  
Julie Xanders, Vice President and Assistant General Counsel, *Los Angeles Times*  
Jeffrey Glasser, CNPA Governmental Affairs Committee Chairman and Vice President and Senior Counsel, *Los Angeles Times*  
Thomas W. Newton, CNPA Executive Director  
Nikki Moore, CNPA Staff Attorney

Hi Tracy:

Following is the revised proposed language (in red italics) submitted by CNPA that accurately reflects the allocation calculation discussed by the newspaper industry and BOE staff at both Interested Parties Meetings. I apologize for the confusion. Thank you for bringing the discrepancy to our attention and your diligence in ensuring that it is right. Please contact me at your earliest convenience if you have any questions or concerns.

Thanks,  
Jim



*James W. Ewert*  
**CNPA General Counsel**  
2701 K Street  
Sacramento, California 95816-5131

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, ~~in which tangible copies are distributed four days or more per week, it is presumed that sixty-two (62) percent of the charge for the mixed newspaper subscription is regarded as the taxable measure from the sale of and tax applies to that amount; and the remaining thirty-eight (38) percent is presumed to be the nontaxable sale of the right to access the digital content.~~

~~2. For sales of mixed newspaper subscriptions made on and after October 1, 2016, in which tangible copies are distributed three days or less per week, forty-eight (48) percent of the charge for the mixed newspaper subscription is regarded as the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-two (52) percent is regarded as the nontaxable sale of the right to access the digital content.”~~

2. *For sales of mixed newspaper subscriptions made on and after October 1, 2016, a taxpayer may submit data that shows the non-tangible portion of a mixed subscription is greater than the percentages provided in subdivision (B)(1). The data shall include, but is not limited to, the taxpayer’s individual home subscription and digital delivery rates.*

3. *If a taxpayer submits data described in subdivision (B)(2), the digital delivery rate shall be divided by the sum of home subscription delivery rates and the digital delivery rate to determine if the mixed subscription is greater than sixty (60) percent.”*

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JANUARY 26, 2016

BUSINESS TAXES COMMITTEE

REPORTED BY: Carole W. Browne

CSR NO. 7351

## P R E S E N T

1  
2 For the Board of Diane L. Harkey.  
Equalization: Chair  
3  
4 Jerome E. Horton  
Member  
5 Sen. George Runner (Ret.)  
Member  
6  
7 Fiona Ma, CPA  
Member  
8 Yvette Stowers  
Appearing for Betty T.  
9 Yee, State Controller  
(per Government Code  
10 Section 7.9)  
11 Joann Richmond  
Chief  
12 Board Proceedings  
Division  
13  
14 For the Board of  
Equalization Staff: Susanne Buehler  
15 Chief  
Tax Policy Division  
16 Scott Claremon  
Tax Counsel III  
17 Legal Department  
18 Lawrence Mendel  
Tax Counsel III  
19 Legal Department  
20 Robert Tucker  
Assistant Chief Counsel  
21 Legal Department  
22 Richard Parrott  
Business Taxes  
23 Administrator III  
Special Taxes Department  
24  
25 Speakers: Jim Ewert  
General Counsel  
26 California Newspaper  
Publishers Association  
27 Randy Cheek  
SEIU Local 1000  
28

1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 JANUARY 26, 2016

4 ---o0o---

5 MR. RUNNER: We're going to go ahead and begin  
6 with the Business Taxes Committee, so I'll turn that  
7 over to the Chair of the Business Taxes Committee.

8 MS. HARKEY: Thank you very much.

9 I -- we have several items today, and I would  
10 like to first bring up -- I thought I was ready. Okay.  
11 First item on the agenda is Regulation 1590, Newspaper  
12 and Periodicals.

13 (Mr. Horton entered the hearing room.)

14 MR. RUNNER: Oh, here we are.

15 Mr. Chair, we just started the Business Taxes  
16 Committee.

17 MR. HORTON: Thank you.

18 MR. RUNNER: If you want to go back and start  
19 over, that would be fine, because we haven't actually  
20 started. We just did the pledge.

21 MS. HARKEY: We haven't done anything yet, so  
22 would you like to just . . .

23 MR. HORTON: Just continue.

24 MR. RUNNER: We knew you had an interest in the  
25 leg., so we were waiting until you got here to do that.

26 MR. HORTON: Appreciate it. Appreciate it.

27 MS. HARKEY: Okay. Staff accompanying Susanne  
28 Buehler, Charlotte -- or you want to introduce your

1 staff? Have you got any staff, Susanne?

2 MS. BUEHLER: Mr. Larry Mendel and Mr. Scott  
3 Claremon are supposed to be joining me, but I'm not sure  
4 that they're aware --

5 MS. HARKEY: I think they're coming up the rear  
6 here.

7 MS. BUEHLER: Awesome. Thank you.

8 MR. RUNNER: Backup's on its way.

9 MS. BUEHLER: Good morning. I am Susanne  
10 Buehler with the Sales and Use Tax Department. We have  
11 two agenda items for your consideration today. We will  
12 take each agenda item and their respective action items  
13 separately before moving on to the next.

14 With me for Agenda Item 1 are Mr. Larry Mendel  
15 and Mr. Scott Claremon from our Legal Department.

16 Staff requests your approval and authorization  
17 to publish proposed amendments to Sales and Use Tax  
18 Regulation 1590, Newspapers and Periodicals.

19 The proposed amendments clarify the application  
20 of tax to newspaper subscriptions that include both  
21 paper and access to digital content.

22 Staff recommends that 53 percent of the charge  
23 for these subscriptions be presumed to be for the  
24 nontaxable sale of the right to access digital content.  
25 Taxpayers may rebut this presumption by producing  
26 documentation that -- establishing that the nontaxable  
27 allocation is greater than 53 percent.

28 We do have speakers on this agenda item, and

1 we'd be happy to answer any questions you may have after  
2 their presentation.

3 MS. HARKEY: Thank you very much.

4 Are there any -- any questions from the Board?

5 MR. RUNNER: (Inaudible) guest speaker.

6 MS. HARKEY: Oh, okay. I'm sorry. He's not  
7 part of staff. I'm sorry. Excuse me. Yes, sir.

8 MR. EWERT: Madam Chair and Members of the  
9 Board, my name is Jim Ewert. I'm the general counsel  
10 for the California Newspaper Publishers Association.

11 We want to thank you, Madam Chair, for  
12 spearheading the effort here and for your staff's work  
13 as well as the staff of the BTC. We think this is a  
14 good regulation, good amendments to the regulation that  
15 we've lived under since about 1991 now, and we urge an  
16 aye vote.

17 MS. HARKEY: Thank you. Are there any other  
18 speakers? Any member of the public? Board members?  
19 Any questions or comments?

20 MR. RUNNER: Move to adopt staff  
21 recommendation.

22 MS. STOWERS: Second.

23 MS. HARKEY: Second. But I'd like to just say  
24 this was a very, very cooperative effort between the  
25 industry and the staff. I really appreciate the staff  
26 efforts of trying to move and the industry's efforts of  
27 moving so that we've got something that works for  
28 everyone. It's a good compromise position, and I -- I

1 want to thank you all for working collectively together.  
2 Thank you. It'll -- it'll benefit the state of  
3 California. Thanks so much.

4 MS. BUEHLER: Thank you.

5 MS. HARKEY: Okay. We have a motion and a  
6 second. Any opposition? No? Okay. So moved.

7 MS. BUEHLER: Thank you.

8 Joining me for Agenda Item 2 will be  
9 Mr. Richard Parrott from Special Taxes and Fees  
10 Department, and Mr. Robert Tucker from the Legal  
11 Department.

12 Staff requests your approval and authorization  
13 to publish Proposed Cigarette and Tobacco Products Tax  
14 Regulation 4076, Wholesale Cost of Other Tobacco  
15 Products, and Regulation 4001, Retail Stock.

16 The proposed regulations define and clarify the  
17 terms "wholesale cost" and "retail stock" as they relate  
18 to the cigarette and tobacco products tax.

19 In addition to the definitions, both  
20 regulations provide examples to assist taxpayers in the  
21 application of tax.

22 Regulation 4076 also includes a rebuttable  
23 presumption for showing a transaction was at arm's  
24 length.

25 We do have speakers on this agenda item, and  
26 we'd be happy to answer any questions you may have after  
27 their presentation.

28 MS. HARKEY: Okay. Thank you.

1 Any speakers from the public? Come forward and  
2 state your name and affiliation for the record, please.

3 MR. CHEEK: Thank you, Madam Harkey. Randy  
4 Cheek with SEIU Local 1000.

5 We do have some concerns about the regulation  
6 that deals with humidors in that you have regular retail  
7 product that will be mixed in with product that is not  
8 taxed yet; and therefore, that gives our inspectors,  
9 whom we represent, a problem when they go into a section  
10 and they don't know which one has been pretaxed and  
11 which one hasn't been taxed.

12 That also provides -- if you go into some of  
13 these humidors, you'll notice that they may not have  
14 personnel in there, and someone can go in and take a  
15 nontaxed item off the shelf and go to the clerk and pay  
16 for it; and therefore, that gives the -- that will cause  
17 a loss of revenue for the BOE.

18 And we feel that this particular item -- and I  
19 believe it's under No. 2A that talks about the walk-in  
20 humidors -- we believe that that could be a problem for  
21 our members, and we also believe that that could be a  
22 loss of tax revenue.

23 So therefore, we would like you to take that  
24 into consideration. We -- we do have a -- oppose on  
25 that particular position.

26 MS. HARKEY: I believe -- just for the record,  
27 we did take that into consideration.

28 Ms. Buehler, could you define the differences

1 between the two items and when something is moved from  
2 overstock, in essence, to retail stock?

3 MS. BUEHLER: I will defer to Mr. Parrott.  
4 That is his area of expertise.

5 MR. PARROTT: Yes. Richard Parrott with  
6 Special Taxes and Fees.

7 We have in the regulation where the product  
8 must be segregated, separated, and clearly labeled.  
9 The -- the wholesale -- or the nonretail stock will  
10 still be sealed in the original manufacturer packaging,  
11 and that's the distinction in the regulation to cause  
12 the -- the difference.

13 So we felt it was very clear, even in the  
14 walk-in humidors, that that product would be separately  
15 set aside from the retail stock and still sealed in the  
16 original manufacturer packaging.

17 MS. HARKEY: Thank you. I know we worked on  
18 this for several months to try to get it right so that  
19 we couldn't have a fudge factor in it or could decrease.

20 MR. PARROTT: Yes.

21 MS. HARKEY: This resulted, you know, Members,  
22 as a -- a case we heard I think our first or second  
23 month where there was an issue as to what was taxable,  
24 what was not. So I appreciate the SEIU's concern. I  
25 think we tried to address that over the several months.  
26 It's been probably nine months, I think, in the works.

27 So with that, are there any other speakers?

28 Board members?

1 MR. HORTON: Madam Chair.

2 MS. HARKEY: Yes, Chairman.

3 MR. HORTON: Only because I wasn't really a  
4 party to the -- to the process, I just want to make sure  
5 that SEIU and the Department have reconciled their  
6 differences and they're in agreement that this works for  
7 the individuals who are on the front line trying to --  
8 that are required to enforce the law. These are the  
9 individuals that are out there in the field.

10 As much as I, you know, appreciate the  
11 administrative oversight, I have a tendency to -- to --  
12 to give credence to those individuals who have to --  
13 actually have to enforce the law itself. So the  
14 questions of both of you have -- and I'll first go to  
15 SEIU. Have you had an opportunity to reconcile your  
16 concerns in this regard?

17 MR. CHEEK: No, sir, we have not. I -- I last  
18 spoke with one of the inspectors, and their concern was  
19 that a customer can come into a walk-in humidor, see  
20 that the product was on the retail side, no longer  
21 available, look around the humidor, and see that, oh,  
22 there's an El Presidente over there, go over to that  
23 box, open it up, even though it may be sealed, and  
24 purchase the product. And they felt that it wasn't  
25 clearly delineated as to what was taxed and not taxed  
26 inside the humidors, and that -- that gave them some  
27 pause.

28 And, you know, as you know, probably don't have

1 enough inspectors out there right now, so that's  
2 probably part of the issue. It causes them to have some  
3 confusion, and therefore, they felt that this was an  
4 issue with them.

5 MR. HORTON: Okay. Have -- have they put forth  
6 a recommended solution or are they contemplating and  
7 would like an opportunity to do so?

8 MR. CHEEK: They would like an opportunity to  
9 do so.

10 MS. HARKEY: Thank you.

11 MS. STOWERS: Chairman -- Chairwoman, can I  
12 make a comment?

13 Thank you for your comments, Mr. Cheek. I'm  
14 also concerned with the -- with the definition of retail  
15 stock as well.

