

Regulations 1602.5

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1602.5

Index

1. *Form 400 and Proposed Regulation 1602.5*
2. *Statement of Explanation*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 03/04/10*
- B. *Approved Minutes, 03/25/10*
- C. *BOE "Section 100 Change" Recommendation*
- D. *Reporters Transcript, 03/25/10*

**State of California
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1602.5, 1700

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT

California Code of Regulations, Title 1,
Section 100

OAL File No. 2010-0406-02 N

RECEIVED

MAY 14 2010

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

Sections 1602.5 and 1700 of title 18 contain examples for calculating applicable tax using a 6% tax rate. This change without regulatory effect replaces the out-dated 6% tax rate, which currently does not apply anywhere in California, with an 8.25% tax rate in the examples for calculating applicable tax.

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

Date: 5/13/2010


Debra M. Cornez
Assistant Chief Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

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



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk 
DATE: 5/19/2010
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-0406-02N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0406-02N regarding Reporting Methods for Grocers).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

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

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

Enclosures

NON-SUBSTANTIVE (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0406-02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		
NOTICE		REGULATIONS

ENDORSED FILED
IN THE OFFICE OF

2010 MAY 13 PM 1:19

Debra Bowen
 DEBRA BOWEN
 SECRETARY OF STATE

2010 APR -6 AM 8:51
 OFFICE OF
 ADMINISTRATIVE LAW

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

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Reporting Methods for Grocers	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 1602.5, 1700
TITLE(S) 18	REPEAL

3. TYPE OF FILING

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

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

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

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

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

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
---	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diane G. Olson</i>	DATE 4/5/2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 13 2010

Office of Administrative Law

**Text of Proposed Changes to
Title 18. Public Revenue**

Regulation 1602.5. Reporting Methods for Grocers.

(a) Food Products Exemption-In General. . . . (unchanged).

(b) Reporting Methods. . . . (unchanged).

(1) Purchase-Ratio Method. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

1 (unchanged).

2 (unchanged).

3 (unchanged).

4 (unchanged).

A (unchanged).

B (unchanged).

C (unchanged).

(G) Sales tax reimbursement collected in accordance with Regulation 1700 which is included in total sales is an allowable deduction. An example of the computation of the purchase-ratio method which provides for an adjustment for sales tax included follows:

1. Taxable grocery purchases..... \$40,000

2. Add sales tax adjustment (<u>68.25%</u> * x Item 1).....	<u>2,4003,300</u>
3. Adjusted taxable grocery purchases (Item 1 + Item 2).....	<u>42,40043,300</u>
4. Exempt food products purchases.....	130,000
5. Total grocery purchases including sales tax (Item 3 + Item 4)...	<u>172,400173,300</u>
6. Exempt food products ratio (Item 4 divided by Item 5).....	<u>75.4175.01%</u>
7. Total sales including sales tax.....	254,088
8. Nongrocery taxable sales including sales tax (if such sales are not accurately segregated, mark up nongrocery taxable cost of goods sold to compute sales-add <u>68.25%</u> * sales tax to total)**	31,500
9. Grocery sales including sales tax (Item 7 - Item 8).....	222,588
10. Exempt food products sales (Item 6 x Item 9).....	<u>167,854166,963</u>
11. Sales of taxable items including sales tax (Item 7 - Item 10).....	<u>86,23487,125</u>
12. Less taxable items purchased with food stamps (2% of total food stamps redeemed for period, e.g., 2% x \$100,000).....	2,000
13. Taxable Measure including sales tax (Item 11 - Item 12).....	<u>84,23485,125</u>
14. Sales tax included (6/10 <u>68.25/108.25</u> * x Item 13).....	<u>4,7686,488</u>
15. Measure of tax (Item 13 - Item 14).....	<u>79,46678,637</u>
16. Sales tax payable (<u>68.25%</u> * x Item 15).....	<u>4,7686,488</u>

(2) Modified Purchase-Ratio Method. . . (unchanged).

(3) Retail Inventory Method and Markup Method. . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

d. . . . (unchanged).

C. . . . (unchanged).

D. . . . (unchanged).

E. . . . (unchanged).

F. . . . (unchanged).

(4) Electronic Scanning Systems. . . . (unchanged).

(c) Food Stamps. . . . (unchanged).

(d) Shrinkage. . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(e) List of Methods Not Exhaustive. . . . (unchanged).

(f) Audits. . . . (unchanged).

* Use applicable tax rate -tax rate of 68.25% used for illustration purposes.

** . . . (unchanged).

¹ . . . (unchanged).

Note: Authority cited: Sections 7051 and 7051.5, Revenue and Taxation Code.
Reference: Sections 6359 and 6373, Revenue and Taxation Code.

Regulation 1700. Reimbursement for Sales Tax.

(a) Reimbursement for Sales Tax.

(1) Addition of Sales Tax Reimbursement. . . . (unchanged).

(2) Presumptions. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(3) Reimbursement Schedules. . . . (unchanged).

(b) Excess Tax Reimbursement.

(1) Definition. . . . (unchanged).

(2) Procedure upon Ascertainment of Excess Tax Reimbursement. . . . (unchanged).

(3) Evidence Sufficient to Establish that Excess Amounts have been or will be Returned to Customer.

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(4) Offsets. . . . (unchanged).

(5) Particular Applications. (Examples at 68.25 percent tax rate.)

(A) Discounts and trading stamps.

1. Discounts. A retailer who allows discounts on sales prices but charges customers tax reimbursement computed upon the prices before the discount is deducted is collecting excess reimbursement.

For example, a sale is made for \$100 plus \$68.25 as tax reimbursement. Upon payment for the item the purchaser is allowed a discount of 20 percent of the sales price of \$100 but the \$68.25 tax reimbursement is excluded from the computation. Since the retailer is deducting the amount of the discount, \$20, from taxable gross receipts, the retailer is actually paying a tax of only \$~~4.80~~6.60, i.e., 68.25 percent of \$80, and has retained excessive tax reimbursement of \$~~1.20~~1.65.

2. Trading Stamps. A retailer who issues trading stamps or similar evidences of patronage may deduct as cash discounts the cost to the retailer of the stamps or other indicia (hereinafter called "stamps") issued in connection with taxable retail sales. A retailer who deducts the cost of stamps as a cash discount in computing the tax payable to the state, but who charges tax reimbursement on the full sales price of the goods, collects more tax reimbursement than the retailer pays to the state. The following illustration shows why this is true: If a retailer collects sales tax reimbursement of \$68.25 on a \$100 sale but gives the customer trading stamps which cost the retailer \$2 and then deducts the \$2 as a cash discount when reporting taxable receipts, the retailer will pay a tax of only \$~~5.88~~8.08 (68.25 percent of \$98).

The retailer must follow one of the three following procedures:

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(6) Rights of Customers. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6901.5, Revenue and Taxation Code; and Section 1656.1, Civil Code. Leases, see also regulation 1660; Meals, tips and other charges as tax-included amounts, see regulation 1603; "Free meals," charging reimbursement on, see regulation 1670; Trading stamps generally, see regulation 1671; Trade-ins generally, see regulation 1654.