16 First, can you clarify the reg -- the portion  
17 of the regulation that deals with an individual that  
18 holds the distributor's license and a retail license and  
19 basically saying -- and I'll paraphrase -- that if  
20 you're in that situation where you hold both licenses,  
21 you can have stock on the distributor's side, store it  
22 on the location but separate from the inventory that  
23 you're going to sell? Is that kind of a good paraphrase  
24 of that?

25 MR. PARROTT: That's correct. Yes.

26 MS. STOWERS: So at what point will this  
27 distributor -- and is the distributor mainly  
28 distributing the -- the product to himself on the retail

1 side?

2 MR. PARROTT: Correct.

3 MS. STOWERS: So at what point will the  
4 distributor self-assess the excise tax and remit to the  
5 Board and then how do we verify this?

6 MR. PARROTT: The distributor would do that  
7 when they take the product from the sealed original  
8 manufacturer packaging, break that seal, and put it on  
9 the shelf that's intended for retail. Then at that  
10 point that would trigger a taxable event that would be  
11 reported on their distributor's tax return for that  
12 period, and then that would be verified also through  
13 audit -- our audit program.

14 MS. STOWERS: My concern is that -- that  
15 process, taking it from the back room to the front room  
16 and now reporting it is going to increase the cost of  
17 our licensing act and that distribution when our  
18 inspectors get out there and try to verify if this  
19 product is taxable or not taxable. I'm also concerned  
20 that it's going to raise the cost, it's going to provide  
21 more administration variable to the BOE.

22 And considering that we're talking about  
23 distributors, retailers that are just basically selling  
24 to themselves, it seems to me a more bright-line test  
25 would be that when they acquire the product from the  
26 wholesaler or the -- whoever they're acquiring it from,  
27 that they know that they're going to sell it to  
28 themselves at some point in time, that they might as

1 well go ahead and pay the excise tax up front.

2 So I do not support 4001. I also believe that  
3 it's going to encourage the underground economy and it's  
4 just opening the door for noncompliance.

5 MR. HORTON: Okay.

6 MS. HARKEY: Other Board member comments?

7 Mr. Runner.

8 MR. RUNNER: Yeah. Just a quick question in  
9 regards to my understanding of the process.

10 I assume SEIU brought this up in the IP  
11 process?

12 MR. CHEEK: I'm not sure they have, no.

13 MR. RUNNER: Well, then it's -- okay. It's  
14 difficult for me, when we have an IP process, which then  
15 includes these kind of discussions, then to come to the  
16 Board if they didn't engage during the time when this  
17 was supposed to be talked about, because I think we  
18 can -- it seems to me this is a solvable problem, I  
19 think, I mean, unless you expect a store to have two  
20 different -- two separate humidors, and in order to do  
21 this, you know, move stock from one place to the other,  
22 I just don't think that's reasonable for business. But  
23 I guess I'm a little kind of concerned that -- at the  
24 process. I assume SEIU is aware of the IP process.

25 MR. CHEEK: I am not sure that we were, no.

26 MR. RUNNER: Well, let me ask --

27 MR. CHEEK: I wasn't part of that.

28 MR. RUNNER: Okay. Let me ask, what's --

1 what's our normal process in regards to invitation to  
2 the -- to the Interested Parties' meetings?

3 MS. BUEHLER: Generally we have a stock list  
4 that we go from and then also pull in the industry that  
5 is specific to the topic and do searches for industry  
6 organizations as well as large retailers that we look  
7 at.

8 MR. RUNNER: Would we normally then include  
9 then representing then staff who would be enforcing of  
10 that, and would -- would SEIU be notified or would -- or  
11 would staff be identified -- invited and be -- be aware  
12 of the IP process?

13 MS. BUEHLER: The Investigations Division was  
14 represented in the meetings, yes.

15 MR. RUNNER: So they were in the meetings?

16 MS. BUEHLER: Yes.

17 MR. RUNNER: And -- okay. Again, it's hard --  
18 it seems to me, again, just processwise, we have IP  
19 processes so that we can kind of iron out these issues.  
20 That's the whole purpose for why we do it. And so it's  
21 hard then when we come to a Board meeting if all of a  
22 sudden we have objections that were never even raised in  
23 the IP process, and we have the investigators there that  
24 are the ones that are helping to craft the -- the  
25 solution.

26 You know, I -- again, what I'm hearing, I  
27 think, is that there just -- that right now at least  
28 what I'm hearing is that you don't believe that there is

1 a way to separate retail sale if it's all from stock --  
2 from stock that isn't for retail if it's all in the same  
3 big humidor, walk-in humidor.

4 MR. CHEEK: I wouldn't say that. I would say  
5 that our inspectors were concerned about delineating  
6 those products.

7 MR. RUNNER: Were your inspectors different  
8 than the ones that were in the IP process?

9 MR. CHEEK: I do not know who was in the IP  
10 process.

11 MR. RUNNER: Well, we've got -- we've got to  
12 fix that. We've got to fix this so that -- so that when  
13 we have an IP process that we have the right labor folks  
14 that are in the IP process so we don't end up with these  
15 kind of issues, you know.

16 So I guess I'm -- I'm personally satisfied the  
17 IP process was there; the inspectors were there. I  
18 think, you know, again, the guidelines to separate  
19 retail sales from -- from stock made sense.

20 Remember, we got in this problem because of the  
21 fact that there was a robbery, people couldn't keep  
22 track of what was in, what was out, and so we're trying  
23 to solve that problem.

24 And I would just encourage everybody who's out  
25 there when we have an IP process to participate so we  
26 can solve these problems in the be -- end, not when we  
27 get in front of the Board.

28 MS. HARKEY: Mr. Horton.

1           MR. HORTON: Madam Chair, just from a  
2 historical perspective, Members, the IP process and this  
3 process is a -- is a continuous process. Individuals  
4 participate at that level if they -- if they're not or  
5 for whatever reason don't have an opportunity to  
6 participate at that level or if the information that is  
7 developed and consummated at that level, upon review of  
8 that, their only alternative is to come before the Board  
9 and then express their concerns if for -- for whatever  
10 reason.

11           The IP process itself is not guaranteed to --  
12 to dictate or delineate what the suggestions that are  
13 made in the hearing. For example, staff is not required  
14 to accept all suggestions and to incorporate that in  
15 their ultimate recommendation. And when that doesn't  
16 occur, the public's only position is to come before the  
17 body and then express their concerns about the final  
18 results.

19           The other inherent difference from SEIU's  
20 perspective and the employees that work, that may be  
21 there in an advisory capacity to provide advice to  
22 staff, the investigators, they have a different  
23 perspective oftentimes than from a labor perspective.

24           And so you've got two situations, often up to  
25 five different situations, where individuals are --  
26 ultimately will come before the Board, which is part of  
27 the process and part of the duties that we have in order  
28 to take that under consideration.

1           We cannot summarily dismiss concerns because  
2 they didn't participate in the initial process. This is  
3 a part of that process. Their participation at this  
4 point is welcome.

5           And Members, I suggest we just put it over,  
6 allow the parties an opportunity to work out their  
7 differences and bring it back to us.

8           MS. HARKEY: Ms. Ma.

9           MS. MA: Yeah, I would second that motion just  
10 because I still don't think it's going to be clear, like  
11 in the case that we had, what is taxable and what's not  
12 taxable. I mean, if it's in a wrapper or not in a  
13 wrapper, they open the box, they don't open the box.  
14 So, you know, I think we should either have it one or  
15 the other instead of having someone decipher whether it  
16 really was wrapped or not wrapped.

17           MS. HARKEY: Okay. There's a motion and  
18 second.

19           And I would just like to comment, we went  
20 through a very long process with this. I believe  
21 Mr. Silva was involved, staff was involved, we had  
22 members of the industry, I believe we had labor --  
23 should have -- and I appreciate your concerns, because  
24 this is a public hearing, but I would like to suggest,  
25 if we're going to hold this over, that we bring it back  
26 next month, and that we encourage everyone to get really  
27 involved if we could. What -- excuse me. You have a  
28 problem with doing that?

1 MS. BUEHLER: Next month, because of the  
2 timeline for putting things on the Public Agenda Notice  
3 I don't think would be quite feasible, so I would ask  
4 that you give us a little bit more time.

5 MS. HARKEY: March?

6 MS. BUEHLER: And I would also like to suggest  
7 that perhaps we bifurcate the two regulations, and  
8 perhaps, since we're only having issues on the 4001,  
9 Retail Stock, that we have a separate vote on 4076.

10 MS. HARKEY: Okay. That's fine. Okay. So is  
11 that agreeable to everybody? Is your motion for --

12 MR. HORTON: Yes, mm-hmm.

13 MS. HARKEY: Okay. So the Retail Stock is the  
14 one we have an issue with; correct? So there's a motion  
15 to put that over, 4001, Retail Stock, to put that over  
16 until March. And there was a second from Ms. Ma?

17 MS. MA: Mm-hmm.

18 MS. HARKEY: Okay. Any opposition? Okay. So  
19 it will be.

20 MR. HORTON: Madam Chair, if you will, I do  
21 believe Mr. Runner's point does have significance to  
22 these, too. And this is to the general public, to the  
23 extent possible, we -- it is helpful to have all of the  
24 insight in each phase of the process but it's also  
25 understanding and respectful to allow this process to --  
26 to take its course as well.

27 And I thank you everybody for their  
28 participation, particularly the Chair. She has been,

1 you know, conscious of this and working diligently  
2 trying to work it out, and so . . .

3 MS. HARKEY: That has been a very --

4 MR. HORTON: Long process.

5 MS. HARKEY: -- long and difficult process  
6 establishing what's what. And I would encourage the  
7 members of SEIU to look at the recent case, over the  
8 last year, and find out why -- how this came -- how this  
9 came to be and review the tapes of the Board hearing.  
10 It was -- it's quite a process for a small store that  
11 has one humidor. And, you know, it's quite an expense  
12 to pay the taxes on all of it up front versus as you  
13 bring it into the inventory, which I think --

14 MR. HORTON: Democracy at its best.

15 MR. RUNNER: And one quick item, too. If -- if  
16 we could ensure that in the IP process -- because,  
17 again, I -- I get the fact that -- that investigators  
18 that may have been in this process were not the same  
19 folks that maybe deal with the issue in regards to the  
20 SEIU, so I guess I'd like to know that when we do an IP  
21 process that affects staff that we actually go the extra  
22 effort to include the fact that we know that whatever  
23 staff is in that discussion is also then, at least, I  
24 guess, using the same eyes as -- as SEIU would be, as  
25 their union would, so again, we don't end up with this  
26 bifurcated issue and assume that, you know, there's  
27 staff that was participating, but that staff didn't  
28 necessarily hold the views or concerns of the -- of the

1 union itself. So I think -- I think that's an important  
2 discussion to have at the front end so that we don't get  
3 here at the back end.

4 MS. HARKEY: It's okay to bring this back. I'm  
5 happy to have the discussion, and we'll go over it  
6 again, but it is a -- it's a very, very difficult  
7 process, and I really encourage your members to get  
8 involved so that we can -- we can fine-tune this. I  
9 think we did, but I respect that, you know, this is a  
10 public hearing, and so more time is not a problem.  
11 Thank you.

12 So then do we have a motion on Regulation 4076,  
13 Wholesale Cost of Tobacco Products? Move that item?

14 MR. RUNNER: I'll move the -- okay. So the --

15 MS. HARKEY: We're bifurcating.

16 MR. RUNNER: Right. And 4001 is the one we put  
17 over, and I'll move -- I'll move the -- or the  
18 recommendation of adoption of Regulation 4076.

19 MS. HARKEY: Do I have a second? I will  
20 second.

21 MR. RUNNER: I thought we were okay.

22 MS. HARKEY: I thought we were okay, too.

23 MS. STOWERS: Oh, I'm sorry. Second.

24 MS. HARKEY: Okay. We can't blame SEIU for not  
25 showing up. Okay. Here we go.

26 Okay. We have a motion and a second to adopt  
27 Regulation 4076. Any objection? Such will be the  
28 order. Thank you very, very much.

1 MS. BUEHLER: Thank you.

2 MS. HARKEY: That ends the Business Taxes  
3 Committee, I believe.

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REPORTER'S CERTIFICATE

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State of California )  
 ) ss  
County of Sacramento )

I, CAROLE W. BROWNE, Hearing Reporter for the California State Board of Equalization, certify that on January 26, 2016, 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 20 constitute a complete and accurate transcription of the shorthand writing.

Dated: January 31, 2016

*Carole W. Browne*



CAROLE W. BROWNE, CSR #7351

Hearing Reporter

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

**Proposed Amendment of Sales and Use Tax Regulation 1590, *Newspapers and Periodicals***

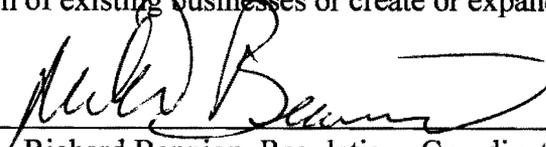
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

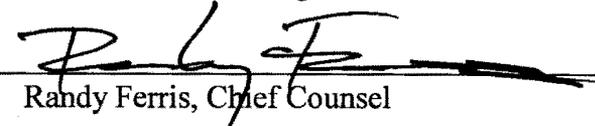
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that 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 5-6-16  
Richard Bennion, Regulations Coordinator

Approved by  Date 5/9/16  
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 State 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 1590, Newspapers and Periodicals			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       e. Imposes reporting requirements  
 b. Impacts small businesses                       f. Imposes prescriptive instead of performance  
 c. Impacts jobs or occupations                       g. Impacts individuals  
 d. Impacts California competitiveness               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 \_\_\_\_\_ estimates that the economic impact of this regulation (which includes the fiscal impact) is:  
(Agency/Department)

- 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)]*

3. 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)**

**STIMATED 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.*

1. 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)**

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)**

**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

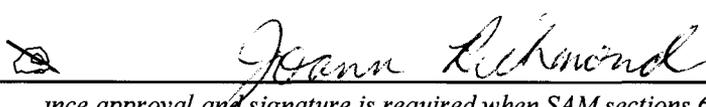


DATE

April 19, 2016

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

April 19, 2016

once 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 1590,**  
***Newspapers and Periodicals***

As explained in more detail in the initial statement of reasons, the proposed amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1590, *Newspapers and Periodicals*, add definitions for the terms “mixed newspaper subscription,” “digital-only subscription rate” and “print-only subscription rate” to subdivision (a). The proposed amendments clarify, in subdivision (b)(3)(B), that in the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction and tax is not applied to the portion of the transaction associated with the sale of the right to access digital content, and establish that, on and after October 1, 2016, fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is presumed to be for the nontaxable portion. The proposed amendments clarify that the presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate (as proposed to be defined) divided by the sum of the print-only subscription rate (as proposed to be defined) and the digital-only subscription rate is greater than fifty-three (53) percent. The proposed amendments also make changes to subdivision (b)(5) and Exemption Certificates C and D so that the subdivision and certificates more clearly follow the language of Revenue and Taxation Code (RTC) section 6362.8. In addition, the proposed amendments delete outdated references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from the regulation, reformat the regulation’s exemption certificates, and make minor non-substantive changes to Exemption Certificates B, C, and D.

As explained in more detail in the initial statement of reasons, the proposed amendments do not change the application of tax to mixed newspaper subscriptions because only a portion of a lump-sum charge for a mixed newspaper subscription is currently subject to tax under *Dell, Inc. v. Superior Court* (2008) 159 Cal.App.4th 911. The RTC, as previously interpreted by the Board and Board’s Legal Department, currently requires newspaper retailers to make a “reasonable” and “fair” allocation of such a lump-sum charge based upon the values of the taxable and nontaxable portions of the mixed transaction and the proposed amendments continue to require such a reasonable and fair allocation consistent with long-standing precedent. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].)<sup>1</sup> Also, beginning October 1, 2016, the proposed amendments permit newspaper retailers to reasonably and fairly allocate fifty-three percent of such a lump-sum charge to the nontaxable sale of the right to access digital content based upon the California Newspaper Publishers Association’s (CNPA’s) data and calculations, included in Attachment A to the initial statement of reasons, which established that, on average, fifty-three (53) percent of the current charges for 27 newspapers’

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<sup>1</sup> Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. (See Reg. 5700.)

mixed newspaper subscriptions are charges for the right to access digital content. And, the proposed amendments incorporate the formula the CNPA used to calculate the portion of such a lump-sum charge that is for the nontaxable right to access digital content and permit newspaper retailers to use the formula to establish that more than fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable right to access digital content, to ensure that tax continues to be applied to the tangible personal property portion, but not the service portion, of such a mixed transaction, consistent with *Dell*.

As a result, the proposed amendments provide guidance about how tax currently applies to lump-sum charges for mixed newspaper subscriptions, and there is nothing in the proposed amendments to Regulation 1590 that would significantly change how retailers and consumers of newspapers would generally behave in the absence of the proposed amendments. The amendments to Regulation 1590 do not require that individuals and businesses do anything that is not currently required and do not impose any costs on any persons. The Research and Statistics Section of the Board's Legislative and Research Division determined that there is nothing in the proposed amendments that would impact revenue. (See Exhibit 1 to Formal Issue Paper 15-012.) The Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. The Board has determined that the proposed amendments 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 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper 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 1590:

- 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 creation of new businesses or the elimination of existing businesses nor expand businesses currently doing 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, no 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, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California; 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 1590 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 1590 will not affect the benefits of Regulation 1590 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-2016-0419-01), REGULATORY ACTION NUMBER, EMERGENCY NUMBER

For use by Office of Administrative Law (OAL) only

RECEIVED DATE PUBLICATION DATE

APR 19 '16 APR 29 '16

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 (Newspapers and Periodicals), TITLE(S) (18), FIRST SECTION AFFECTED (1590), 2. REQUESTED PUBLICATION DATE (April 29, 2016), 3. NOTICE TYPE (Notice re Proposed Regulatory Action), 4. AGENCY CONTACT PERSON (Richard E. Bennion), TELEPHONE NUMBER ((916) 445-2130), FAX NUMBER ((916) 324-3984), OAL USE ONLY (Approved as Submitted), ACTION ON PROPOSED NOTICE (Approved as Modified), NOTICE REGISTER NUMBER, PUBLICATION DATE

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

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, \$100 Changes Without Regulatory Effect, Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY: Department of Finance, 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**

### **The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1590, *Newspapers and Periodicals***

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.) 1590, *Newspapers and Periodicals*. The proposed amendments define the term “mixed newspaper subscription” to mean “a subscription for a tangible newspaper combined with a subscription for the right to access digital content.” The proposed amendments clarify in subdivision (b)(3) that in “the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content in not subject to tax.” The proposed amendments establish that, on and after October 1, 2016, it is presumed that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provide that the presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate (as proposed to be defined) divided by the sum of the print-only subscription rate (as proposed to be defined) and the digital-only subscription rate is greater than fifty-three (53) percent.

In addition, the proposed amendments make changes to subdivision (b)(5) so that it more clearly follows the language of RTC section 6362.8. The proposed amendments delete outdated references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b), and delete the outdated reference to RTC section 6362.3 from the regulation’s reference note. Furthermore, the proposed amendments make minor grammatical and formatting changes to Exemption Certificates A through D set forth in the regulation and add language to Exemption Certificates C and D to make them consistent with the requirements of RTC section 6362.8.

#### **PUBLIC HEARING**

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on June 14-15, 2016. 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](http://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 9:00 a.m. or as soon thereafter as the matter may be heard on June 14 or 15, 2016. 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 1590.

## AUTHORITY

RTC section 7051

## REFERENCE

RTC sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.7, and 6362.8.

## 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.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) 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.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the Board, and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

"Tangible personal property" means "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal

property is transferred incidental to the provision of the services. (Reg. 1501) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A “mixed transaction,” in contrast, is a transaction in which “the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other).” (*Dell, Inc. v. Superior Court (Dell)* (2008) 159 Cal.App.4th 911, 925.) If a transaction is a “mixed transaction,” each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board’s Legal Department have previously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a “reasonable” and “fair” allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].) (Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. See Reg. 5700.) In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board’s Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and nontaxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15, 1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of “periodical” which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590 implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a

“newspaper” is a publication that is “commonly understood to be a newspaper” and is “printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest.” (Reg. 1590, subd. (a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

#### Effects, Objective, and Benefit of the Proposed Amendments to Regulation 1591

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell, supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the digital services and the printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such subscriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested parties did not agree with the nontaxable percentage in the draft amendments

and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable presumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would

consider adding a “safe harbor” provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper’s digital-only subscription rate by the sums of the newspaper’s print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper’s nontaxable percentage and then averaged all twenty-seven (27) newspapers’ nontaxable percentages together. (Attachment A to the initial statement of reasons contains the redacted data and calculations.) The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that “sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription.” In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers’ average nontaxable percentages. (Attachment B to the initial statement of reasons contains BTC staff’s calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA’s and BTC staff’s calculations, and interested parties’ presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect

the average nontaxable percentage of newspaper retailers' lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers' lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer's business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1 establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2 explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A to the initial statement of reasons.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define "digital-only subscription" and "print-only subscription" for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board's January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff's amendments to Regulation 1590 discussed above to address the issue discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff's proposed amendments added definitions for the terms "mixed newspaper subscription," "digital-only subscription rate," and "print-only subscription rate" to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in "the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax." The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the "presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate

divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent.”

Furthermore, as discussed above, BTC staff’s proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation’s reference note because the statute’s provisions are only applicable to early 1990’s transactions.

In addition, BTC staff’s proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with lines that can be initialed and checked, respectively. Staff’s proposed amendments deleted the outdated references to “19” from the exemption certificates’ date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff’s proposed amendments deleted the word “the” from the phrase “measured by the purchase price of *the* such property” (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff’s proposed amendments inserted the word “seller’s” before the word “permit” in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller’s permit, as opposed to some other type of permit. Staff’s proposed amendments inserted “the” before “business” in the phrase “engaged in business of selling or publishing” in Exemption Certificate D to make the phrase grammatically correct. Staff’s proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or periodical “which is regularly issued at average intervals not exceeding three months” to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA’s support for staff’s proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary to have the effect and accomplish the objective of addressing the issue with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions, establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper

subscription is for the nontaxable sale of the right to access digital content, and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary to have the effects and accomplish the objectives of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1590 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that specifically prescribe the application of the sales and use tax to sales and purchases of newspapers and periodicals. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1590 or the proposed amendments to Regulation 1590.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will result in no direct or indirect cost or savings to any state agency, no 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, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

#### **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 1590 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 1590 may affect small business.

#### NO 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 proposed amendments to Regulation 1590 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 1590 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1590 will not affect the benefits of Regulation 1590 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 1590 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 Scott Claremon, Tax Counsel III, by telephone at (916) 323-3184, by e-mail at [Scott.Claremon@boe.ca.gov](mailto:Scott.Claremon@boe.ca.gov), or by mail at State Board of Equalization, Attn: Scott Claremon, 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](mailto: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. Mr. Bennion is the designated backup contact person to Mr. Claremon.

#### WRITTEN COMMENT PERIOD

The written comment period ends at 9:00 a.m. on June 14, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1590 during the June 14-15, 2016, 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 1590. 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 1590 illustrating the express terms of the proposed amendments. The Board has prepared a separate document illustrating the format of amended Exemption Certificates A through D after the proposed formatting changes are made to provide additional clarity. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1590, 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, the document illustrating the format of amended Exemption Certificates A through D, and the initial statement of reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

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

The Board may adopt the proposed amendments to Regulation 1590 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 1590, 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](http://www.boe.ca.gov).

## **Bennion, Richard**

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**From:** State Board of Equalization - Announcement of Regulatory Change  
<Legal.Regulations@BOE.CA.GOV>  
**Sent:** Friday, April 29, 2016 8:28 AM  
**To:** BOE\_REGULATIONS@LISTSERV.STATE.CA.GOV  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 1590

The State Board of Equalization proposes to adopt amendments to update Sales and Use Tax Regulation 1590, *Newspapers and Periodicals*, and clarify the application of tax to lump-sum charges for mixed newspaper subscriptions that include the right to access digital content. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 9:00 a.m., or as soon thereafter as the matter may be heard, on June 14-15, 2016.

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\\_1590\\_2016.htm](http://www.boe.ca.gov/regs/reg_1590_2016.htm)

Questions regarding the substance of the proposed amendments should be directed to Mr. Scott Claremon, Tax Counsel III, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email [Scott.Claremon@boe.ca.gov](mailto:Scott.Claremon@boe.ca.gov), telephone (916) 323-3184, 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](mailto: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.

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Lance Salisbury, Senior Environmental Scientist  
California Department of Fish and Wildlife  
Lake and Streambed Alteration Program  
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Sacramento, CA 95814  
Telephone: (916) 653-3559  
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The backup contact person is:

Cathie Vouchilas, Environmental Program Manager  
California Department of Fish and Wildlife  
Lake and Streambed Alteration Program  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 651-1190  
Email: [cathie.vouchilas@wildlife.ca.gov](mailto:cathie.vouchilas@wildlife.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Lance Salisbury (see above for contact information).

#### AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying at its office at the above address. As of the date this notice is published, the rulemaking file consists of:

- Notice of Proposed Rulemaking
- Proposed Regulatory Text
- Initial Statement of Reasons
- Lake and Streambed Alteration Program Fiscal Analysis for FYs 2010–2014
- LSA Program Costs Table 2016–2018; and
- Economic and Fiscal Impact Assessment (STD. Form 399).