Revised
5-12-2010
DML

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

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1602.5, *Reporting Methods for Grocers*
Regulation 1700, *Reimbursement for Sales Tax*

A. Factual Basis

Subdivision (b)(1)(G) of California Code of Regulations, title 18, section (Regulation) 1602.5, *Reporting Methods for Grocers*, includes an example showing how grocers can calculate the applicable sales and use tax using the purchase-ratio method. Subdivision (b)(5)(A) of Regulation 1700, *Reimbursement for Sales Tax*, contains two examples showing how retailers can mistakenly calculate and collect excess tax reimbursement in transactions involving discounts and trading stamps. However, the example in Regulation 1602.5 and the examples in Regulation 1700 use an out-dated 6 percent tax rate,¹ which does not currently apply anywhere in California. Therefore, the State Board of Equalization (Board) proposes to update all three examples so that they utilize an 8.25 percent tax rate² because California sales and use tax rates currently range from 8.25 percent to 10.75 percent, and 8.25 percent will continue to be the operative rate in some areas of California after the temporary 1 percent tax rate increase authorized by Revenue and Taxation Code sections 6051.7 and 6201.7 expires.³

The Board has determined that the changes to Regulation 1602.5 and 1700 are appropriate for processing under Rule 100 because they merely change the tax rates used in examples, not the actual tax rates that apply to specific transactions, and therefore do not have any regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes to Regulation 1602.5

Proposed changes to Regulation 1602.5:

Regulation 1602.5. Reporting Methods for Grocers.

(a) Food Products Exemption-In General. . . . (unchanged).

(b) Reporting Methods. . . . (unchanged).

¹ The tax rate refers to the cumulative rates at which the state sales and use tax (Rev. & Tax Code, § 6001 et seq.), the Bradley-Burns Uniform Local Sales and Use Tax (Rev. & Tax. Code, § 7200 et seq.), and local Transactions and Use Tax are computed in a given jurisdiction, such as a city or county.

² For ease of reference, there is a chart available at <http://www.boe.ca.gov/news/sp111500att.htm>, which shows each component of the 8.25 percent rate.

³ For ease of reference, the specific sales and use tax rates applicable in the various California cities and counties are available on the Board's Website at <http://www.boe.ca.gov/sutax/pam71.htm>.

(1) Purchase-Ratio Method. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

C. . . . (unchanged).

(G) Sales tax reimbursement collected in accordance with Regulation 1700 which is included in total sales is an allowable deduction. An example of the computation of the purchase-ratio method which provides for an adjustment for sales tax included follows:

1. Taxable grocery purchases.....	\$40,000
2. Add sales tax adjustment ($68.25\% \times$ Item 1).....	<u>2,400</u> 3,300
3. Adjusted taxable grocery purchases (Item 1 + Item 2).....	<u>42,400</u> 43,300
4. Exempt food products purchases.....	130,000
5. Total grocery purchases including sales tax (Item 3 + Item 4).....	<u>172,400</u> 173,300
6. Exempt food products ratio (Item 4 divided by Item 5).....	<u>75.41</u> 75.01%
7. Total sales including sales tax.....	254,088
8. Nongrocery taxable sales including sales tax (if such sales are not accurately segregated, mark up nongrocery taxable cost of goods sold to compute sales-add $68.25\% \times$ sales tax to total)**.....	31,500
9. Grocery sales including sales tax (Item 7 - Item 8).....	222,588
10. Exempt food products sales (Item 6 x Item 9).....	<u>167,854</u> 166,963
11. Sales of taxable items including sales tax (Item 7 - Item 10).....	<u>86,234</u> 87,125

12. Less taxable items purchased with food stamps (2% of total food stamps redeemed for period, e.g., 2% x \$100,000).....	2,000
13. Taxable Measure including sales tax (Item 11 - Item 12).....	<u>84,234,85,125</u>
14. Sales tax included (6/10 <u>68.25/108.25</u> * x Item 13).....	<u>4,7686,488</u>
15. Measure of tax (Item 13 - Item 14).....	<u>79,46678,637</u>
16. Sales tax payable (6 <u>8.25</u> %* x Item 15).....	<u>4,7686,488</u>

(2) Modified Purchase-Ratio Method. . . . (unchanged).

(3) Retail Inventory Method and Markup Method. . . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

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4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

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(4) Electronic Scanning Systems. . . . (unchanged).

(c) Food Stamps. . . . (unchanged).

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(e) List of Methods Not Exhaustive. . . . (unchanged).

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* Use applicable tax rate -tax rate of 68.25% used for illustration purposes.

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Note: Authority cited: Sections 7051 and 7051.5, Revenue and Taxation Code. Reference: Sections 6359 and 6373, Revenue and Taxation Code.

C. Proposed Changes to Regulation 1700

Proposed changes to Regulation 1700

Regulation 1700. Reimbursement for Sales Tax.

(a) Reimbursement for Sales Tax.

(1) Addition of Sales Tax Reimbursement. . . . (unchanged).

(2) Presumptions. . . . (unchanged).

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- (1) Definition. . . . (unchanged).
- (2) Procedure upon Ascertainment of Excess Tax Reimbursement. . . . (unchanged).
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For example, a sale is made for \$100 plus \$68.25 as tax reimbursement. Upon payment for the item the purchaser is allowed a discount of 20 percent of the sales price of \$100 but the \$68.25 tax reimbursement is excluded from the computation. Since the retailer is deducting the amount of the discount, \$20, from taxable gross receipts, the retailer is actually paying a tax of only \$4.806.60, i.e., 68.25 percent of \$80, and has retained excessive tax reimbursement of \$1.201.65.

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(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

C. . . . (unchanged).

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10. Exempt food products sales (Item 6 x Item 9).....	<u>167,854</u> 166,963
11. Sales of taxable items including sales tax (Item 7 - Item 10).....	<u>86,234</u> 87,125

12. Less taxable items purchased with food stamps (2% of total food stamps redeemed for period, e.g., 2% x \$100,000).....	2,000
13. Taxable Measure including sales tax (Item 11 - Item 12).....	<u>84,23485,125</u>
14. Sales tax included (6/10 <u>68.25/108.25</u> * x Item 13).....	<u>4,7686,488</u>
15. Measure of tax (Item 13 - Item 14).....	<u>79,46678,637</u>
16. Sales tax payable (<u>68.25</u> %* x Item 15).....	<u>4,7686,488</u>

(2) Modified Purchase-Ratio Method. . . . (unchanged).

(3) Retail Inventory Method and Markup Method. . . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

d. . . . (unchanged).

C. . . . (unchanged).

D. . . . (unchanged).

E. . . . (unchanged).

F. . . . (unchanged).

(4) Electronic Scanning Systems. . . . (unchanged).

(c) Food Stamps. . . . (unchanged).

(d) Shrinkage. . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(e) List of Methods Not Exhaustive. . . . (unchanged).

(f) Audits. . . . (unchanged).

* Use applicable tax rate -tax rate of 68.25% used for illustration purposes.

** . . . (unchanged).

¹ . . . (unchanged).

Note: Authority cited: Sections 7051 and 7051.5, Revenue and Taxation Code. Reference: Sections 6359 and 6373, Revenue and Taxation Code.