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Website Access: The rulemaking file is available at: <https://www.wildlife.ca.gov/Notices/Regulations>

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received by the Department, the Department may adopt the proposed regulations sub-

stantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Lance Salisbury (see above for contact information). The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Lance Salisbury (see above for contact information).

### TITLE 18. BOARD OF EQUALIZATION

#### The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1590, *Newspapers and Periodicals*

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.) 1590, *Newspapers and Periodicals*. The proposed amendments define the term “mixed newspaper subscription” to mean “a subscription for a tangible newspaper combined with a subscription for the right to access digital content.” The proposed amendments clarify in subdivision (b)(3) that in “the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” The proposed amendments establish that, on and after October 1, 2016, it is presumed that fifty–three (53) percent of the lump–sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provide that the presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital–only subscription rate (as proposed to be defined) divided by the sum of the print–only subscription rate (as proposed to be defined) and the digital–only subscription rate is greater than fifty–three (53) percent.

In addition, the proposed amendments make changes to subdivision (b)(5) so that it more clearly follows the

language of RTC section 6362.8. The proposed amendments delete outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from subdivision (b), and delete the outdated reference to RTC section 6362.3 from the regulation's reference note. Furthermore, the proposed amendments make minor grammatical and formatting changes to Exemption Certificates A through D set forth in the regulation and add language to Exemption Certificates C and D to make them consistent with the requirements of RTC section 6362.8.

### PUBLIC HEARING

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on June 14–15, 2016. 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](http://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 9:00 a.m. or as soon thereafter as the matter may be heard on June 14 or 15, 2016. 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 1590.

### AUTHORITY

RTC section 7051.

### REFERENCE

RTC sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.7, and 6362.8.

### 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.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) Although sales tax is imposed on retailers, retailers may collect sales tax reim-

bursment from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the Board, and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

"Tangible personal property" means "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal property is transferred incidental to the provision of the services. (Reg. 1501.) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A "mixed transaction," in contrast, is a transaction in which "the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other)." (*Dell, Inc. v. Superior Court (Dell)* (2008) 159 Cal.App.4th 911, 925.) If a transaction is a "mixed transaction," each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board's Legal Department have pre-

viously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a “reasonable” and “fair” allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].) (Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. See Reg. 5700.) In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board’s Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and non-taxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15, 1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of “periodical” which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590 implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a “newspaper” is a publication that is “commonly understood to be a newspaper” and is “printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest.” (Reg. 1590, subd.

(a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

#### Effects, Objective, and Benefit of the Proposed Amendments to Regulation 1591

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary

in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell, supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the digital services and the printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such sub-

scriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested parties did not agree with the nontaxable percentage in the draft amendments and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable pre-

sumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would consider adding a "safe harbor" provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The

CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper's digital-only subscription rate by the sums of the newspaper's print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper's nontaxable percentage and then averaged all twenty-seven (27) newspapers' nontaxable percentages together. (Attachment A to the initial statement of reasons contains the redacted data and calculations). The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that "sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription." In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers' average nontaxable percentages. (Attachment B to the initial statement of reasons contains BTC staff's calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA's and BTC staff's calculations, and interested parties' presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect the average nontaxable percentage of newspaper

retailers' lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers' lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer's business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1. establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2. explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A to the initial statement of reasons.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define "digital-only subscription" and "print-only subscription" for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board's January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff's amendments to Regulation 1590 discussed above to address the issue discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff's proposed amendments added definitions for the terms "mixed newspaper subscription," "digital-only subscription rate," and "print-only subscription rate" to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in "the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction

(unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax." The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the "presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent."

Furthermore, as discussed above, BTC staff's proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation's reference note because the statute's provisions are only applicable to early 1990's transactions.

In addition, BTC staff's proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with lines that can be initialed and checked, respectively. Staff's proposed amendments deleted the outdated references to "19" from the exemption certificates' date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff's proposed amendments deleted the word "the" from the phrase "measured by the purchase price of *the* such property" (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff's proposed amendments inserted the word "seller's" before the word "permit" in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller's permit, as opposed to some other type of permit. Staff's proposed amendments inserted "the" before "business" in the phrase "engaged in business of selling or publishing" in Exemption Certificate D to make the phrase grammatically correct. Staff's proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or

periodical “which is regularly issued at average intervals not exceeding three months” to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA’s support for staff’s proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary to have the effect and accomplish the objective of addressing the issue with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions; establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content; and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary to have the effects and accomplish the objectives of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1590 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that specifically prescribe the application of the sales and use tax to sales and purchases of newspapers and periodicals. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1590 or the proposed amendments to Regulation 1590.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will result in no direct or indirect cost or savings to any state agency, no 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, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

#### **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 1590 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 1590 may affect small business.

#### **NO 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 proposed amendments to Regulation 1590 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 1590 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1590 will not affect the benefits of Regulation 1590 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 1590 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 Scott Claremon, Tax Counsel III, by telephone at (916) 323-3184, by e-mail at [Scott.Claremon@boe.ca.gov](mailto:Scott.Claremon@boe.ca.gov), or by mail at State Board of Equalization, Attn: Scott Claremon, 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](mailto: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. Mr. Bennion is the designated backup contact person to Mr. Claremon.

#### WRITTEN COMMENT PERIOD

The written comment period ends at 9:00 a.m. on June 14, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1590 during the June 14-15, 2016, 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 1590. 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 1590 illustrating the express terms of the proposed amendments. The Board has prepared a separate document illustrating the format of amended Exemption Certificates A through D after the proposed formatting changes are made to provide additional clarity. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1590, 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, the document illustrating the format of amended Exemption Certificates A through D, and the initial statement of reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

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

The Board may adopt the proposed amendments to Regulation 1590 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 1590, 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](http://www.boe.ca.gov).

**TITLE 22. STATE WATER RESOURCES CONTROL BOARD**

The State Water Resources Control Board (State Board) proposes to adopt the proposed regulations described below after all comments, objections, and recommendations regarding the proposed action.

**NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED DRINKING WATER FEE REGULATIONS**

The State Board will conduct a public hearing at the time and place noted below. At the hearing any person may present statements or arguments orally or in writing relevant to the proposed action described below.

DATE: June 22, 2016  
 TIME: 9:00 a.m.  
 PLACE: California Environmental Protection Agency  
 State Water Resources Board  
 Coastal Hearing Room  
 1001 I Street  
 Sacramento, California 95814

**SPECIAL ACCOMMODATION REQUEST**

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;

- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk to the Board at (916) 341-5600 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 341-5600 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

**WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

Any interested person, or his or her representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 341-5248 or by email to [DAS-DrinkingWaterFees@waterboards.ca.gov](mailto:DAS-DrinkingWaterFees@waterboards.ca.gov). The written comment period closes at **5:00 p.m. on June 22, 2016**. The Board will consider only comments received at the Board offices by that time.

Submit written comments to:

Postal mail: Jeanine Townsend, Clerk to the Board  
 State Water Resources Control Board  
 1001 I Street, 24th Floor  
 Sacramento, California 95814

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

70 N STREET, SACRAMENTO, CALIFORNIA  
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Third District, Los Angeles County

DIANE L. HARKEY  
Fourth District, Orange County

BETTY T. YEE  
State Controller

DAVID J. GAU  
Executive Director

**April 29, 2016**

**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 1590, *Newspapers and Periodicals***

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.) 1590, *Newspapers and Periodicals*. The proposed amendments define the term “mixed newspaper subscription” to mean “a subscription for a tangible newspaper combined with a subscription for the right to access digital content.” The proposed amendments clarify in subdivision (b)(3) that in “the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” The proposed amendments establish that, on and after October 1, 2016, it is presumed that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provide that the presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate (as proposed to be defined) divided by the sum of the print-only subscription rate (as proposed to be defined) and the digital-only subscription rate is greater than fifty-three (53) percent.

In addition, the proposed amendments make changes to subdivision (b)(5) so that it more clearly follows the language of RTC section 6362.8. The proposed amendments delete outdated references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b), and delete the outdated reference to RTC section 6362.3 from the regulation’s reference note. Furthermore, the proposed amendments make minor grammatical and formatting changes to Exemption Certificates A through D set forth in the regulation and add

language to Exemption Certificates C and D to make them consistent with the requirements of RTC section 6362.8.

## **PUBLIC HEARING**

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on June 14-15, 2016. 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 9:00 a.m. or as soon thereafter as the matter may be heard on June 14 or 15, 2016. 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 1590.

## **AUTHORITY**

RTC section 7051

## **REFERENCE**

RTC sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.7, and 6362.8.

## **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.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) 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.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in

business” in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the Board, and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

“Tangible personal property” means “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.” Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal property is transferred incidental to the provision of the services. (Reg. 1501) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A “mixed transaction,” in contrast, is a transaction in which “the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other).” (*Dell, Inc. v. Superior Court (Dell)* (2008) 159 Cal.App.4th 911, 925.) If a transaction is a “mixed transaction,” each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board’s Legal Department have previously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a “reasonable” and “fair” allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].) (Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. See Reg. 5700.) In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board’s Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and non-taxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15,

1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of “periodical” which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590 implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a “newspaper” is a publication that is “commonly understood to be a newspaper” and is “printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest.” (Reg. 1590, subd. (a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

#### Effects, Objective, and Benefit of the Proposed Amendments to Regulation 1591

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital

content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell, supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the digital services and the printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such subscriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-

exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested parties did not agree with the nontaxable percentage in the draft amendments and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable presumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding

subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would consider adding a “safe harbor” provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper’s digital-only subscription rate by the sums of the newspaper’s print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper’s nontaxable percentage and then averaged all twenty-seven (27) newspapers’ nontaxable percentages together. (Attachment A to the initial statement of reasons contains the redacted data and calculations.) The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that “sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription.” In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and

Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers' average nontaxable percentages. (Attachment B to the initial statement of reasons contains BTC staff's calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA's and BTC staff's calculations, and interested parties' presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect the average nontaxable percentage of newspaper retailers' lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers' lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer's business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1 establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2 explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A to the initial statement of reasons.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define "digital-only subscription" and "print-only subscription" for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board's January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff's amendments to Regulation 1590 discussed above to address the issue discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff's proposed amendments added definitions for the terms "mixed newspaper subscription," "digital-only subscription rate," and "print-only subscription rate" to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in "the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the

transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the “presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent.”

Furthermore, as discussed above, BTC staff’s proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation’s reference note because the statute’s provisions are only applicable to early 1990’s transactions.

In addition, BTC staff’s proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with lines that can be initialed and checked, respectively. Staff’s proposed amendments deleted the outdated references to “19” from the exemption certificates’ date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff’s proposed amendments deleted the word “the” from the phrase “measured by the purchase price of *the* such property” (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff’s proposed amendments inserted the word “seller’s” before the word “permit” in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller’s permit, as opposed to some other type of permit. Staff’s proposed amendments inserted “the” before “business” in the phrase “engaged in business of selling or publishing” in Exemption Certificate D to make the phrase grammatically correct. Staff’s proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or periodical “which is regularly issued at average intervals not exceeding three months” to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA’s support for staff’s proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary to have the effect and accomplish the objective of addressing the issue with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions, establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content, and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary to have the effects and accomplish the objectives of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1590 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that specifically prescribe the application of the sales and use tax to sales and purchases of newspapers and periodicals. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1590 or the proposed amendments to Regulation 1590.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will result in no direct or indirect cost or savings to any state agency, no 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, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

**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 1590 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 1590 may affect small business.

**NO 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 proposed amendments to Regulation 1590 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 1590 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1590 will not affect the benefits of Regulation 1590 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 1590 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 Scott Claremon, Tax Counsel III, by telephone at (916) 323-3184, by e-mail at [Scott.Claremon@boe.ca.gov](mailto:Scott.Claremon@boe.ca.gov), or by mail at State Board of Equalization, Attn: Scott Claremon, 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](mailto: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. Mr. Bennion is the designated backup contact person to Mr. Claremon.

## **WRITTEN COMMENT PERIOD**

The written comment period ends at 9:00 a.m. on June 14, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1590 during the June 14-15, 2016, 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 1590. 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 1590 illustrating the express terms of the proposed amendments. The Board has prepared a separate document illustrating the format of amended Exemption Certificates A through D after the proposed formatting changes are made to provide additional clarity. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1590, 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, the document illustrating the format of amended Exemption Certificates A through D, and the initial statement of reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

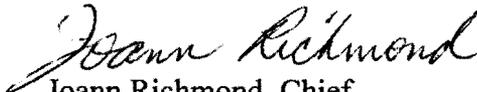
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the proposed amendments to Regulation 1590 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 1590, 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](http://www.boe.ca.gov).