C. Proposed Changes to Regulation 1700

Proposed changes to Regulation 1700

Regulation 1700. Reimbursement for Sales Tax.

(a) Reimbursement for Sales Tax.

(1) Addition of Sales Tax Reimbursement. . . . (unchanged).

(2) Presumptions. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(3) Reimbursement Schedules. . . . (unchanged).

(b) Excess Tax Reimbursement.

(1) Definition. . . . (unchanged).

(2) Procedure upon Ascertainment of Excess Tax Reimbursement. . . . (unchanged).

(3) Evidence Sufficient to Establish that Excess Amounts have been or will be Returned to Customer. . . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(4) Offsets. . . . (unchanged).

(5) Particular Applications. (Examples at 68.25 percent tax rate.)

(A) Discounts and trading stamps.

1. Discounts. A retailer who allows discounts on sales prices but charges customers tax reimbursement computed upon the prices before the discount is deducted is collecting excess reimbursement.

For example, a sale is made for \$100 plus \$68.25 as tax reimbursement. Upon payment for the item the purchaser is allowed a discount of 20 percent of the sales price of \$100 but the \$68.25 tax reimbursement is excluded from the computation. Since the retailer is deducting the amount of the discount, \$20, from taxable gross receipts, the retailer is actually paying a tax of only ~~\$4.80~~6.60, i.e., 68.25 percent of \$80, and has retained excessive tax reimbursement of ~~\$1.20~~1.65.

2. Trading Stamps. A retailer who issues trading stamps or similar evidences of patronage may deduct as cash discounts the cost to the retailer of the stamps or other indicia (hereinafter called "stamps") issued in connection with taxable retail sales. A retailer who deducts the cost of stamps as a cash discount in computing the tax payable to the state, but who charges tax reimbursement on the full sales price of the

goods, collects more tax reimbursement than the retailer pays to the state. The following illustration shows why this is true: If a retailer collects sales tax reimbursement of \$68.25 on a \$100 sale but gives the customer trading stamps which cost the retailer \$2 and then deducts the \$2 as a cash discount when reporting taxable receipts, the retailer will pay a tax of only \$~~5.88~~8.08 (68.25 percent of \$98).

The retailer must follow one of the three following procedures:

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(6) Rights of Customers. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6901.5, Revenue and Taxation Code; and Section 1656.1, Civil Code. Leases, see also regulation 1660; Meals, tips and other charges as tax-included amounts, see regulation 1603; "Free meals," charging reimbursement on, see regulation 1670; Trading stamps generally, see regulation 1671; Trade-ins generally, see regulation 1654.

("OBD") systems on used 2010 and subsequent heavy duty engines, amends the OBD regulation that specifies the required capabilities of OBD systems installed in passenger cars, light duty trucks, and medium duty vehicles, and updates the regulation that specifies the emission standards pertinent to OBD systems and other requirements applicable to 2010 and subsequent heavy-duty engines.

Title 13
California Code of Regulations
ADOPT: 1971.5 AMEND: 1968.2, 1971.1
Filed 05/18/2010
Effective 06/17/2010
Agency Contact: Amy Whiting (916) 322-6533

File# 2010-0407-01
BOARD OF EQUALIZATION
Innocent Spouse or Registered Domestic Partner Relief from Liability

The State Board of Equalization adopted sections 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106 and 4903 in title 18 of the California Code of Regulations to provide for relief for innocent spouses and registered domestic partners from liability under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Law, or Fuel Tax Law.

Title 18
California Code of Regulations
ADOPT: 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903
Filed 05/18/2010
Effective 06/17/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0406-01
BOARD OF EQUALIZATION
Membership Fees

This change without regulatory effect deletes subdivision (c) of section 1584 which states "The provisions of this regulation are operative January 1, 1996" because all of the reporting periods that began prior to January 1, 1996, ended more than 14 years ago, the Board does not expect to issue any new notices of determina-

tion or receive any new claims for refund for those reporting periods because of statutory deadlines, and therefore, the reporting periods are closed for all material regulatory purposes.

Title 18
California Code of Regulations
AMEND: 1584
Filed 05/13/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0406-02
BOARD OF EQUALIZATION
Reporting Methods for Grocers

Sections 1602.5 and 1700 of title 18 contain examples for calculating applicable tax using a 6% tax rate. This change without regulatory effect replaces the outdated 6% tax rate, which currently does not apply anywhere in California, with an 8.25% tax rate in the examples for calculating applicable tax.

Title 18
California Code of Regulations
AMEND: 1602.5, 1700
Filed 05/13/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0415-07
BUREAU OF AUTOMOTIVE REPAIR
Motor Vehicle Inspection Program Definitions

This Section 100 change without regulatory effect amends the existing Motor Vehicle Inspection Program definitions regulation by rearranging the definitions into alphabetical order.

Title 16
California Code of Regulations
AMEND: 3340.1
Filed 05/19/2010
Agency Contact: Steven Hill (916) 255-2135

File# 2010-0330-01
CALIFORNIA EMERGENCY MANAGEMENT
AGENCY
Office of Emergency Services — Change of Agency Name and Corrections

This change without regulatory effect implements Assembly Bill 38, Chapter 372, of 2008. Assembly Bill 38 changed the name of the agency from the Office of Emergency Services (OES) to the California Emergency Management Agency (Cal EMA) and changed the title of the head of the agency from Director to Secretary. This change without regulatory effect also made corrective grammar, spelling, alphabetizing, cross-reference, Authority and Reference Citation, and punctua-

Regulation 1602.5
Section 100

Index

1. *Form 400 and Proposed Regulation 1602.5*
2. *Statement of Explanation*

NO SUBSTANTIVE

STD. 400 (REV. 01-09)

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0406-02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		
NOTICE		REGULATIONS

2010 APR -6 AM 8:40
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
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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	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Reporting Methods for Grocers	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 1602.5, 1700
TITLE(S) 18	REPEAL

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

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diane G. Olson</i>	DATE 4/5/2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

**Text of Proposed Changes to
Title 18. Public Revenue**

Regulation 1602.5. Reporting Methods for Grocers.

(a) Food Products Exemption-In General. . . . (unchanged).

(b) Reporting Methods. . . . (unchanged).

(1) Purchase-Ratio Method. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

C. . . . (unchanged).

(G) Sales tax reimbursement collected in accordance with Regulation 1700 which is included in total sales is an allowable deduction. An example of the computation of the purchase-ratio method which provides for an adjustment for sales tax included follows:

1. Taxable grocery purchases..... \$40,000

2. Add sales tax adjustment (<u>68.25%</u> * x Item 1).....	<u>2,4003,300</u>
3. Adjusted taxable grocery purchases (Item 1 + Item 2).....	<u>42,40043,300</u>
4. Exempt food products purchases.....	130,000
5. Total grocery purchases including sales tax (Item 3 + Item 4)...	<u>172,400173,300</u>
6. Exempt food products ratio (Item 4 divided by Item 5).....	<u>75.4175.01%</u>
7. Total sales including sales tax.....	254,088
8. Nongrocery taxable sales including sales tax (if such sales are not accurately segregated, mark up nongrocery taxable cost of goods sold to compute sales-add <u>68.25%</u> * sales tax to total)**	31,500
9. Grocery sales including sales tax (Item 7 - Item 8).....	222,588
10. Exempt food products sales (Item 6 x Item 9).....	<u>167,854166,963</u>
11. Sales of taxable items including sales tax (Item 7 - Item 10).....	<u>86,23487,125</u>
12. Less taxable items purchased with food stamps (2% of total food stamps redeemed for period, e.g., 2% x \$100,000).....	2,000
13. Taxable Measure including sales tax (Item 11 - Item 12).....	<u>84,23485,125</u>
14. Sales tax included (6/10 <u>68.25/108.25</u> * x Item 13).....	<u>4,7686,488</u>
15. Measure of tax (Item 13 - Item 14).....	<u>79,46678,637</u>
16. Sales tax payable (<u>68.25%</u> * x Item 15).....	<u>4,7686,488</u>

(2) Modified Purchase-Ratio Method. . . (unchanged).