Sincerely,

  
Joann Richmond, Chief  
Board Proceedings Division

JR:reb

**STATE BOARD OF EQUALIZATION**



BOARD APPROVED

At the June 14, 2016 Board Meeting

  
Joann Richmond, Chief  
Board Proceedings Division

**Initial Statement of Reasons for  
Proposed Amendments to California Code of Regulations,  
Title 18, Section 1590, *Newspapers and Periodicals***

SPECIFIC PURPOSES, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFIT

Current Law

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (Rev. & Tax. Code (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.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) 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, § (Regulation or Reg.) 1700.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the State Board of Equalization (Board), and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

"Tangible personal property" means "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal property is transferred incidental to the provision of the services. (Reg. 1501.) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A “mixed transaction,” in contrast, is a transaction in which “the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other).” (*Dell, Inc. v. Superior Court (Dell)* (2008) 159 Cal.App.4th 911, 925.) If a transaction is a “mixed transaction,” each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board’s Legal Department have previously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a “reasonable” and “fair” allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].)<sup>1</sup> In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board’s Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and non-taxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15, 1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of “periodical” which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590, *Newspapers and Periodicals*, implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a “newspaper” is a publication that is “commonly understood to be a newspaper” and is “printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest.” (Reg. 1590, subd. (a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It

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<sup>1</sup> Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. (See Reg. 5700.)

also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

### Proposed Amendments

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell, supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the digital services and the

printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue (or problem within the meaning of Gov. Code, 11346.2, subd. (b)) because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such subscriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested parties did not agree with the nontaxable percentage in the draft amendments and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable presumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would consider adding a "safe harbor" provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA

presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper's digital-only subscription rate by the sums of the newspaper's print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper's nontaxable percentage and then averaged all twenty-seven (27) newspapers' nontaxable percentages together. (Attachment A contains the redacted data and calculations.) The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that "sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription." In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers' average nontaxable percentages. (Attachment B contains BTC staff's calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA's and BTC staff's calculations, and interested parties' presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect the average nontaxable percentage of newspaper retailers' lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers' lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer's business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1 establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2 explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate

divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define “digital-only subscription” and “print-only subscription” for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board’s January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff’s amendments to Regulation 1590 discussed above to address the issue (or problem) discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff’s proposed amendments added definitions for the terms “mixed newspaper subscription,” “digital-only subscription rate,” and “print-only subscription rate” to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in “the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the “presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent.”

Furthermore, as discussed above, BTC staff’s proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation’s reference note because the statute’s provisions are only applicable to early 1990’s transactions.

In addition, BTC staff’s proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with lines that can be initialed and checked, respectively. Staff’s proposed amendments deleted the outdated references to “19” from the exemption certificates’ date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff’s proposed amendments deleted the word “the” from the phrase “measured by the purchase price of *the* such

property” (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff’s proposed amendments inserted the word “seller’s” before the word “permit” in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller’s permit, as opposed to some other type of permit. Staff’s proposed amendments inserted “the” before “business” in the phrase “engaged in business of selling or publishing” in Exemption Certificate D to make the phrase grammatically correct. Staff’s proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or periodical “which is regularly issued at average intervals not exceeding three months” to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA’s support for staff’s proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary for the specific purpose of addressing the issue (or problem) with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions, establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content, and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary for the specific purposes of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

In addition, the Board has determined that the proposed amendments are not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 1590 or the proposed amendments to Regulation 1590.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-012, the exhibits to the issue paper, the data and calculations in Attachments A and B to this initial statement of reasons, and the comments made during the Board’s discussion of the issue paper during its January 26, 2016, BTC meeting in deciding to propose the amendments to Regulation 1590 described above.

## ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1590 recommended by staff at this time or whether to take no action at this time. The Board decided to begin the formal rulemaking process to propose to adopt staff's recommended amendments to Regulation 1590 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 1590 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)

As previously explained, the proposed amendments add definitions for the terms "mixed newspaper subscription," "digital-only subscription rate" and "print-only subscription rate" to subdivision (a) of Regulation 1590. The proposed amendments clarify, in subdivision (b)(3)(B) of the regulation, that in the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction and tax is not applied to the portion of the transaction associated with the sale of the right to access digital content, and establish that, on and after October 1, 2016, fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is presumed to be for the nontaxable portion, based upon the current trend in the industry and the data and calculations in Attachment A. The proposed amendments clarify that the presumption may be overcome by evidence demonstrating that the portion of the charge associated with the digital subscription is greater than fifty three percent using the same methodology used to make the calculations in Attachment A. The proposed amendments also make changes to subdivision (b)(5) and Exemption Certificates C and D so that the subdivision and certificates more clearly follow the language of RTC section 6362.8. In addition, the proposed amendments delete outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from the regulation, reformat the regulation's exemption certificates, and make minor non-substantive changes to Exemption Certificates B, C, and D.

The proposed amendments do not change the application of tax to mixed newspaper subscriptions because, as explained above, only a portion of a lump-sum charge for a mixed newspaper subscription is currently subject to tax under *Dell, supra*. The RTC, as previously interpreted by the Board and Board's Legal Department, currently requires newspaper retailers to make a "reasonable" and "fair" allocation of such a lump-sum charge based upon the values of

the taxable and nontaxable portions of the mixed transaction and the proposed amendments continue to require such a reasonable and fair allocation consistent with long-standing precedent. Also, beginning October 1, 2016, the proposed amendments permit newspaper retailers to reasonably and fairly allocate fifty-three percent of such a lump-sum charge to the nontaxable sale of the right to access digital content based upon the CNPA's calculation, which established that, on average, fifty-three (53) percent of the current charges for 27 newspapers' mixed newspaper subscriptions are charges for the right to access digital content. And, the proposed amendments incorporate the formula the CNPA used to calculate the portion of such a lump-sum charge that is for the nontaxable right to access digital content and permit newspaper retailers to use the formula to establish that more than fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable right to access digital content, to ensure that tax continues to be applied to the tangible personal property portion, but not the service portion, of such a mixed transaction, consistent with *Dell, supra*.

As a result, the proposed amendments provide guidance about how tax currently applies to lump-sum charges for mixed newspaper subscriptions, and there is nothing in the proposed amendments to Regulation 1590 that would significantly change how retailers and consumers of newspapers would generally behave in the absence of the proposed amendments. In addition, the amendments to Regulation 1590 do not require that individuals and businesses do anything that is not currently required and do not impose any costs on any persons. And, the Research and Statistics Section of the Board's Legislative and Research Division determined that there is nothing in the proposed amendments that would impact revenue. (See Exhibit 1 to Formal Issue Paper 15-012.) Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. The Board has determined that the proposed amendments to Regulation 1590 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 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

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 1590 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California.

Furthermore, Regulation 1590 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 1590 will not affect the benefits of Regulation 1590 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 1590 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1590 may affect small businesses.

# Attachment A

## Delivery frequency

## Avg Rate (Wkly)

7Day / 6Day	\$ 3.81	\$ 4.20	\$ 4.75	\$ 4.67	\$ 2.44	\$ 3.37	\$ 4.25	\$ 4.73	\$ 3.96	
Mon-Fri	\$ 1.93	\$ 2.07	\$ 2.08	\$ 1.30		\$ 1.25	\$ 1.35			
SunOnly	\$ 1.71	\$ 0.98	\$ 1.31	\$ 1.66	\$ 1.47	\$ 1.59	\$ 1.69	\$ 1.62	\$ 1.79	
Thu-Sun	\$ 2.10	\$ 1.98	\$ 2.02	\$ 2.19	\$ 2.08	\$ 2.02	\$ 2.15	\$ 2.26	\$ 2.18	
Digital only	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	
7Day / 6Day	40%	37%	35%	35%	51%	43%	37%	35%	39%	
Mon-Fri	56%	55%	55%	66%		67%	65%			
SunOnly	59%	72%	66%	60%	63%	61%	60%	61%	58%	
Thu-Sun	54%	56%	55%	53%	55%	55%	54%	52%	53%	
Overall Allocation %	52%	55%	53%	54%	56%	56%	54%	49%	50%	

7 day	9.25	7	7.99	5.99	4	5.25	6.5	4.75	4.25	
wknd	3.62	1.82	3.03	2.2			1.2	0.86	0.58	
sun only	1.71	0.7	1.05	0.94			2.15			
Digital only	4.5	3.99	3.99	3.99	2.99	2.99	3.99	2.99	2.99	
7 day	33%	36%	33%	40%	43%	36%	38%	39%	41%	
wknd	55%	69%	57%	64%			77%	78%	84%	
sun only	72%	85%	79%	81%			65%			
Overall Allocation %	54%	63%	56%	62%	43%	36%	60%	58%	63%	

7 day	4.95	4.95	5.95	5.95	5.95	5.95	4.95	5	5.99	
wknd	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.49	
sun only	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	3.49	
Digital Only	3.95	3.95	3.95	3.95	3.95	3.95	3.95	3.95	3.49	
7 day	44%	44%	40%	40%	40%	40%	44%	44%	37%	
wknd	47%	47%	47%	47%	47%	47%	47%	47%	44%	
sun only	61%	61%	61%	61%	61%	61%	61%	61%	50%	
Overall Allocation %	51%	51%	49%	49%	49%	49%	51%	51%	44%	

# Attachment B

City/Paper	Avg Percent	Avg # of Subscribers
[REDACTED]	63%	33,550
[REDACTED]	49%	182,647
[REDACTED]	62%	20,043
[REDACTED]	51%	31,861
[REDACTED]	51%	38,709
[REDACTED]	55%	178,404
[REDACTED]	43%	7,381
[REDACTED]	53%	97,172
[REDACTED]	54%	33,766
[REDACTED]	49%	40,145
[REDACTED]	51%	94,120
[REDACTED]	52%	65,591
[REDACTED]	54%	34,675
[REDACTED]	63%	7,826
[REDACTED]	56%	6,956
[REDACTED]	56%	73,021
[REDACTED]	44%	328,531
[REDACTED]	54%	59,656
[REDACTED]	49%	529,999
[REDACTED]	49%	35,300
[REDACTED]	56%	25,305
[REDACTED]	49%	79,327
[REDACTED]	36%	7,677
[REDACTED]	60%	17,887
[REDACTED]	51%	20,927
[REDACTED]	50%	16,964
[REDACTED]	58%	10,089
<b>Weighted Average</b>		<b>50%</b>

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1590**

**1590. Newspapers and Periodicals.**

(a) Definitions.

(1) “Newspaper.” The term “newspaper” as used herein conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(2) “Periodical.” The term “periodical” as used herein is limited to those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them.<sup>1</sup> Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. An annual report of a corporation which is substantially different in style and format from the corporation’s quarterly reports is not part of a series with the quarterly reports. The term “periodical” does not include books complete in themselves, even those that are issued at stated intervals, for example, books sold by the Book-of-the-Month Club or similar organizations, so-called “pocket books,” a new one of which may be issued once a month or some other interval, or so-called “one-shot” magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include shopping guides or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.

(3) “Ingredient or Component Part of a Newspaper or Periodical.” The term “ingredient or component part of a newspaper or periodical” includes only those items that become physically incorporated into the publication and not those which are merely consumed or used in the production of the publication. For example, newsprint and ink are ingredients of a newspaper; however, a photograph does not become an ingredient or component part of a newspaper or periodical merely because the image of the photograph is reproduced in the publication.

Handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical.

(4) “Publisher.” “Publisher” means and includes any person who owns the rights to produce, market, and distribute printed literature and information.

(5) “Distributor.” “Distributor” means any person who acquires newspapers or periodicals for subsequent distribution to retailers or newspaper carriers.

(6) “Newspaper Carrier.” “Newspaper carrier” means any person who acquires newspapers from a publisher or distributor to deliver to consumers. The term includes a hawker. A “hawker” is an individual who sells single copies of newspapers to passersby on a street corner or other trafficked area. “Newspaper carrier” does not include persons selling newspaper or periodicals from a fixed place of business.

(7) “Third Party Retailer.” “Third party retailer” means and includes any person who sells at retail subscriptions to newspapers and periodicals who is not the publisher of the newspapers or periodicals. Typically, third party retailers solicit subscriptions in a single offering for a large number of different publications, require that payment be made to the account of the third party retailer, and undertake to resolve subscription problems. The term includes persons commonly known as direct mail, school, paid during service, cash, catalog, and telephone agents. “Third party retailer” does not include persons who solicit renewals of subscriptions on behalf of individual publishers.

(8) “Mixed Newspaper Subscription.” “Mixed newspaper subscription” means and includes a subscription for a tangible newspaper combined with a subscription for the right to access digital content.

(9) “Digital-Only Subscription Rate.” “Digital-only subscription rate” means the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.

(10) “Print-Only Subscription Rate.” “Print-only subscription rate” means the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.

(b) Application of Tax.

(1) In General. ~~Effective July 15, 1991,~~ <sup>†</sup>The sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.

Tax does not apply to sales of tangible personal property to persons who purchase the property for incorporation as a component part of a newspaper or periodical which will be sold notwithstanding that the purchaser is not the seller of the newspaper or periodical.

See Regulation 1574 (18 CCR 1574) for the application of tax to sales through vending machines and Regulation 1628 (18 CCR 1628) for the application of tax to transportation charges.

(2) Distributions of Newspapers and Periodicals Without Charge. ~~Effective October 2, 1991, tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.~~

Newspapers and periodicals distributed on a voluntary pay basis shall be considered as distributed without charge. Newspapers and periodicals are distributed on a voluntary pay basis when payment is requested from the consumer but is not required.

(3) Subscriptions. ~~The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

(A) Exempt Subscriptions. ~~Effective November 1, 1992, tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.~~

~~Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).~~

(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.

2. This presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation

greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.

(C) Reporting Subscription Sales. Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

(4) Membership Organizations. Generally, tax applies to sales of newspapers and periodicals by membership organizations. If the price is separately stated, tax applies to that amount. If the price is not separately stated, the measure of tax is the fair retail selling price of the publication.

The application of tax to distributions of newspapers and periodicals by nonprofit organizations is provided at subdivision (b)(5). The application of tax to sales of periodicals by subscription is provided at subdivision (b)(3).

(5) Nonprofit Organizations.

(A) Internal Revenue Code Section 501(c)(3) Organizations. ~~Effective November 1, 1991, until October 31, 1992, tax does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible personal property which becomes an ingredient or component part of any such newspaper or periodical, regularly issued at average intervals not exceeding three months only as to issues and~~ distributed under either of the following circumstances:

1. The issues are distributed to the organization's members in consideration of the organization's membership fee; or
2. The issues are of a newspaper or periodical which neither receives revenue from, nor accepts, any commercial advertising.

~~Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.~~

For purposes of this subdivision, any governmental entity established and administered for the purposes provided in Internal Revenue Code Section 501(c)(3) shall be considered to be an organization that qualifies for tax exempt status under that section.

(B) Other Nonprofit Organizations. ~~Effective November 1, 1991, tax does not apply to the sale or use of any newspaper or periodical~~ regularly issued at average intervals not exceeding three months and distributed by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of ~~or any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:~~

1. The issues are distributed to the organization's members in consideration, in whole, or in part, of the organization's membership fee;
2. The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than ten percent of the membership fee attributable to the period for which the newspaper or periodical is distributed, whether the publication is printed within or without this state. The cost of printing shall be determined as follows.

The cost of printing includes costs of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical (e.g., ink and paper) and costs of labor to print the newspaper or periodical. The cost of printing does not include costs not attributable to actual printing, such as costs of special printing aids, typography, and preparation of layouts.

If the organization contracts with an outside printer to print the newspaper or periodical, the organization shall obtain and retain documentation segregating the costs of printing from the printer's other charges.

If the organization is the printer of the newspaper or periodical, the cost of printing includes the aggregate of the cost of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical; labor of printing, including fringe benefits and payroll taxes; and other costs attributable to the actual printing of the newspaper or periodical.

If an organization has published the newspaper or periodical for a period exceeding twelve months and the method of printing has not changed, the organization may elect to consider the cost of printing for a reporting period to be equal to the amount paid or incurred for the same reporting period for the previous fiscal or calendar year.

(6) Newspaper Carriers. A newspaper carrier is not a retailer. The publisher or distributor for whom the carrier delivers is the retailer of the newspapers delivered. The publisher or distributor shall report and pay tax measured by the price charged to the customer by the carrier.

(7) Consumption of Property. Tax applies to the sale to or use by a newspaper or periodical publisher of tangible personal property consumed in the manufacturing process. Tax does not apply to the cost of tangible personal property lost or wasted in the manufacturing process when that property was purchased for the purpose of incorporation into a newspaper or periodical to be sold or to be distributed in accordance with subdivision (b)(2).

~~(8) Fixed Price Contracts. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

(98) School Catalogs and Yearbooks. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.

Tax applies to charges for the preparation of such publications made to public or private schools, county offices of education, school districts, or student organizations by printers, engravers, photographers and the like.

(c) Exemption Certificates.

Any seller claiming a transaction as exempt from sales tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8 should timely obtain an exemption certificate in writing from the purchaser. The exemption certificate will be considered timely if obtained by the seller at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property.

(1) Certificate A. Certificate to be used for purchases of tangible personal property for incorporation into newspapers or periodicals for sale in accordance with subdivisions (b)(1) or (b)(3), above.

(2) Certificate B. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed without charge in accordance with subdivision (b)(2), above.

(3) Certificate C. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3) in accordance with subdivision (b)(5)(A), above.

(4) Certificate D. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations in accordance with subdivision (b)(5)(B), above.

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for  
incorporation into a newspaper or periodical for sale

---

(Name of Purchaser)

---

(Address of Purchaser)

I HEREBY CERTIFY:

~~Initial one of \_\_\_\_\_  
the following:~~

That I hold valid seller's permit  
No. \_\_\_\_\_  
issued pursuant to the Sales and  
Use Tax Law.

That I do not hold a seller's permit  
issued pursuant to the Sales and Use  
Tax Law. I do not sell any tangible  
personal property for which a permit  
is required.

Initial one of the following:

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the newspaper or periodical\*

\_\_\_\_\_  
and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified above or  
used other than for retention, demonstration, or display while holding it for sale in the regular  
course of business, I am required by the Sales and Use Tax Law to report and pay any applicable  
sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient  
or component part of newspapers or periodicals that are  
distributed free of charge

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of  
the following:*

~~That I hold valid seller's permit  
No. \_\_\_\_\_  
issued pursuant to the Sales and  
Use Tax Law.~~

~~That I do not hold a seller's permit  
issued pursuant to the Sales and Use  
Tax Law. I do not sell any tangible  
personal property for which a permit  
is required.~~

*Initial one of the following:*

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing\*

\_\_\_\_\_ which is regularly issued at average intervals not exceeding three months and distributed without  
charge by me. The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of  
the property purchased for any other purpose I am required by the Sales and Use Tax Law to  
report and pay tax, measured by the purchase price of ~~the~~ such property.

Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_\_\_

(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate C

California Sales Tax Exemption Certificate

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organization which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

That the purchaser holds valid seller's permit No. \_\_\_\_\_

issued pursuant to the Sales and Use Tax Law.

That the purchaser does not hold a permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

Initial one of the following:

\_\_\_\_\_ That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing\*

which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors;

The publication does not receive revenue from or accept any commercial advertising.

The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors.

           The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

### Certificate D

#### California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

#### I HEREBY CERTIFY:

*Initial one of the following:*

That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

*Initial one of the following:*

           That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

           That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in the business of selling or publishing\*

\_\_\_\_\_  
which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

<sup>1</sup> This definition is based upon Business Statistics Organization Inc. v. Joseph, 299 N.Y. 443, 87 N.E. 2d 505, and Houghton v. Payne, 194 U. S. 88, 48 L.Ed. 888.

Note: Authority cited: Section 7051, Revenue and Taxation Code; Reference: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, ~~6362.3~~, 6362.7 and 6362.8, Revenue and Taxation Code.

**Format of Amended California Code of Regulations, Title 18,  
Section 1590, Newspapers and Periodicals, Exemption Certificates A through D**

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for  
incorporation into a newspaper or periodical for sale

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the newspaper or periodical\*

\_\_\_\_\_  
and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified above or  
used other than for retention, demonstration, or display while holding it for sale in the regular  
course of business, I am required by the Sales and Use Tax Law to report and pay any applicable  
sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient  
or component part of newspapers or periodicals that are  
distributed free of charge

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing\*

\_\_\_\_\_ which is regularly issued at average intervals not exceeding three months and distributed without  
charge by me. The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of  
the property purchased for any other purpose I am required by the Sales and Use Tax Law to  
report and pay tax, measured by the purchase price of ~~the~~ such property.

Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate C

California Sales Tax Exemption Certificate  
Sales of tangible personal property that becomes an ingredient  
or component of newspapers or periodicals that are distributed  
by organization which qualify for tax-exempt status under  
Internal Revenue Code section 501(c)(3)

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_\_ That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing\*

\_\_\_\_\_  
which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

\_\_\_\_\_ The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors,

\_\_\_\_\_ The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate D

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_\_ That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in the business of selling or publishing\*

\_\_\_\_\_ which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

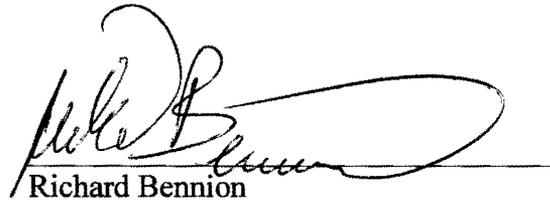
\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

## Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Taxes Regulation 1590, *Newspapers and Periodicals*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on April 29, 2016, 46 days prior to the public hearing.

June 15, 2016

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

JUNE 14, 2016

ITEM F

PUBLIC HEARINGS

ITEM F2

PROPOSED AMENDMENTS TO SALES AND USE TAX REGULATION

1590, NEWSPAPERS AND PERIODICALS

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board  
of Equalization:

Fiona Ma, CPA  
Chairwoman

Diane L. Harkey  
Vice Chair

Jerome E. Horton  
Member

Sen. George Runner (Ret.)  
Member

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

Joann Richmond  
Chief  
Board Proceedings  
Division

For Board of  
Equalization Staff:

Scott Claremon  
Tax Counsel III  
Legal Department

Bradley Heller  
Tax Counsel IV  
Legal Department

---oOo---

1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 JUNE 14, 2016

4 ---oOo---

5 MS. MA: Next item, Ms. Richmond?

6 MS. RICHMOND: Our next item is Item F2  
7 Proposed Amendments to Sales and Use Tax Regulation  
8 1590, Newspapers and Periodicals.

9 MS. MA: Okay. Thank you very much.

10 Gentlemen, if you could please introduce  
11 yourself for the record.

12 MR. CLAREMON: Good morning, Chairwoman Ma,  
13 Members of the Board. I'm Scott Claremon from the  
14 Legal Department. With me is Bradley Heller.

15 We are requesting that the Board vote to  
16 adopt the proposed amendments to Regulation 1590,  
17 Newspapers and Periodicals.

18 The proposed amendments clarify the  
19 application of tax to lump sum charges for mixed  
20 newspaper subscriptions and establish a presumption  
21 that 53 percent of such a charge is for the  
22 nontaxable digital content.

23 MS. MA: Any questions, Members?

24 Any speakers?

25 Seeing none, is there a motion?

26 MS. STOWERS: Move to adopt the  
27 amendments.

28 MS. HARKEY: Second.

1 MS. MA: Ms. Stowers moves to adopt staff  
2 recommendation?

3 MS. STOWERS: Yes.

4 MS. MA: Okay. Ms. Harkey seconds.

5 Without objection, motion carries.

6 Thank you, gentlemen.

7 ---oOo---

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Tuesday, June 14, 2016

The Board met at its offices at 450 N Street, Sacramento, at 9:00 a.m., with Ms. Ma, Chairwoman, Ms. Harkey, Vice Chair, Mr. Runner and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

### PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mario Guerrero, Legislative Director of SEIU, local 1000.

The Board recessed at 9:01 a.m. and reconvened at 9:04 a.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

### PUBLIC HEARINGS

#### Timber Harvest Values and Modified Harvest Values

Mike Harris, Manager, State-Assessed Properties Division, Property Tax Department, made introductory remarks regarding the timber harvest values and modified harvest values. On or before June 30, 2016, the Board shall estimate the immediate harvest values of and adopt schedules for each species or sub-classification of timber harvested between July 1 and December 31, 2016. Additionally, the Board may modify immediate harvest values to reflect material changes in timber values that result from fire or other catastrophic cause for any area or part thereof in which damaged timber is located. Revenue and Taxation Code section 38204 (Exhibit 6.1).

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

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the timber harvest values as recommended by staff.

Exhibits to these minutes are incorporated by reference.

#### **Proposed Amendments to Sales and Use Tax Regulation 1590, *Newspapers and Periodicals***

Scott Claremon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to clarify the application of tax to charges for mixed newspaper subscriptions that include the right to access digital content (Exhibit 6.2).

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

Action: Upon motion of Ms. Stowers, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board adopted the amendments to Regulation 1590 as published.

**Note: These minutes are not final until Board approved.**

Pending Approval



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)  
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

DAVID J. GAU  
Executive Director

**April 29, 2016**

**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 1590, *Newspapers and Periodicals***

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.) 1590, *Newspapers and Periodicals*. The proposed amendments define the term “mixed newspaper subscription” to mean “a subscription for a tangible newspaper combined with a subscription for the right to access digital content.” The proposed amendments clarify in subdivision (b)(3) that in “the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content in not subject to tax.” The proposed amendments establish that, on and after October 1, 2016, it is presumed that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provide that the presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate (as proposed to be defined) divided by the sum of the print-only subscription rate (as proposed to be defined) and the digital-only subscription rate is greater than fifty-three (53) percent.