(3) Retail Inventory Method and Markup Method. . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

d. . . . (unchanged).

C. . . . (unchanged).

D. . . . (unchanged).

E. . . . (unchanged).

F. . . . (unchanged).

(4) Electronic Scanning Systems. . . . (unchanged).

(c) Food Stamps. . . . (unchanged).

(d) Shrinkage. . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(e) List of Methods Not Exhaustive. . . . (unchanged).

(f) Audits. . . . (unchanged).

* Use applicable tax rate -tax rate of 68.25% used for illustration purposes.

** . . . (unchanged).

¹ . . . (unchanged).

Note: Authority cited: Sections 7051 and 7051.5, Revenue and Taxation Code.
Reference: Sections 6359 and 6373, Revenue and Taxation Code.

**Text of Proposed Changes to
Regulation 1700. Reimbursement for Sales Tax.**

(a) Reimbursement for Sales Tax.

(1) Addition of Sales Tax Reimbursement. . . . (unchanged).

(2) Presumptions. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(3) Reimbursement Schedules. . . . (unchanged).

(b) Excess Tax Reimbursement.

(1) Definition. . . . (unchanged).

(2) Procedure upon Ascertainment of Excess Tax Reimbursement. . . . (unchanged).

(3) Evidence Sufficient to Establish that Excess Amounts have been or will be Returned to Customer. . . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(4) Offsets. . . . (unchanged).

(5) Particular Applications. (Examples at 68.25 percent tax rate.)

(A) Discounts and trading stamps.

1. Discounts. A retailer who allows discounts on sales prices but charges customers tax reimbursement computed upon the prices before the discount is deducted is collecting excess reimbursement.

For example, a sale is made for \$100 plus \$68.25 as tax reimbursement. Upon payment for the item the purchaser is allowed a discount of 20 percent of the sales price of \$100 but the \$68.25 tax reimbursement is excluded from the computation. Since the retailer is deducting the amount of the discount, \$20, from taxable gross receipts, the retailer is actually paying a tax of only ~~\$4.80~~6.60, i.e., 68.25 percent of \$80, and has retained excessive tax reimbursement of ~~\$1.20~~1.65.

2. Trading Stamps. A retailer who issues trading stamps or similar evidences of patronage may deduct as cash discounts the cost to the retailer of the stamps or other indicia (hereinafter called "stamps") issued in connection with taxable retail sales. A retailer who deducts the cost of stamps as a cash discount in computing the tax payable to the state, but who charges tax reimbursement on the full sales price of the goods, collects more tax reimbursement than the retailer pays to the state. The following illustration shows why this is true: If a retailer collects sales tax reimbursement of \$68.25 on a \$100 sale but gives the customer trading stamps which cost the retailer \$2 and then deducts the \$2 as a cash discount when reporting taxable receipts, the retailer will pay a tax of only ~~\$5.88~~8.08 (68.25 percent of \$98).

The retailer must follow one of the three following procedures:

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(6) Rights of Customers. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6901.5, Revenue and Taxation Code; and Section 1656.1, Civil Code. Leases, see also regulation 1660; Meals, tips and other charges as tax-included amounts, see regulation 1603; "Free meals," charging reimbursement on, see regulation 1670; Trading stamps generally, see regulation 1671; Trade-ins generally, see regulation 1654.

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

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1602.5, *Reporting Methods for Grocers*
Regulation 1700, *Reimbursement for Sales Tax*

A. Factual Basis

Subdivision (b)(1)(G) of California Code of Regulations, title 18, section (Regulation) 1602.5, *Reporting Methods for Grocers*, includes an example showing how grocers can calculate the applicable sales and use tax using the purchase-ratio method. Subdivision (b)(5)(A) of Regulation 1700, *Reimbursement for Sales Tax*, contains two examples showing how retailers can mistakenly calculate and collect excess tax reimbursement in transactions involving discounts and trading stamps. However, the example in Regulation 1602.5 and the examples in Regulation 1700 use an out-dated 6 percent tax rate,¹ which does not currently apply anywhere in California. Therefore, the State Board of Equalization (Board) proposes to update all three examples so that they utilize an 8.25 percent tax rate² because California sales and use tax rates currently range from 8.25 percent to 10.75 percent, and 8.25 percent will continue to be the operative rate in some areas of California after the temporary 1 percent tax rate increase authorized by Revenue and Taxation Code sections 6051.7 and 6201.7 expires.³

The Board has determined that the changes to Regulation 1602.5 and 1700 are appropriate for processing under Rule 100 because they merely change the tax rates used in examples, not the actual tax rates that apply to specific transactions, and therefore do not have any regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes to Regulation 1602.5

Proposed changes to Regulation 1602.5:

Regulation 1602.5. *Reporting Methods for Grocers*.

(a) Food Products Exemption-In General. . . . (unchanged).

(b) Reporting Methods. . . . (unchanged).

¹ The tax rate refers to the cumulative rates at which the state sales and use tax (Rev. & Tax Code, § 6001 et seq.), the Bradley-Burns Uniform Local Sales and Use Tax (Rev. & Tax. Code, § 7200 et seq.), and local Transactions and Use Tax are computed in a given jurisdiction, such as a city or county.

² For ease of reference, there is a chart available at <http://www.boe.ca.gov/news/sp111500att.htm>, which shows each component of the 8.25 percent rate.

³ For ease of reference, the specific sales and use tax rates applicable in the various California cities and counties are available on the Board's Website at <http://www.boe.ca.gov/sutax/pam71.htm>.

(1) Purchase-Ratio Method. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

C. . . . (unchanged).

(G) Sales tax reimbursement collected in accordance with Regulation 1700 which is included in total sales is an allowable deduction. An example of the computation of the purchase-ratio method which provides for an adjustment for sales tax included follows:

1. Taxable grocery purchases.....	\$40,000
2. Add sales tax adjustment (<u>68.25%</u> * x Item 1).....	<u>2,4003,300</u>
3. Adjusted taxable grocery purchases (Item 1 + Item 2).....	<u>42,40043,300</u>
4. Exempt food products purchases.....	130,000
5. Total grocery purchases including sales tax (Item 3 + Item 4).....	<u>172,400173,300</u>
6. Exempt food products ratio (Item 4 divided by Item 5).....	<u>75.4175.01%</u>
7. Total sales including sales tax.....	254,088
8. Nongrocery taxable sales including sales tax (if such sales are not accurately segregated, mark up nongrocery taxable cost of goods sold to compute sales-add <u>68.25%</u> * sales tax to total)**.....	31,500
9. Grocery sales including sales tax (Item 7 - Item 8).....	222,588
10. Exempt food products sales (Item 6 x Item 9).....	<u>167,854166,963</u>
11. Sales of taxable items including sales tax (Item 7 - Item 10).....	<u>86,23487,125</u>

12. Less taxable items purchased with food stamps (2% of total food stamps redeemed for period, e.g., 2% x \$100,000).....	2,000
13. Taxable Measure including sales tax (Item 11 - Item 12).....	<u>84,23485,125</u>
14. Sales tax included (6 / 10 <u>68.25</u> / <u>108.25</u> * x Item 13).....	<u>4,7686,488</u>
15. Measure of tax (Item 13 - Item 14).....	<u>79,46678,637</u>
16. Sales tax payable (<u>68.25</u> %* x Item 15).....	<u>4,7686,488</u>

(2) Modified Purchase-Ratio Method. . . . (unchanged).

(3) Retail Inventory Method and Markup Method. . . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

A. . . . (unchanged).

B. . . . (unchanged).

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

d. . . . (unchanged).

C. . . . (unchanged).

D. . . . (unchanged).

E. . . . (unchanged).

F. . . . (unchanged).

(4) Electronic Scanning Systems. . . . (unchanged).

(c) Food Stamps. . . . (unchanged).

(d) Shrinkage. . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(e) List of Methods Not Exhaustive. . . . (unchanged).

(f) Audits. . . . (unchanged).

* Use applicable tax rate -tax rate of 68.25% used for illustration purposes.

** . . . (unchanged).

¹ . . . (unchanged).

Note: Authority cited: Sections 7051 and 7051.5, Revenue and Taxation Code. Reference: Sections 6359 and 6373, Revenue and Taxation Code.

C. Proposed Changes to Regulation 1700

Proposed changes to Regulation 1700

Regulation 1700. Reimbursement for Sales Tax.

(a) Reimbursement for Sales Tax.

(1) Addition of Sales Tax Reimbursement. . . . (unchanged).

(2) Presumptions. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(3) Reimbursement Schedules. . . . (unchanged).

(b) Excess Tax Reimbursement.

(1) Definition. . . . (unchanged).

(2) Procedure upon Ascertainment of Excess Tax Reimbursement. . . . (unchanged).

(3) Evidence Sufficient to Establish that Excess Amounts have been or will be Returned to Customer. . . . (unchanged).

(A) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(B) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(4) Offsets. . . . (unchanged).

(5) Particular Applications. (Examples at 68.25 percent tax rate.)

(A) Discounts and trading stamps.

1. Discounts. A retailer who allows discounts on sales prices but charges customers tax reimbursement computed upon the prices before the discount is deducted is collecting excess reimbursement.

For example, a sale is made for \$100 plus \$68.25 as tax reimbursement. Upon payment for the item the purchaser is allowed a discount of 20 percent of the sales price of \$100 but the \$68.25 tax reimbursement is excluded from the computation. Since the retailer is deducting the amount of the discount, \$20, from taxable gross receipts, the retailer is actually paying a tax of only \$4.806.60, i.e., 68.25 percent of \$80, and has retained excessive tax reimbursement of \$1.201.65.

2. Trading Stamps. A retailer who issues trading stamps or similar evidences of patronage may deduct as cash discounts the cost to the retailer of the stamps or other indicia (hereinafter called "stamps") issued in connection with taxable retail sales. A retailer who deducts the cost of stamps as a cash discount in computing the tax payable to the state, but who charges tax reimbursement on the full sales price of the

goods, collects more tax reimbursement than the retailer pays to the state. The following illustration shows why this is true: If a retailer collects sales tax reimbursement of \$68.25 on a \$100 sale but gives the customer trading stamps which cost the retailer \$2 and then deducts the \$2 as a cash discount when reporting taxable receipts, the retailer will pay a tax of only \$~~5.888~~.08 (68.25 percent of \$98).

The retailer must follow one of the three following procedures:

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(6) Rights of Customers. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6901.5, Revenue and Taxation Code; and Section 1656.1, Civil Code. Leases, see also regulation 1660; Meals, tips and other charges as tax-included amounts, see regulation 1603; "Free meals," charging reimbursement on, see regulation 1670; Trading stamps generally, see regulation 1671; Trade-ins generally, see regulation 1654.

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: March 4, 2010

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

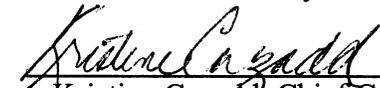
Subject : Board Meeting—March 25, 2010
Item J
Chief Counsel’s Rulemaking Calendar
Regulation 1602.5, *Reporting Methods for Grocers*

Subdivision (b)(1)(G) of Sales and Use Tax Regulation 1602.5, *Reporting Methods for Grocers*, includes an example showing the computation of the purchase-ratio method. The tax rate used in the example is 6 percent. However, the tax rates in California now range from 8.25 to 10.75 percent and 8.25 percent will remain an active tax rate after the 1 percent temporary tax rate increase authorized by Revenue and Taxation Code sections 6051.7 and 6201.7 expires. As such, staff believes that the Board should update the example using an 8.25 percent tax rate. Therefore, we request your approval to place proposed revisions to Regulation 1602.5, subdivision (b)(1)(G), on the Chief Counsel’s Rulemaking Calendar for March 25, 2010, for Board authorization to amend the example under Rule 100, without the normal notice and public hearing process. This change is appropriate for processing under Rule 100 because it is a change without regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underline version of Regulation 1602.5 showing the updated example.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

Recommendation by:



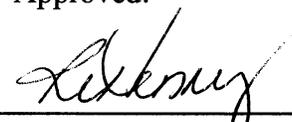
Kristine Cazadd, Chief Counsel

Approved:



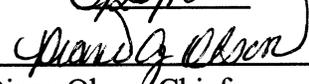
Ramon J. Hirsig, Executive Director

Approved:



Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the 3/25/10 Board Meeting


Diane Olson, Chief
Board Proceedings Division

Attachments

cc (all with attachments):

Ms. Randie L. Henry (MIC 43)

Ms. Diane Olson (MIC 80)

Mr. Randy Ferris (MIC 82)

Mr. Bradley Heller (MIC 82)

Mr. Jeffrey L. McGuire (MIC 92)

Mr. Geoffrey E. Lyle (MIC 50)

Ms. Leila Hellmuth (MIC 50)

Ms. Lynn Whitaker (MIC 50)

Regulation 1602.5. Reporting Methods for Grocers.

Reference: Sections 6359 and 6373, Revenue and Taxation Code.

(a) FOOD PRODUCTS EXEMPTION — IN GENERAL. Tax does not apply to sales of food products for human consumption. Accurate and complete records of all purchases and sales of tangible personal property must be kept to verify all exemptions claimed as sales of exempt food products.

In preparing returns, grocers may use any method of determining the amount of their sales of exempt food products which does not result in an overstatement of the exemption. Grocers must be prepared to demonstrate by records which can be verified by audit that the method used properly reflects their sales of exempt food products.

(b) REPORTING METHODS.

(1) **PURCHASE-RATIO METHOD.** One method which may be used is the purchase-ratio method sometimes referred to as the "grocer's formula". Under this method, grocers may claim as sales of exempt food products that proportion of their total gross receipts from the sale of "grocery items" that the amount of their purchases of exempt food products bears to their total purchases of grocery items.

If the grocer elects to use the purchase-ratio method of reporting, the following criteria should be followed:

(A) The purchase-ratio method may be used only by grocers and only with respect to sales of "grocery items."

(B) Grocers selling clothes, furniture, hardware, farm implements, distilled spirits, drug sundries, cosmetics, body deodorants, sporting goods, auto parts, cameras, electrical supplies, appliances, books, pottery, dishes, film, flower and garden seeds, nursery stock, fertilizers, flowers, fuel and lubricants, glassware, stationery supplies, pet supplies (other than pet food), school supplies, silverware, sun glasses, toys and other similar property should not include the purchases and sales of such items in the purchase-ratio method. These items are referred to as "nongrocery taxable" items.

When the purchase-ratio method is used for reporting purposes and sales of nongrocery taxable items are computed by the retail extension or markup method, the computation of nongrocery taxable sales should include adjustments for beginning and ending inventories of these items and may include adjustments for shrinkage as specified in (d) below.

(C) Grocers selling gasoline, feed for farm animals, farm fertilizers or who operate a snack bar or restaurant, or sell hot prepared food should not include the purchases and sales of such items or operations in the purchase-ratio method.

(D) The purchases and sales of meat, fruit, produce, delicatessen (except hot prepared food or food sold for immediate consumption at facilities provided by the grocer), beverage (except distilled spirits in the liquor department) and bakery departments must be included in the purchase-ratio method if these departments are operated by the grocer.

(E) The records should be complete and adequate and all sales and purchases should be properly accounted for in the records. All purchases of exempt food products, grocery taxable items and nongrocery taxable items should be segregated into their respective classifications.

(F) The following definitions apply to the purchase-ratio method:

1. "Exempt food products" means those items generally described as food products in Section 6359 and Regulation 1602. If grocers are uncertain as to the classification of any product, they should contact the nearest board office.

2. "Total gross receipts from the sale of grocery items" means the total amount of the sales price of all exempt food products and taxable grocery items, including sales tax reimbursement, amounts receivable from manufacturers, or others, for coupons (excluding any handling allowances) redeemed by customers, and the face value of federal food stamps. The term does not include receipts from sales of those items described in (b)(1)(B), above, which are commonly referred to as "nongrocery taxable items", or from those sales described in (b)(1)(C),

above (gasoline, snack bar, etc.). It does not include amounts which represent "deposits", as defined in Regulation 1589, e.g., bottle deposits. When deposits are not segregated, it will be presumed, in the absence of evidence to the contrary, that the total deposits received are equal to the deposits refunded.

3. "Grocery items" means exempt food products and taxable items other than those generally classified under (b)(1)(B) and (b)(1)(C), above.

4. "Purchases" means the actual amount which a grocer is required to pay to the suppliers of merchandise, net of any cash discounts, volume rebates or quantity discounts and promotional allowances. The term does not include the cost of transportation, processing, manufacturing, warehousing, and other costs, if these operations are self-performed. It does not include the cost of operating supplies such as wrapping materials, paper bags, string, or similar items. It does not include amounts which represent "deposits", as defined in Regulation 1589, e.g., bottle deposits (see (b)(1)(F)2., above). If deposits are not segregated, it will be presumed, in the absence of evidence to the contrary, that the amount deposited with the supplier is equal to the credit received for bottles returned by the grocer.

A. As used herein, the term "cash discount" means a reduction from the invoice price which is allowed the grocer for prompt payment.

B. As used herein, the term "volume rebate or quantity discount" means an allowance or reduction of the price for volume purchases based on the number of units purchased or sold. Such rebates or discounts normally are obtained without any specific contractual obligation upon the part of the grocer to advertise or otherwise promote sales of the products purchased. The term does not include patronage dividends distributed to members by nonprofit cooperatives pursuant to Section 12805 of the Corporations Code, or rebates which constitute a distribution of profits to members or stockholders.

C. As used herein, the term "promotional allowance" means an allowance in the nature of a reduction of the price to the grocer, based on the number of units sold or purchased during a promotional period. The allowance is directly related to units sold or purchased although some additional promotional expense may be incurred by the grocer. Normally, grocers would feature the product in their advertising, although they may or may not be contractually obligated to do so. The retail price of the product may or may not be lowered during a promotional period.

The term does not include display or other merchandising plan allowances or payments which are based on agreements to provide shelf space for a price not related to volume of purchases, or cooperative advertising allowances which are based on a national line rate for advertising and are not directly related to volume of purchases and sales. Cooperative advertising allowances are intended to reimburse grocers for a portion of their advertising costs for a particular product or products.

(G) Sales tax reimbursement collected in accordance with Regulation 1700 which is included in total sales is an allowable deduction. An example of the computation of the purchase-ratio method which provides for an adjustment for sales tax included follows:

1. Taxable grocery purchases	\$40,000
2. Add sales tax adjustment ($68.25\% \times$ Item 1)	2,4003,300
3. Adjusted taxable grocery purchases (Item 1 + Item 2)	42,40043,300
4. Exempt food products purchases	130,000
5. Total grocery purchases including sales tax (Item 3 + Item 4)	172,400173,300
6. Exempt food products ratio (Item 4 divided by Item 5)	75.4475.01%
7. Total sales including sales tax	254,088
8. Nongrocery taxable sales including sales tax (if such sales are not accurately segregated, mark up nongrocery taxable cost of goods sold to compute sales — add 68.25% sales tax to total) **	31,500
9. Grocery sales including sales tax (Item 7 - Item 8).....	222,588
10. Exempt food products sales (Item 6 x Item 9)	167,854166,963
11. Sales of taxable items including sales tax (Item 7 - Item 10)	86,23487,125
12. Less taxable items purchased with food stamps (2% of total food stamps redeemed for period, e.g., $2\% \times \$100,000$)	2,000
13. Taxable Measure including sales tax (Item 11 - Item 12)	84,23485,125
14. Sales tax included ($68.25/108.25 \times$ Item 13)	4,7686,488
15. Measure of tax (Item 13 - Item 14)	79,46678,637
16. Sales tax payable ($68.25\% \times$ Item 15)	4,7686,488

(2) MODIFIED PURCHASE-RATIO METHOD. Any grocer who does not follow the procedure outlined in (b)(1), above, but reports on a purchase-ratio basis of some type is using a modified version of the purchase-ratio method. For example, grocers who include self-performed processing, manufacturing, warehousing or transportation costs in the purchase-ratio formula are using a modified version. Grocers using such a modified version must establish that their modified version does not result in an overstatement of their food products exemption. They may demonstrate the adequacy of their modified method by extending taxable purchases, adjusted for inventories, to retail for a representative period or computing taxable sales by marking up taxable purchases, adjusted for inventories, for a representative period. Grocers must retain adequate records which may be verified by audit, documenting the modified purchase-ratio method used.

(3) RETAIL INVENTORY METHOD AND MARKUP METHOD. Grocers who engage in manufacturing, processing, warehousing or transporting their own products may prefer to use a retail or markup method of reporting. These methods are described below:

(A) Retail Inventory Method.

1. The opening inventory is extended to retail and segregated as to exempt food products and taxable merchandise.
2. As invoices for merchandise are received, they are extended to retail and segregated as to exempt food products and taxable merchandise.
3. The ending inventory at retail is segregated as to exempt food products and taxable merchandise.
4. The total of segregated amounts determined in 1 and 2 less 3 represent anticipated exempt and taxable sales.

* Use applicable tax rate — tax rate of 68.25% used for illustration purposes.

** Adjust for shrinkage if applicable — see paragraph (d).

5. The segregated amounts determined in 4 are adjusted for net markons, net markdowns, and shrinkage to determine realized exempt and taxable sales.

6. Physical inventories are taken periodically to adjust book inventories.

(B) Cost Plus Markup Method — Taxable Merchandise.

1. The cost of all taxable merchandise is marked up to anticipated selling prices at the time of purchase. Records are kept of net markons, net markdowns, and shrinkage for all taxable merchandise. Such records are used to adjust the anticipated selling price to the realized price. Inventory adjustments are required unless the inventory of taxable merchandise at the beginning and ending of reporting periods is substantially constant. Returns should reflect as taxable sales the realized selling price of all taxable merchandise during a reporting period (anticipated sales price on purchases adjusted for inventory changes and other adjustments of the types mentioned).

2. If the grocer elects to use the cost plus markup method of reporting, the following criteria should be followed:

A. Markup factor percentages¹ applicable to taxable merchandise should be determined by a shelf test sample of representative purchases, covering a minimum purchasing cycle of one month within a three-year period, segregated by commodity groupings, i.e., beer, wine, carbonated beverages, tobacco and related products, paper products, pet food, soap, detergents, etc. The markup factor percentages determined for commodity groupings should be applied to the cost of sales of the respective commodities for the reporting to determine taxable sales.

In order to insure that markup factor percentages typical of the total business are determined, grocers who conduct multistore operations should include purchases from several representative stores in the shelf test sample of markup factor percentages.

B. As an alternate procedure to A., above, the overall average markup factor percentage for all taxable commodity groupings may be used to determine taxable sales for the reporting period. This markup factor percentage is applied to the overall cost of taxable sales for the reporting period.

The overall average markup factor percentage should be determined as follows:

a. Determine markup factor percentages by commodity groupings based on shelf tests covering a minimum purchasing cycle of one month within a three-year period.

b. Determine cost of sales, segregated by commodity groupings, for a representative one-year period.

c. Apply markup factor percentages (Step a) to the cost of sales of the respective commodity groupings (Step b) to determine anticipated sales by commodity groupings and in total.

d. Divide total anticipated sales (Step c) by the respective total cost of sales to determine the overall average markup factor percentage.

C. In calculating markup factor percentages, appropriate consideration should be given to markon and markdown price adjustments, quantity price adjustments such as on cigarettes sold by the carton, liquor sold by the case and other selling price adjustments. Quantity and other price adjustments may be determined by a limited test of sales of a representative period or by sales experience of a representative store within the operating entity.

D. The computation of taxable sales for the reporting period should be based on cost of sales for the period. If for any particular reporting period or periods, cost of sales is not determinable because actual physical inventories are unknown and inventories remain substantially constant, the computation of taxable sales may be based on purchases for the period. However, if inventories are not substantially constant, adjustments for physical inventories should be taken into consideration in one of the reporting periods occurring within the accounting year.

E. Shrinkage should be adjusted as specified in (d) below.

¹ Markup factor percentage is the markup + 100%. When applied to cost, it computes the selling price. For example, an item costing \$1.00 and selling at a 25% markup will have a markup factor of 125%. The markup factor (125%) when applied to \$1.00 cost results in a \$1.25 selling price.

F. Taxable markup factor percentages based on shelf test samples will generally be considered valid for reporting purposes for a period of three years, provided business operations remain substantially the same. A substantial change in business operations will be considered as having occurred when there is a significant change in pricing practices, commodities handled, commodity mix, locations operated, sources of supply, or other circumstances affecting the nature of the business.

(4) ELECTRONIC SCANNING SYSTEMS. The use of a scanning system is another acceptable reporting method for grocers. Electronic scanning systems utilize electronic scanners and central computers to automatically compile and record taxable and nontaxable sales, sales tax, and related data from scanning of products imprinted with the Universal Product Code. It is the grocer's responsibility to establish the propriety of reported amounts. Grocers must ensure that proper controls are maintained for monitoring and verifying the accuracy of the scanning results and tax returns. Adequate documentation must be retained which may be verified by audit, including all scanning programs relating to product identity, price, sales tax code, program changes and corrections to the programs. Records which clearly show a segregation of taxable and nontaxable merchandise purchases would provide an additional source from which the scanning accuracy may be monitored or verified.

(c) FOOD STAMPS. Tangible personal property eligible to be purchased with federal food stamps and so purchased is exempt from the tax. Grocers who receive gross receipts in the form of federal food stamp coupons in payment for such tangible personal property which normally is subject to the tax, e.g., nonalcoholic carbonated beverages, may deduct on each sales tax return an amount equal to two percent (2%) of the total amount of food stamps redeemed during the period for which the return is filed. Effective January 1, 1993, grocers may claim amounts in excess of two percent whenever the following computation results in a greater percentage: total purchases of taxable items eligible to be purchased with federal food stamps divided by an amount equal to the total of the exempt food product purchases as defined in subdivision (b)(1)(F)1 plus the purchases of taxable items eligible to be purchased with federal food stamps. For example, for a reporting period, if the total purchases of carbonated beverages equals \$5,000 and the total purchases of exempt food products equals \$130,000, a percentage of 3.7% ($\$5,000 \div \$135,000$) may be used in computing the allowable food stamp deduction for that period. This deduction may be taken in lieu of accounting separately for such sales.

(d) SHRINKAGE. As used herein, the term "shrinkage" means unaccounted for losses due to spoilage, breakage, pilferage, etc. Grocers who incur such losses, may, for reporting purposes, adjust for such losses as follows:

(1) An adjustment of up to 1 percent of the cost of taxable merchandise may be taken into consideration when the retail inventory or markup method is used for reporting purposes.

(2) An adjustment of up to 3 percent of the cost of nongrocery taxable items may be taken into consideration when the purchase-ratio method is used for reporting purposes and sales of nongrocery taxable items are computed by the retail extension or markup method. The adjustment is limited to an overall 1 percent of taxable purchases when other than the purchase-ratio method is used for reporting purposes.

Losses in excess of the above are allowable when supported by records which show that a greater loss is sustained.

(e) LIST OF METHODS NOT EXHAUSTIVE. The methods by which grocers may determine their sales of exempt food products are not limited to the methods described above. Grocers may use any method which they can support as properly reflecting their exempt food sales. As is the case for all exemptions, it is the grocer's responsibility to establish the propriety of the amount of the claimed exemption.

(f) AUDITS. Taxpayers using one of the approved methods of reporting described in this regulation will normally be audited by application of the same approved procedure in the audit to verify the accuracy of claimed deductions. However, determinations may be imposed or refunds granted if the board, upon audit of the retailer's accounts and records, determines that the returns did not accurately disclose the amount of tax due.

Thursday, March 25, 2010

Action: Upon motion of Ms. Mandel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CHIEF COUNSEL MATTERS

RULEMAKING

Section 100 Changes

Sales and Use Tax Regulation 1525.7, *Rural Investment Tax Exemption*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to repeal Regulation 1525.7 based on the repeal of Revenue and Taxation Code section 6378.1 by its own terms effective January 1, 2006. (Exhibit 3.6.)

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the repeal of Regulation 1525.7 as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Sales and Use Tax Regulation 1584, *Membership Fees*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to delete obsolete reference to the operative date of January 1, 1996. (Exhibit 3.7.)

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the amendment as recommended by staff.

Sales and Use Tax Regulation 1602.5, *Reporting Methods for Grocers*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to update the tax rates used in the example included in the regulation. (Exhibit 3.8.)

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the amendment of examples in the regulation as recommended by staff.

BOARD OF EQUALIZATION
REGULATORY ACTION IN ACCORDANCE
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 1602.5

REASON FOR CHANGE (check those applicable)

- renumbering, reordering, or relocating regulatory provision
- deleting regulatory provision for which all statutory or constitutional authority has been repealed
- deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court
- revising structure, syntax, cross-reference, grammar, or punctuation
- changing an "authority" or "reference" citation
- making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal
- changing without regulatory effect, not otherwise described above

Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.

Prepared by Gym Whitaker Date 1-12-10

Approvals
Division Chief [Signature] Date 2/22/10
Deputy Director [Signature] Date 2-23-10
Assistant Chief Counsel [Signature] Date 2/24/10
Chief Counsel [Signature] Date 2/24/10
Chief, Board Proceedings [Signature] Date 3/2/10

INSTRUCTIONS:

After approval, forward to next on list. In the event of disapproval, return to preparer.

Section 100. Publication of "Changes Without Regulatory Effect."

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. The addition, revision or deletion is a "change without regulatory effect." Changes without regulatory effect include, but are not limited to:"

- (1) renumbering, reordering, or relocating a regulatory provision;
- (2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;
- (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;
- (4) revising structure, syntax, cross-reference, grammar, or punctuation;
- (5) changing an "authority" or "reference" citation for a regulation; and,
- (6) making a regulatory provision consistent with a changed California statute if both the following conditions are met:
 - (A) the regulatory provision is inconsistent with an superseded by the changed statute, and
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) In submitting a change without regulatory effect to OAL for review the agency shall:

- (1) submit seven copies of the regulation with an addition shown in underline or italics and a deletion shown in strike-out; and
- (2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and
- (3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MARCH 25, 2010

ITEM J

SECTION 100 CHANGES

J1 SALES AND USE TAX REGULATION 1525.7

J2 SALES AND USE TAX REGULATION 1584

J3 SALES AND USE TAX REGULATION 1602.5

J4 SALES AND USE TAX REGULATION 1700

Reported by: Juli Price Jackson

No. CSR 5214

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P R E S E N T

For the Board
of Equalization:

Betty T. Yee
Chair

Jerome E. Horton
Vice-Chair

Barbara Alby
Acting Member

Michelle Steel
Member

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

Diane G. Olson
Chief, Board
Proceedings Division

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 MARCH 25, 2010

4 ---oOo---

5 MS. YEE: Okay, our next matter?

6 MS. OLSON: Our next matter is J1, Sales and
7 Use Tax Regulation 1525.7, Rural Investment Tax
8 Exemption.

9 MS. STEEL: Go through all the Js together?

10 MS. YEE: Yeah, I think so.

11 Good morning, Mr. Heller.

12 MR. HELLER: Good morning, Madam -- excuse me,
13 Madam Chair, Members of the Board.

14 My name's Bradley Heller. I'm here with the
15 Legal Department.

16 MS. YEE: Okay.

17 MR. HELLER: And before I begin, I just wanted
18 to note that Ms. Steel had asked staff to review the
19 Board's sales and use tax regulations to insure that
20 they're current and recommend any necessary updates.

21 And today's proposed Rule 100 changes, as well
22 as the Rule 100 changes from January, are the result of
23 that review and staff's recommendations.

24 MS. YEE: Excellent, great.

25 MR. HELLER: But, first of all, for item J1
26 this morning, I'm here to request the Board's
27 authorization to repeal Regulation 1525.7, the Rural
28 Investment Tax Exemption, under Rule 100, because the

1 statutory authority for the regulation, Revenue and
2 Taxation Code Section 6378.1 was repealed by its own
3 terms effective January 1, 2006.

4 MS. YEE: Okay. Let me -- without objection,
5 Members -- have you summarize each of these.

6 I think we'll take them all up on one vote.

7 MR. HELLER: Perfect.

8 MS. YEE: Thank you.

9 MR. HELLER: And then for item J2, we're here
10 to request the Board's authorization to delete
11 subdivision (c) from Regulation 1584, Membership Fees,
12 under Rule 100 because the January 1, 1996 operative
13 date is no longer necessary.

14 For item J3, I am here to request the Board's
15 authorization to update the example in Regulation
16 1602.5, Reporting Methods for Grocers, illustrating the
17 application of the purchase -- excuse me, purchase ratio
18 method to use a current tax rate, also under Rule 100.

19 Then similarly for item J4, I am here to
20 request the Board's authorization to update the examples
21 in Regulation 1700, Reimbursement for Sales Tax,
22 illustrating the application of tax to discounts and
23 trading stamps to use a current tax rate, also under
24 Rule 100.

25 MS. YEE: Okay. Thank you very much,
26 Mr. Heller.

27 Comments, Members?

28 Hearing none, is there a motion?

1 MS. STEEL: So moved.

2 MS. YEE: Motion by Ms. Steel --

3 MR. HORTON: Second.

4 MS. YEE: -- second by Mr. Horton.

5 Without objection, the motion carries to
6 request authorization for each of the items under J1
7 through J4, thank you.

8 MR. HELLER: Thank you.

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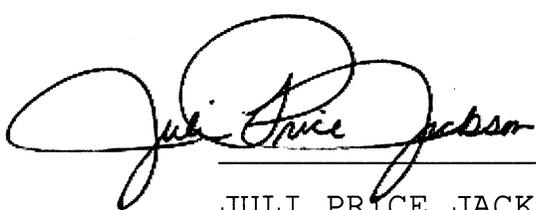
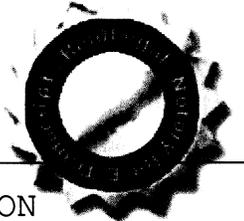
REPORTER'S CERTIFICATE

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County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on MARCH 25, 2010 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 5 constitute a complete and accurate transcription of the shorthand writing.

Dated: MAY 2, 2010

JULI PRICE JACKSON
Hearing Reporter