In addition, the proposed amendments make changes to subdivision (b)(5) so that it more clearly follows the language of RTC section 6362.8. The proposed amendments delete outdated references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b), and delete the outdated reference to RTC section 6362.3 from the regulation’s reference note. Furthermore, the proposed amendments make minor grammatical and formatting changes to Exemption Certificates A through D set forth in the regulation and add

language to Exemption Certificates C and D to make them consistent with the requirements of RTC section 6362.8.

## **PUBLIC HEARING**

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on June 14-15, 2016. 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 9:00 a.m. or as soon thereafter as the matter may be heard on June 14 or 15, 2016. 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 1590.

## **AUTHORITY**

RTC section 7051

## **REFERENCE**

RTC sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.7, and 6362.8.

## **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.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) 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.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in

business” in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the Board, and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

“Tangible personal property” means “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.” Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal property is transferred incidental to the provision of the services. (Reg. 1501) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A “mixed transaction,” in contrast, is a transaction in which “the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other).” (*Dell, Inc. v. Superior Court (Dell)* (2008) 159 Cal.App.4th 911, 925.) If a transaction is a “mixed transaction,” each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board’s Legal Department have previously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a “reasonable” and “fair” allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].) (Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. See Reg. 5700.) In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board’s Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and non-taxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15,

1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of “periodical” which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590 implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a “newspaper” is a publication that is “commonly understood to be a newspaper” and is “printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest.” (Reg. 1590, subd. (a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

#### Effects, Objective, and Benefit of the Proposed Amendments to Regulation 1591

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital

content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell, supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the digital services and the printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such subscriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-

exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested parties did not agree with the nontaxable percentage in the draft amendments and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable presumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding

subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would consider adding a “safe harbor” provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper’s digital-only subscription rate by the sums of the newspaper’s print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper’s nontaxable percentage and then averaged all twenty-seven (27) newspapers’ nontaxable percentages together. (Attachment A to the initial statement of reasons contains the redacted data and calculations.) The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that “sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription.” In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and

Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers' average nontaxable percentages. (Attachment B to the initial statement of reasons contains BTC staff's calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA's and BTC staff's calculations, and interested parties' presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect the average nontaxable percentage of newspaper retailers' lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers' lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer's business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1 establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2 explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A to the initial statement of reasons.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define "digital-only subscription" and "print-only subscription" for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board's January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff's amendments to Regulation 1590 discussed above to address the issue discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff's proposed amendments added definitions for the terms "mixed newspaper subscription," "digital-only subscription rate," and "print-only subscription rate" to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in "the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the

transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the “presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent.”

Furthermore, as discussed above, BTC staff’s proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation’s reference note because the statute’s provisions are only applicable to early 1990’s transactions.

In addition, BTC staff’s proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with lines that can be initialed and checked, respectively. Staff’s proposed amendments deleted the outdated references to “19” from the exemption certificates’ date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff’s proposed amendments deleted the word “the” from the phrase “measured by the purchase price of *the* such property” (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff’s proposed amendments inserted the word “seller’s” before the word “permit” in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller’s permit, as opposed to some other type of permit. Staff’s proposed amendments inserted “the” before “business” in the phrase “engaged in business of selling or publishing” in Exemption Certificate D to make the phrase grammatically correct. Staff’s proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or periodical “which is regularly issued at average intervals not exceeding three months” to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA’s support for staff’s proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary to have the effect and accomplish the objective of addressing the issue with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions, establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content, and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary to have the effects and accomplish the objectives of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1590 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that specifically prescribe the application of the sales and use tax to sales and purchases of newspapers and periodicals. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1590 or the proposed amendments to Regulation 1590.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will result in no direct or indirect cost or savings to any state agency, no 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, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

**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 1590 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 1590 may affect small business.

**NO 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 proposed amendments to Regulation 1590 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 1590 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1590 will not affect the benefits of Regulation 1590 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 1590 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 Scott Claremon, Tax Counsel III, by telephone at (916) 323-3184, by e-mail at [Scott.Claremon@boe.ca.gov](mailto:Scott.Claremon@boe.ca.gov), or by mail at State Board of Equalization, Attn: Scott Claremon, 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](mailto: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. Mr. Bennion is the designated backup contact person to Mr. Claremon.

## **WRITTEN COMMENT PERIOD**

The written comment period ends at 9:00 a.m. on June 14, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1590 during the June 14-15, 2016, 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 1590. 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 1590 illustrating the express terms of the proposed amendments. The Board has prepared a separate document illustrating the format of amended Exemption Certificates A through D after the proposed formatting changes are made to provide additional clarity. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1590, 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, the document illustrating the format of amended Exemption Certificates A through D, and the initial statement of reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

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

The Board may adopt the proposed amendments to Regulation 1590 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 1590, 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](http://www.boe.ca.gov).

Sincerely,

  
Joann Richmond, Chief  
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for  
Proposed Amendments to California Code of Regulations,  
Title 18, Section 1590, *Newspapers and Periodicals***

SPECIFIC PURPOSES, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFIT

Current Law

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (Rev. & Tax. Code (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.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) 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, § (Regulation or Reg.) 1700.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the State Board of Equalization (Board), and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

"Tangible personal property" means "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal property is transferred incidental to the provision of the services. (Reg. 1501.) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A “mixed transaction,” in contrast, is a transaction in which “the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other).” (*Dell, Inc. v. Superior Court (Dell)* (2008) 159 Cal.App.4th 911, 925.) If a transaction is a “mixed transaction,” each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board’s Legal Department have previously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a “reasonable” and “fair” allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].)<sup>1</sup> In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board’s Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and non-taxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15, 1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of “periodical” which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590, *Newspapers and Periodicals*, implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a “newspaper” is a publication that is “commonly understood to be a newspaper” and is “printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest.” (Reg. 1590, subd. (a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It

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<sup>1</sup> Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board’s Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. (See Reg. 5700.)

also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

### Proposed Amendments

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell, supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the digital services and the

printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue (or problem within the meaning of Gov. Code, 11346.2, subd. (b)) because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such subscriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested parties did not agree with the nontaxable percentage in the draft amendments and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable presumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would consider adding a "safe harbor" provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA

presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper's digital-only subscription rate by the sums of the newspaper's print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper's nontaxable percentage and then averaged all twenty-seven (27) newspapers' nontaxable percentages together. (Attachment A contains the redacted data and calculations.) The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that "sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription." In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers' average nontaxable percentages. (Attachment B contains BTC staff's calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA's and BTC staff's calculations, and interested parties' presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect the average nontaxable percentage of newspaper retailers' lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers' lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer's business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1 establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2 explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate

divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define “digital-only subscription” and “print-only subscription” for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board’s January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff’s amendments to Regulation 1590 discussed above to address the issue (or problem) discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff’s proposed amendments added definitions for the terms “mixed newspaper subscription,” “digital-only subscription rate,” and “print-only subscription rate” to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in “the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the “presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent.”

Furthermore, as discussed above, BTC staff’s proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation’s reference note because the statute’s provisions are only applicable to early 1990’s transactions.

In addition, BTC staff’s proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with lines that can be initialed and checked, respectively. Staff’s proposed amendments deleted the outdated references to “19” from the exemption certificates’ date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff’s proposed amendments deleted the word “the” from the phrase “measured by the purchase price of *the* such

property” (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff’s proposed amendments inserted the word “seller’s” before the word “permit” in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller’s permit, as opposed to some other type of permit. Staff’s proposed amendments inserted “the” before “business” in the phrase “engaged in business of selling or publishing” in Exemption Certificate D to make the phrase grammatically correct. Staff’s proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or periodical “which is regularly issued at average intervals not exceeding three months” to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA’s support for staff’s proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary for the specific purpose of addressing the issue (or problem) with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions, establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content, and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary for the specific purposes of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990’s effective dates and obsolete guidance regarding early 1990’s transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

In addition, the Board has determined that the proposed amendments are not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 1590 or the proposed amendments to Regulation 1590.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-012, the exhibits to the issue paper, the data and calculations in Attachments A and B to this initial statement of reasons, and the comments made during the Board’s discussion of the issue paper during its January 26, 2016, BTC meeting in deciding to propose the amendments to Regulation 1590 described above.

## ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1590 recommended by staff at this time or whether to take no action at this time. The Board decided to begin the formal rulemaking process to propose to adopt staff's recommended amendments to Regulation 1590 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 1590 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)

As previously explained, the proposed amendments add definitions for the terms "mixed newspaper subscription," "digital-only subscription rate" and "print-only subscription rate" to subdivision (a) of Regulation 1590. The proposed amendments clarify, in subdivision (b)(3)(B) of the regulation, that in the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction and tax is not applied to the portion of the transaction associated with the sale of the right to access digital content, and establish that, on and after October 1, 2016, fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is presumed to be for the nontaxable portion, based upon the current trend in the industry and the data and calculations in Attachment A. The proposed amendments clarify that the presumption may be overcome by evidence demonstrating that the portion of the charge associated with the digital subscription is greater than fifty three percent using the same methodology used to make the calculations in Attachment A. The proposed amendments also make changes to subdivision (b)(5) and Exemption Certificates C and D so that the subdivision and certificates more clearly follow the language of RTC section 6362.8. In addition, the proposed amendments delete outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from the regulation, reformat the regulation's exemption certificates, and make minor non-substantive changes to Exemption Certificates B, C, and D.

The proposed amendments do not change the application of tax to mixed newspaper subscriptions because, as explained above, only a portion of a lump-sum charge for a mixed newspaper subscription is currently subject to tax under *Dell, supra*. The RTC, as previously interpreted by the Board and Board's Legal Department, currently requires newspaper retailers to make a "reasonable" and "fair" allocation of such a lump-sum charge based upon the values of

the taxable and nontaxable portions of the mixed transaction and the proposed amendments continue to require such a reasonable and fair allocation consistent with long-standing precedent. Also, beginning October 1, 2016, the proposed amendments permit newspaper retailers to reasonably and fairly allocate fifty-three percent of such a lump-sum charge to the nontaxable sale of the right to access digital content based upon the CNPA's calculation, which established that, on average, fifty-three (53) percent of the current charges for 27 newspapers' mixed newspaper subscriptions are charges for the right to access digital content. And, the proposed amendments incorporate the formula the CNPA used to calculate the portion of such a lump-sum charge that is for the nontaxable right to access digital content and permit newspaper retailers to use the formula to establish that more than fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable right to access digital content, to ensure that tax continues to be applied to the tangible personal property portion, but not the service portion, of such a mixed transaction, consistent with *Dell, supra*.

As a result, the proposed amendments provide guidance about how tax currently applies to lump-sum charges for mixed newspaper subscriptions, and there is nothing in the proposed amendments to Regulation 1590 that would significantly change how retailers and consumers of newspapers would generally behave in the absence of the proposed amendments. In addition, the amendments to Regulation 1590 do not require that individuals and businesses do anything that is not currently required and do not impose any costs on any persons. And, the Research and Statistics Section of the Board's Legislative and Research Division determined that there is nothing in the proposed amendments that would impact revenue. (See Exhibit 1 to Formal Issue Paper 15-012.) Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. The Board has determined that the proposed amendments to Regulation 1590 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 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

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 1590 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California.

Furthermore, Regulation 1590 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 1590 will not affect the benefits of Regulation 1590 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 1590 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1590 may affect small businesses.

# Attachment A

Delivery frequency	Avg Rate (Wkly)						
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7Day / 6Day	\$ 3.81	\$ 4.20	\$ 4.75	\$ 4.67	\$ 2.44	\$ 3.37	\$
Mon-Fri	\$ 1.93	\$ 2.07	\$ 2.08	\$ 1.30		\$ 1.25	\$
SunOnly	\$ 1.71	\$ 0.98	\$ 1.31	\$ 1.66	\$ 1.47	\$ 1.59	\$
Thu-Sun	\$ 2.10	\$ 1.98	\$ 2.02	\$ 2.19	\$ 2.08	\$ 2.02	\$
Digital only	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$
7Day / 6Day	40%	37%	35%	35%	51%	43%	
Mon-Fri	56%	55%	55%	66%		67%	
SunOnly	59%	72%	66%	60%	63%	61%	
Thu-Sun	54%	56%	55%	53%	55%	55%	
Overall Allocation %	52%	55%	53%	54%	56%	56%	

7 day	9.25	7	7.99	5.99	4	5.25
wknd	3.62	1.82	3.03	2.2		
sun only	1.71	0.7	1.05	0.94		
Digital only	4.5	3.99	3.99	3.99	2.99	2.99
7 day	33%	36%	33%	40%	43%	36%
wknd	55%	69%	57%	64%		
sun only	72%	85%	79%	81%		
Overall Allocation %	54%	63%	56%	62%	43%	36%

7 day	4.95	4.95	5.95	5.95	5.95	5.95
wknd	4.5	4.5	4.5	4.5	4.5	4.5
sun only	2.5	2.5	2.5	2.5	2.5	2.5
Digital Only	3.95	3.95	3.95	3.95	3.95	3.95
7 day	44%	44%	40%	40%	40%	40%
wknd	47%	47%	47%	47%	47%	47%
sun only	61%	61%	61%	61%	61%	61%
Overall Allocation %	51%	51%	49%	49%	49%	49%

# Attachment B

City/Paper	Avg Percent	Avg # of Subscribers
[REDACTED]	63%	33,550
[REDACTED]	49%	182,647
[REDACTED]	62%	20,043
[REDACTED]	51%	31,861
[REDACTED]	51%	38,709
[REDACTED]	55%	178,404
[REDACTED]	43%	7,381
[REDACTED]	53%	97,172
[REDACTED]	54%	33,766
[REDACTED]	49%	40,145
[REDACTED]	51%	94,120
[REDACTED]	52%	65,591
[REDACTED]	54%	34,675
[REDACTED]	63%	7,826
[REDACTED]	56%	6,956
[REDACTED]	56%	73,021
[REDACTED]	44%	328,531
[REDACTED]	54%	59,656
[REDACTED]	49%	529,999
[REDACTED]	49%	35,300
[REDACTED]	56%	25,305
[REDACTED]	49%	79,327
[REDACTED]	36%	7,677
[REDACTED]	60%	17,887
[REDACTED]	51%	20,927
[REDACTED]	50%	16,964
[REDACTED]	58%	10,089
<b>Weighted Average</b>		<b>50%</b>

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1590**

**1590. Newspapers and Periodicals.**

(a) Definitions.

(1) "Newspaper." The term "newspaper" as used herein conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(2) "Periodical." The term "periodical" as used herein is limited to those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them.<sup>1</sup> Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. An annual report of a corporation which is substantially different in style and format from the corporation's quarterly reports is not part of a series with the quarterly reports. The term "periodical" does not include books complete in themselves, even those that are issued at stated intervals, for example, books sold by the Book-of-the-Month Club or similar organizations, so-called "pocket books," a new one of which may be issued once a month or some other interval, or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include shopping guides or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.

(3) "Ingredient or Component Part of a Newspaper or Periodical." The term "ingredient or component part of a newspaper or periodical" includes only those items that become physically incorporated into the publication and not those which are merely consumed or used in the production of the publication. For example, newsprint and ink are ingredients of a newspaper; however, a photograph does not become an ingredient or component part of a newspaper or periodical merely because the image of the photograph is reproduced in the publication.

Handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical.

(4) “Publisher.” “Publisher” means and includes any person who owns the rights to produce, market, and distribute printed literature and information.

(5) “Distributor.” “Distributor” means any person who acquires newspapers or periodicals for subsequent distribution to retailers or newspaper carriers.

(6) “Newspaper Carrier.” “Newspaper carrier” means any person who acquires newspapers from a publisher or distributor to deliver to consumers. The term includes a hawker. A “hawker” is an individual who sells single copies of newspapers to passersby on a street corner or other trafficked area. “Newspaper carrier” does not include persons selling newspaper or periodicals from a fixed place of business.

(7) “Third Party Retailer.” “Third party retailer” means and includes any person who sells at retail subscriptions to newspapers and periodicals who is not the publisher of the newspapers or periodicals. Typically, third party retailers solicit subscriptions in a single offering for a large number of different publications, require that payment be made to the account of the third party retailer, and undertake to resolve subscription problems. The term includes persons commonly known as direct mail, school, paid during service, cash, catalog, and telephone agents. “Third party retailer” does not include persons who solicit renewals of subscriptions on behalf of individual publishers.

(8) “Mixed Newspaper Subscription.” “Mixed newspaper subscription” means and includes a subscription for a tangible newspaper combined with a subscription for the right to access digital content.

(9) “Digital-Only Subscription Rate.” “Digital-only subscription rate” means the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.

(10) “Print-Only Subscription Rate.” “Print-only subscription rate” means the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.

(b) Application of Tax.

(1) In General. ~~Effective July 15, 1991,~~ The sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.

Tax does not apply to sales of tangible personal property to persons who purchase the property for incorporation as a component part of a newspaper or periodical which will be sold notwithstanding that the purchaser is not the seller of the newspaper or periodical.

See Regulation 1574 (18 CCR 1574) for the application of tax to sales through vending machines and Regulation 1628 (18 CCR 1628) for the application of tax to transportation charges.

(2) Distributions of Newspapers and Periodicals Without Charge. ~~Effective October 2, 1991,~~ Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.

Newspapers and periodicals distributed on a voluntary pay basis shall be considered as distributed without charge. Newspapers and periodicals are distributed on a voluntary pay basis when payment is requested from the consumer but is not required.

(3) Subscriptions. ~~The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

(A) Exempt Subscriptions. ~~Effective November 1, 1992,~~ Tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.

~~Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).~~

(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.

2. This presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation

greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.

(C) Reporting Subscription Sales. Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

(4) Membership Organizations. Generally, tax applies to sales of newspapers and periodicals by membership organizations. If the price is separately stated, tax applies to that amount. If the price is not separately stated, the measure of tax is the fair retail selling price of the publication.

The application of tax to distributions of newspapers and periodicals by nonprofit organizations is provided at subdivision (b)(5). The application of tax to sales of periodicals by subscription is provided at subdivision (b)(3).

(5) Nonprofit Organizations.

(A) Internal Revenue Code Section 501(c)(3) Organizations. ~~Effective November 1, 1991, until October 31, 1992, tax does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible personal property which becomes an ingredient or component part of any such newspaper or periodical; regularly issued at average intervals not exceeding three months only as to issues and~~ distributed under either of the following circumstances:

1. The issues are distributed to the organization's members in consideration of the organization's membership fee; or
2. The issues are of a newspaper or periodical which neither receives revenue from, nor accepts, any commercial advertising.

~~Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.~~

For purposes of this subdivision, any governmental entity established and administered for the purposes provided in Internal Revenue Code Section 501(c)(3) shall be considered to be an organization that qualifies for tax exempt status under that section.

(B) Other Nonprofit Organizations. ~~Effective November 1, 1991, tax does not apply to the sale or use of any newspaper or periodical~~ regularly issued at average intervals not exceeding three months and distributed by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of ~~or~~ any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:

1. The issues are distributed to the organization's members in consideration, in whole, or in part, of the organization's membership fee;
2. The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than ten percent of the membership fee attributable to the period for which the newspaper or periodical is distributed, whether the publication is printed within or without this state. The cost of printing shall be determined as follows.

The cost of printing includes costs of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical (e.g., ink and paper) and costs of labor to print the newspaper or periodical. The cost of printing does not include costs not attributable to actual printing, such as costs of special printing aids, typography, and preparation of layouts.

If the organization contracts with an outside printer to print the newspaper or periodical, the organization shall obtain and retain documentation segregating the costs of printing from the printer's other charges.

If the organization is the printer of the newspaper or periodical, the cost of printing includes the aggregate of the cost of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical; labor of printing, including fringe benefits and payroll taxes; and other costs attributable to the actual printing of the newspaper or periodical.

If an organization has published the newspaper or periodical for a period exceeding twelve months and the method of printing has not changed, the organization may elect to consider the cost of printing for a reporting period to be equal to the amount paid or incurred for the same reporting period for the previous fiscal or calendar year.

(6) Newspaper Carriers. A newspaper carrier is not a retailer. The publisher or distributor for whom the carrier delivers is the retailer of the newspapers delivered. The publisher or distributor shall report and pay tax measured by the price charged to the customer by the carrier.

(7) Consumption of Property. Tax applies to the sale to or use by a newspaper or periodical publisher of tangible personal property consumed in the manufacturing process. Tax does not apply to the cost of tangible personal property lost or wasted in the manufacturing process when that property was purchased for the purpose of incorporation into a newspaper or periodical to be sold or to be distributed in accordance with subdivision (b)(2).

~~(8) Fixed Price Contracts. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

(98) School Catalogs and Yearbooks. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.

Tax applies to charges for the preparation of such publications made to public or private schools, county offices of education, school districts, or student organizations by printers, engravers, photographers and the like.

(c) Exemption Certificates.

Any seller claiming a transaction as exempt from sales tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8 should timely obtain an exemption certificate in writing from the purchaser. The exemption certificate will be considered timely if obtained by the seller at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property.

(1) Certificate A. Certificate to be used for purchases of tangible personal property for incorporation into newspapers or periodicals for sale in accordance with subdivisions (b)(1) or (b)(3), above.

(2) Certificate B. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed without charge in accordance with subdivision (b)(2), above.

(3) Certificate C. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3) in accordance with subdivision (b)(5)(A), above.

(4) Certificate D. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations in accordance with subdivision (b)(5)(B), above.

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for  
incorporation into a newspaper or periodical for sale

---

(Name of Purchaser)

---

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of \_\_\_\_\_  
the following:

That I hold valid seller's permit  
No. \_\_\_\_\_  
issued pursuant to the Sales and  
Use Tax Law.

That I do not hold a seller's permit  
issued pursuant to the Sales and Use  
Tax Law. I do not sell any tangible  
personal property for which a permit  
is required.

Initial one of the following:

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase from

\_\_\_\_\_

(Name of Vendor)

will become a component part of the newspaper or periodical\*

\_\_\_\_\_

and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified above or  
used other than for retention, demonstration, or display while holding it for sale in the regular  
course of business, I am required by the Sales and Use Tax Law to report and pay any applicable  
sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed free of charge

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

~~That I hold valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.~~

~~That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.~~

Initial one of the following:

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing\*

\_\_\_\_\_ which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of the such property.

Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_

(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate C

California Sales Tax Exemption Certificate

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organization which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

That the purchaser holds valid seller's permit No. \_\_\_\_\_

issued pursuant to the Sales and Use Tax Law.

~~That the purchaser does not hold a permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.~~

Initial one of the following:

\_\_\_\_\_ That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing\*

\_\_\_\_\_ which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

~~The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors;~~

~~The publication does not receive revenue from or accept any commercial advertising.~~

The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors.

           The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate D

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

*Initial one of the following:*

           That the purchaser holds valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

           That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in the business of selling or publishing\*

\_\_\_\_\_  
which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

<sup>1</sup> This definition is based upon *Business Statistics Organization Inc. v. Joseph*, 299 N.Y. 443, 87 N.E. 2d 505, and *Houghton v. Payne*, 194 U. S. 88, 48 L.Ed. 888.

Note: Authority cited: Section 7051, Revenue and Taxation Code; Reference: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, ~~6362.3~~, 6362.7 and 6362.8, Revenue and Taxation Code.

**Format of Amended California Code of Regulations, Title 18,  
Section 1590, Newspapers and Periodicals, Exemption Certificates A through D**

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for  
incorporation into a newspaper or periodical for sale

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued  
pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do  
not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the newspaper or periodical\*

\_\_\_\_\_  
and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified above or  
used other than for retention, demonstration, or display while holding it for sale in the regular  
course of business, I am required by the Sales and Use Tax Law to report and pay any applicable  
sales or use tax. Description of the property to be purchased:

Date: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed free of charge

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_\_ That I hold valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing\*

\_\_\_\_\_ which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of ~~the~~ such property.

Description of the property to be purchased:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

Certificate C

California Sales Tax Exemption Certificate

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organization which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

That the purchaser holds valid seller's permit No. issued pursuant to the Sales and Use Tax Law.

That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing\*

which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

(Name of Vendor)

will be resold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors,

The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

Date: , 19

(Signature of Purchaser or Authorized Agent)

(Title)

\*Insert name and type of newspaper or periodical

Certificate D

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY:

*Initial one of the following:*

\_\_\_\_\_ That the purchaser holds valid seller's permit No. \_\_\_\_\_

issued pursuant to the Sales and Use Tax Law.

\_\_\_\_\_ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in the business of selling or publishing\*

\_\_\_\_\_  
which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

\_\_\_\_\_  
(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

\_\_\_\_\_  
Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

\*Insert name and type of newspaper or periodical

## Regulation History

**Type of Regulation:** Sales and Use Tax

Regulation: 1590

Title: *Newspapers and Periodicals*

**Preparation:** Scott Claremont

**Legal Contact:** Scott Claremont

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1590, *Newspapers and Periodicals*, to clarify the application of tax to charges for mixed newspaper subscriptions that include the right to access digital content.

### History of Proposed Regulation:

June 14-15, 2015	Public Hearing
April 29, 2016	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 19, 2016	Notice to OAL
January 26, 2016	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA