Rulemaking File

Table of Contents

Title18. Public Revenue

Sales and Use Tax
Regulation 1619
Foreign Consuls

OAL Approval

Index

1. Final Statement of Reasons
2. Updated Informative Digest
3. Business Tax Committee Minutes, July 28, 2015
4. Reporter's Transcript Business Taxes Committee, July 28, 2015
5. Estimate of Cost or Savings, September 17, 2014
6. Economic and Fiscal Impact Statements, August 28, 2015
7. Notice of Publications
8. Notice to Interested Parties, September 11, 2015
9. Statement of Compliance
10. Reporter's Transcript, Item F1, October 27, 2015
11. Draft Minutes, October 27, 2015, and Exhibits

RECEIVED
JAN 12 2016
EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

State of California
Office of Administrative Law

In re:
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:
Amend sections: 1619
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2015-1123-02

OAL Matter Type: Regular (S)

This rulemaking action by the Board of Equalization (BOE) amends section 1619 in title 18 of the California Code of Regulations to add information regarding the issuance of tax exemption cards by the American Institute in Taiwan (AIT).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2016.

Date: January 6, 2016

Lindsey S. McNeill
Attorney

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

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

DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: January 7, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2015-1123-02
OAL Matter Type Regular (S)

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

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

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

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

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

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

2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

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

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

DO NOT DISCARD OR DESTROY THIS FILE

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

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

Enclosures

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

STD. 400 (REV. 01-2013)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2015-0831-01	2015-1123-02	

For use by Office of Administrative Law (OAL) only

2015 NOV 23 P 1:35

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

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

JAN 06 2016

1:52 PM

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (If any)

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

1. SUBJECT OF NOTICE

TITLE(S)

FIRST SECTION AFFECTED

2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON

TELEPHONE NUMBER

FAX NUMBER (Optional)

OAL USE ONLY

ACTION ON PROPOSED NOTICE
☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn

NOTICE REGISTER NUMBER: 2015, 37-Z

PUBLICATION DATE: 9/11/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Foreign Consuls

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
1619

REPEAL

TITLE(S)
18

3. TYPE OF FILING

☒ Regular Rulemaking (Gov. Code §11346)

☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

☐ Emergency (Gov. Code, §11346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

☐ Emergency Readopt (Gov. Code, §11346.1(h))

☐ File & Print

☐ Other (Specify) _____

☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

☐ Print Only

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

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

☒ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

☐ Effective on filing with Secretary of State

☐ §100 Changes Without Regulatory Effect

☐ Effective other (Specify) _____

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

☐ Department of Finance (Form STD. 399) (SAM §6660)

☐ Fair Political Practices Commission

☐ State Fire Marshal

☐ Other (Specify) _____

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

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Joann Richmond

DATE
November 23, 2015

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

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 06 2016

Office of Administrative Law

Final Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1619

1619. Foreign Missions and Consuls.

(a) Application of Tax.

(1) Official Purchases – In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sole benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in the form of payment in the name of the foreign mission or representative office.

(2~~1~~) Personal Purchases - In General. ~~Neither sales t~~Tax does not~~nor use tax~~ apply~~ies~~ to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U. S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

(3) Tax applies to sales of tangible personal property to foreign missions or representatives offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U. S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(4~~2~~) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(4~~2~~) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), ~~the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of~~

~~a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~

~~Effective June 1, 2003,~~ the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if:

(A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and

(B) The retailer contacts and obtains directly from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ~~("OFM Eligibility Letter")~~.

For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code.

(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any transaction~~deduction~~ claimed as an exempt sale on its sales and use tax returns for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). In addition, to support each transaction claimed as an exempt sale or lease of a vehicle ~~to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer.~~

~~Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above~~, the retailer must retain a copy of the Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax~~Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family~~.

Note: For special provisions affecting record retention, see Regulation 1698.

Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6272, 6352 and 7053, Revenue and Taxation Code; ~~and~~ Vienna Convention on Diplomatic Relations of April 18, 1961, a~~A~~rticle 34, ~~(~~23 U.S.T. 3242,~~)~~ T.I.A.S. No. 7502~~.~~; Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

licensed clinical social workers and licensed professional clinical counselors. In this rulemaking action the Board is making changes to the examination process. SB 704 (Chapter 387, Statutes of 2011), SB 821 (Chapter 473, Statutes of 2013) and SB 1466 (Chapter 316, Statutes of 2014) restructure the examination process effective January 1, 2016. One of the changes is the requirement for those seeking licensure to pass two exams: a California law and ethics examination and a clinical examination. Additionally, all registered interns must take the California law and ethics exam during each yearly renewal registration period until passed and if the intern fails the exam he or she must take a 12–hour California law and ethics course.

Title 16
ADOPT: 1805.01, 1805.05, 1822.50, 1822.51, 1822.52, 1829.1, 1829.2, 1829.3, 1877.1, 1877.2, 1877.3 AMEND: 1805, 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, 1877
Filed 12/30/2015
Effective 01/01/2016
Agency Contact: Christy Berger (916) 574–8625

File# 2015–1123–02
BOARD OF EQUALIZATION
Foreign Consuls

This rulemaking action by the Board of Equalization (BOE) amends section 1619 in title 18 of the California Code of Regulations to add information regarding the issuance of tax exemption cards by the American Institute in Taiwan (AIT).

Title 18
AMEND: 1619
Filed 01/06/2016
Effective 04/01/2016
Agency Contact: Richard Bennion (916) 445–2130

File# 2015–1210–01
CALIFORNIA CITIZENS COMPENSATION COMMISSION
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 Secretary of State and printing.

Title 2
AMEND: 53900
Filed 12/30/2015
Effective 01/29/2016
Agency Contact: Marian Johnston (916) 322–3748

File# 2015–1119–01
CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE
GAP — Clinical Projects

The California Institute for Regenerative Medicine (CIRM) is adopting section 100503 in title 17 of the California Code of Regulations. This new section establishes the grants administration policy for clinical stage projects. Additionally, CIRM is incorporating by reference the Grants Administration Policy for Clinical Stage Projects (GAP) document. Recipients of grants for clinical stage projects are subject to this particular GAP. This GAP provides guidance to applicants and Awardees regarding their responsibilities and also describes the grant application and review process, including the application submission, budget review and application review processes. This GAP also contains the criteria for review of applications, appeals of scientific review, the process for approval for funding and it delineates certain policies regarding access to public records and use of personal information. The GAP also addresses the pre–award process, acceptance and rules governing election to treat an award as a loan. The GAP also details the rules governing the payment and use of CIRM funds including allowable costs and activities that may be funded with CIRM funds. Additionally, the GAP identifies allowable and unallowable facilities costs, prior approval requirements, accounting and documentation requirements, consequences for misuse of funds and reporting requirements and finally rules regarding determination and consequences for failure to comply.

Title 17
ADOPT: 100503
Filed 01/06/2016
Effective 01/06/2016
Agency Contact: C. Scott Tocher (415) 396–9136

File# 2015–1125–02
Department of Alcoholic Beverage Control
Malt Beverage Regulations — Beer Labeling Requirements

These changes without regulatory effect by the Department of Alcoholic Beverage Control (the "Department") amend section 130 in title 4 of the California Code of Regulations. Prior to these changes without regulatory effect, subdivision (c) of Section 130 required that a copy of any label or notice affixed to beer be filed with the Department and prohibited the sale or delivery of beer in California until the Department accepted the label or notice for filing. Subdivision (e) of Section 130 required that any variation or change to a label or notice be separately filed with the Department. Assembly Bill 893 (2015–2016 Reg. Sess.) repealed and adopted Business and Professions Code section

Rulemaking File Index

Title 18. Public Revenue

Sales and Use Tax

Regulation 1619**,** *Foreign Consuls*

1. Final Statement of Reasons
2. Updated Informative Digest
3. Business Tax Committee Minutes, July 28, 2015
    - Minutes
    - Deputy Director memo dated July 17, 2015
    - BTC Agenda
    - Formal Issue Paper Number 15-006
    - Exhibit 1 Revenue Estimate
    - Exhibit 2 Text Regulation 1619
    - Exhibit 3 Letter from the U.S. Department of State dated December 16, 2014
4. Reporter's Transcript Business Taxes Committee, July 28, 2015
5. Estimate of Cost or Savings, September 17, 2014
6. Economic and Fiscal Impact Statements, August 28, 2015
7. Notice of Publications
    - Form 400 and Notice, Publication Date September 11, 2015
    - Email sent to Interested Parties, September 11, 2015
    - CA Regulatory Notice Register 2015, Volume No. 37-Z
8. Notice to Interested Parties, September 11, 2015

    The following items are exhibited:

    - Notice of Hearing
    - Initial Statement of Reasons
    - Proposed Text of Regulation 1619
    - Regulation History
9. Statement of Compliance
10. Reporter's Transcript, Item F1, October 27, 2015
11. Draft Minutes, October 27, 2015, and Exhibits
    - Notice of Proposed Regulatory Action
    - Initial Statement of Reasons
    - Proposed Text of Regulation 1619
    - 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 November 23, 2015, and was reopened on January 5, 2016 for the purpose of amending the Notice, Final Text, and Index, and was closed on January 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.

January 5, 2016

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

Final Statement of Reasons for

Proposed Amendments to California Code of Regulations,

Title 18, Section 1619, *Foreign Consuls*

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) 1619, *Foreign Consuls*, on October 27, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1619 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 October 27, 2015, to comment on the proposed regulatory action.

The factual basis, specific purposes, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulation 1619 are the same as provided in the initial statement of reasons. The Board anticipates that the proposed amendments will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by Revenue and Taxation Code section (RTC) 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption.

The adoption of the proposed amendments to Regulation 1619 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1619 or the proposed amendments to Regulation 1619.

The Board did not rely on any data or technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulation 1619 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 or expand business in the State of California; and
- Will not affect the benefits of Regulation 1619 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulation 1619 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 1619 does not impose a mandate on local agencies or school districts.

Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on October 27, 2015, to comment on the proposed regulatory action.

Determination Regarding Alternatives

By its motion on October 27, 2015, the Board determined that no alternative to the proposed amendments to Regulation 1619 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 the law.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulation 1619 that would lessen any adverse impact the proposed amendments 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 1619, *Foreign Consuls*

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1619, *Foreign Consuls*, on October 27, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1619 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 October 27, 2015, to comment on the proposed regulatory action. There have not been any changes to the applicable laws or the effect of, the objectives of, and anticipated benefits from the adoption of the proposed amendments to Regulation 1619 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Summary of Existing Laws and Regulations

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

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

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

(RTC, § 6015, subd. (a)(1).) Also, retailers are generally required to keep all records necessary to determine their correct tax liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) and all records necessary for the proper completion of their sales and use tax returns. (RTC, § 7053; Reg. 1698.)

RTC section 6352 specifies that "[t]here are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State." Regulation 1619 currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the U.S Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

Office of Foreign Missions – Tax Exemption Cards
The U.S. Department of State's website explains that the Office of Foreign Missions (OFM) issues two types of diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale. (See Attachments A and B to the Initial Statement of Reasons.)

Mission Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. Also, all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission to be exempt from tax. (See Attachment A to the Initial Statement of Reasons.)

OFM will only issue mission tax exemption cards to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent),

and (3) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. However, individuals other than the person pictured on the exemption card may present the card when making purchases in the name of the mission. (See Attachment A to the Initial Statement of Reasons.)

Personal Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card. (See Attachment A to the Initial Statement of Reasons.)

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees; and
- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

In addition, other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR. (See Attachment A to the Initial Statement of Reasons.)

American Institute in Taiwan – Issues Tax Exemption Cards
The U.S. Department of State's website also explains that, in 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the AIT and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO). (See Attachment C to the Initial Statement of Reasons.)

Pursuant to federal law, TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. (Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014).) Such privileges are authorized by the AIT, not the OFM. (See Attachment D to the Initial Statement of Reasons.)

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for eligible TECRO and TECOs personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards. (See Attachment D to the Initial Statement of Reasons.)

Levels of Exemption

Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. (See Attachments A and B to the Initial Statement of Reasons.) Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT. (See Attachment E to the Initial Statement of Reasons.)

OFM Assistance

OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at its website or by calling OFM during business hours. (See Attachment A to the Initial Statement of Reasons.)

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1619

Need for Clarification

In a December 16, 2014, letter addressed to the Board's Executive Director, the OFM notified the Board that the AIT issues tax exemption cards to certain eligible persons, as explained above, the AIT has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents, and that the policies regarding the use of AIT-issued tax exemption cards are the same as the policies for the OFM-issued tax exemption cards. The letter suggested that the Board issue a regulation, ruling, or statement mirroring the rules discussed above with respect to the tax exemption cards for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Based on the letter and a review of Regulation 1619, Board staff determined that there were issues with Regulation 1619 because:

- There were no specific references to exempt sales of tangible personal property other than vehicles to a foreign government consulate or mission, itself (i.e., official purchases);
- The regulation did not address the tax exemption for TECRO, TECOs, and their personal, or the tax exemption cards being issued by the AIT;
- There was obsolete language regarding exempt sales or leases of vehicles to individuals who do not hold a Personal Tax Exemption Card and missions that do not have a Mission Tax Exemption Card, prior to June 1, 2003; and
- There was a need to update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to conform to the requirements for the tax exemption for TECRO, TECOs, and their personal discussed above.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to Regulation 1619 to address the issues described above and a discussion paper to explain the draft amendments. Both were provided to interested parties.

On May 5, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting. However, staff did receive a May 5, 2015, email from Ms. Cheryl A. Cappiello Edson, Program Manager, Tax & Customs, Office of Foreign Missions, U.S. Department of State, after the interested parties meeting, which suggested adding citations to the following relevant treaty and diplomatic agreements relating to the AIT to the regulation's reference note: Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)). Therefore, BTC staff agreed to add the citations to the regulation's reference note.

BTC staff also received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to add provisions to the regulation regarding the type of payments that would be acceptable for official purchases by a foreign mission. It was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable and that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. BTC staff agreed to consider adding clarifying language to the draft amendments with respect to the acceptable types of payment.

Given the overall support for the draft amendments and the fact that BTC staff did not receive any written comments, other than the May 5, 2015, email, subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were cancelled.

July 28, 2015 Business Taxes Committee Meeting

Subsequently, BTC staff prepared Formal Issue Paper 15-006 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-006 recommended that the Board propose to change the name of Regulation 1619 from "Foreign Consuls" to "Foreign Missions and Consuls." The change to the title of the regulation was suggested by BTC staff as more inclusive of the proposed clarification regarding an exemption from sales or use tax for foreign missions (discussed below). The formal issue paper also recommended adding additional references to the treaty and diplomatic agreements relating to the AIT referred to in the May 5, 2015, email discussed above to Regulation 1619's reference note so that the

regulation's reference note refers to the relevant treaties and the diplomatic agreements relating to the AIT that are being implemented, interpreted, and made specific by Regulation 1619.

The formal issue paper recommended that a new subdivision (a)(1), entitled "Official Purchases – In General," be added to the regulation to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, such as TECRO or a TECO, to the extent that the such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as provided by federal law.

The formal issue paper recommended that the first paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(2), and entitled "Personal Purchases – In General." The formal issue paper recommended that renumbered subdivision (a)(2) be amended to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States, as provided by federal law. The formal issue paper also recommended adding references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.

Additionally, the formal issue paper recommended that the second paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(3). The formal issue paper recommended renumbering current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), updating the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter from the AIT, as currently provided by federal law, moving the regulation's current definition of "vehicle" to the end of renumbered subdivision (a)(4), and deleting the obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailers' record-keeping requirements with respect to such sales, from renumbered subdivision (a)(4) and current subdivision (b). The formal issue paper also recommended that renumbered subdivision (a)(3) be amended to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do

not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4).

Furthermore, the formal issue paper recommended that the Board propose amendments to updated and clarify subdivision (b) to reflect the documentation that retailers must currently have to establish that a transaction is exempt from sales and use tax under federal law. The recommended amendments clarify that a retailer shall retain evidence that the form of payment for purchases made as described in new subdivision (a)(1) was made in the name of the foreign mission or representative office, that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers), as provided by federal law, and clarify that a retailer must retain a copy of a letter from the U.S. Department of State, OFM or similar letter from the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

At the conclusion of the Board's discussion of Formal Issue Paper 15-006 during the July 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1619 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1619 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues referred to above and make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.

The Board anticipates that the proposed amendments to Regulation 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1619 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1619 is the only state regulation that provides specific guidance to retailers regarding the proper application of RTC section 6352 to sales to foreign missions, representative offices, foreign consular officers, and employees of foreign missions and representative offices, and their dependents. In addition, the proposed amendments do implement, interpret, and make specific provisions in federal statues (22 U.S.C §

3301-3316) and a designation and determination published in the Federal Register (79 Fed.Reg. 16090 (March 24, 2014)); however, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1619 or the proposed amendments to Regulation 1619.

BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: JULY 28, 2015, TIME: 10:00 A.M.

Action Items & Status Report Items

Agenda Item No.: 1

Title: Proposed Amendments to Regulation 1619, *Foreign Consuls*

Issue:

Whether the Board should amend Regulation 1619, *Foreign Consuls*, to make a specific reference to sales to a foreign consulate or representative office for official purposes and add references regarding the issuance of tax exemption cards by the American Institute of Taiwan.

Committee Discussion:

Staff introduced the issue. There was no discussion of this item.

Committee Action:

Upon motion by Mr. Horton and seconded by Ms. Stowers, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 1619, *Foreign Consuls*. A copy of the proposed amendments to Regulation 1619 is attached.

Honorable Diane L. Harkey, Committee Chair

Cynthia Bridges, Executive Director

BOARD APPROVED

at the 7/28/15 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Regulation 1619. *Foreign Missions and Consuls.*

Reference: Sections 6272, 6352, and 7053, Revenue and Taxation Code.
Vienna Convention on Diplomatic Relations of April 18, 1961.
Article 34 (23 UST 3242) T.I.A.S. No. 7502.
Vienna Convention on Consular Relations of April 24, 1963.
Article 49 (21 UST 77) T.I.A.S. No. 6820.
Taiwan Relations Act (22 U.S.C. §§ 3301-3316).
Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013.
Designation and Determination under the Foreign Missions Act, 79 Fed. Reg. 16090-16091 (March 24, 2014).

(a) Application of Tax.

(1) Official Purchases - In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sole benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in a form of payment in the name of the foreign mission or representative office.

(2) Personal Purchases - In General. ~~Neither sales t~~Tax does not~~nor use tax~~ apply~~ies~~ to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U.S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

(3) Tax applies to sales of tangible personal property to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U.S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(~~2~~4) below. Also, tax applies to sales of

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tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(~~2~~4) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), ~~the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~

~~Effective June 1, 2003,~~ the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if:

(A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and

(B) The retailer contacts and obtains directly from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ~~("OFM Eligibility Letter")~~.

For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code.

(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any transaction~~deduction~~ claimed as an exempt sale on its sales and use tax returns for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). In addition, to support each transaction claimed as an exempt sale or lease of a vehicle ~~to a foreign diplomat or mission not holding a Tax Exemption Card, the identification~~

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~~letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer~~.

~~Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above~~, the retailer must retain a copy of the Tax Exemption Card (Personal,~~ or~~ Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax~~Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family~~.

Note: For special provisions affecting record retention, see Regulation 1698.

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

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

July 17, 2015

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Regulation 1619, *Foreign Consuls*, which will be presented at the Board's July 28, 2015 Business Taxes Committee meeting. The proposed amendments make a specific reference to sales to a foreign consulate or representative office for official purposes and add references regarding the issuance of tax exemption cards by the American Institute of Taiwan.

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 **July 28, 2015** in Room 121 at the address shown above.

Sincerely,

Susanne Buehler

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

SB:rsw

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
Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Ted Matthies, Board Member's Office, Fourth District
Ms. Lisa Renati, Board Member's Office, Fourth District
Mr. Clifford Oakes, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
Mr. Ramon Salazar, State Controller's Office
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Ms. Lynn Bartolo (MIC 43)
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)
Ms. Monica Silva (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. Tom Trach (MIC 67)
Mr. Michael Patno (MIC 50)
Mr. Robert Wilke (MIC 50)

Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, *Foreign Consuls*

Action 1 – Agreed Upon Items	**Alternative 1**
Agenda, pages 2-4.	Approve and authorize publication of proposed amendments to Regulation 1619, *Foreign Consuls*, to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from tax pursuant to treaties or other diplomatic agreements with the United States. OR **Alternative 2** Do not approve the proposed amendments to Regulation 1619.

Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, *Foreign Consuls*

Action 1 – Staff Recommendation	Regulation 1619, *Foreign Missions and Consuls*. *Reference:* Sections 6272, 6352, and 7053, Revenue and Taxation Code. Vienna Convention on Diplomatic Relations of April 18, 1961. Article 34 (23 UST 3242) T.I.A.S. No. 7502. Vienna Convention on Consular Relations of April 24, 1963. Article 49 (21 UST 77) T.I.A.S. No. 6820. Taiwan Relations Act (22 U.S.C. §§ 3301-3316). Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013. Designation and Determination under the Foreign Missions Act, 79 Fed. Reg. 16090-16091 (March 24, 2014). (a) Application of Tax. (1) Official Purchases - In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sale benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in a form of payment in the name of the foreign mission or representative office. (2) Personal Purchases - In General. ~~Neither sales t~~Tax does not~~nor use tax~~ apply~~ies~~ to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic

Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, *Foreign Consuls*

Action 1 – Staff Recommendation	agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U.S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption. (3) Tax applies to sales of tangible personal property to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U.S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(~~2~~4) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments. (~~2~~4) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), ~~the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~ ~~Effective June 1, 2003,~~ the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if: (A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and

Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, *Foreign Consuls*

Action 1 – Staff Recommendation	(B) The retailer contacts and obtains directly from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ~~("OFM Eligibility Letter")~~. For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code. (b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any transaction~~deduction~~ claimed as an exempt sale on its sales and use tax returns for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). In addition, to support each transaction claimed as an exempt sale or lease of a vehicle ~~to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer~~. ~~Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above~~, the retailer must retain a copy of the Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax~~Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family~~. Note: For special provisions affecting record retention, see Regulation 1698.

Issue Paper Number **15-006**

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

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

Proposed Amendments to Regulation 1619, *Foreign Consuls*

I. Issue

Whether the Board should amend Regulation 1619, *Foreign Consuls*, to make a specific reference to sales to a foreign consulate or representative office for official purposes and add references regarding the issuance of tax exemption cards by the American Institute of Taiwan.

II. Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1619, as set forth in Exhibit 2. Staff's proposed amendments clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State, Office of Foreign Missions (OFM) or the American Institute in Taiwan (AIT) as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.

For a more detailed explanation of Alternative 1 - Staff Recommendation, refer to section VI of this paper.

III. Other Alternatives Considered

Do not approve the proposed amendments to Regulation 1619.

IV. Background

General

Sales tax is imposed on the retail sale of tangible personal property in this state, measured by the retailer's gross receipts, unless 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. All of a retailer's gross receipts are presumed subject to tax, unless the retailer can show otherwise.

Revenue and Taxation Code section 6352, *Constitutional exemptions*, specifies that "there are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State."

Regulation 1619

Regulation 1619, *Foreign Consuls*, implements section 6352 as it applies to sales and leases of tangible personal property, including vehicles, to certain persons affiliated with foreign consulates that have been identified by the OFM as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also explains a retailer's general record-keeping requirements with respect to its claimed exempt sales.

Office of Foreign Missions – Tax Exemption Cards

The U.S. Department of State's website (www.state.gov/ofm/tax/sales/index.htm) explains that the OFM issues diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale.

Mission Tax Exemption Cards

Diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission.

OFM will only issue a mission tax exemption card to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be a permanent resident of the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. Individuals other than the person pictured on the exemption card, however, may present the card when making purchases in the name of the mission.

Personal Tax Exemption Cards

Diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on

the form of payment that can be used with the card.

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanent residents of the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees.
- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.
- Other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR.

Levels of Exemption

Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT.

OFM Assistance

OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at https://ofmapps.state.gov/tecv/ or by calling OFM during business hours. If vendors are not familiar with the diplomatic tax exemption card program, they are encouraged to visit the OFM website at http://www.state.gov/ofm/; and specifically http://www.state.gov/ofm/tax/sales/c63020.htm, which provides relevant state-specific guidance; or e-mail OFM for more information about the program.

V. Discussion

Correspondence from the U.S. Department of State, Office of Foreign Missions

In a December 16, 2014 letter (Exhibit 3) addressed to the Executive Director, Board of Equalization (BOE), the OFM notified the BOE of a policy in which the AIT issues tax exemption cards to certain eligible persons. The letter suggested that the BOE issue a regulation, ruling, or statement with respect to the exemption cards issued by AIT. The letter also suggested that the BOE revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Sales to a Foreign Government/Consulate

Currently, Regulation 1619 subdivision (a)(2) discusses the exemption from sales and use tax for the purchase or lease of a vehicle "on behalf of" a foreign mission. However, Regulation 1619 does *not*

(with the exception of vehicles) generally address the issue of sales or leases to a foreign consulate or mission itself. Regulation 1619 only addresses sales or leases of tangible personal property (in general) to individuals affiliated with foreign missions, such as foreign consular officers, employees, and members of their families.

American Institute of Taiwan – Issues Tax Exemption Cards

In 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the AIT and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Pursuant to U.S. law[1], TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. Accordingly, the AIT, with the approval of the U.S. Department of State, has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents. Such privileges are authorized by the AIT, not the OFM.

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for TECRO, TECOs and their eligible personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards and have policies regarding their use that are similar to the policies for the OFM-issued tax exemption cards.

Guidance with respect to Vehicles Pre/Post June 1, 2003

Regulation 1619, subdivisions (a)(2), *Vehicles*, and (b), *Records of Retailers*, contain specific guidance with respect to sales and leases of vehicles. The aforementioned subdivisions include guidance reflecting OFM's policy that, on and after June 1, 2003, a retailer is required to obtain an eligibility letter from OFM and a copy of the purchaser's tax exemption card or protocol identification card for sales or leases of vehicles. Prior to June 1, 2003, a purchaser who did not hold a tax exemption card was allowed to make exempt purchases provided the OFM issued an identification letter to the retailer. The guidance in Regulation 1619 reflecting the OFM's policies regarding the exempt sale or lease of a vehicle prior to June 1, 2003 is no longer relevant. Since 2003, the BOE has periodically provided notice of the existing policy regarding record-keeping and the tax exemption card program via special notices and articles in Tax Information Bulletins.

Interested Parties Meeting

Staff held an interested parties meeting on May 5, 2015 to discuss the Initial Discussion Paper and proposed amendments distributed on April 24, 2015. There was some question as to the type of payments that would be acceptable for official purchases and it was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable. Staff notes that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. Staff agreed to consider adding clarifying language with respect to the

[1] Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; Designation and Determination under the Foreign Missions Act, 79 Fed. Reg. 16090-16091 (March 24, 2014).

acceptable types of payment. Given the overall support for the proposed amendments and the fact that staff did not receive any written comments subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were canceled.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1619, as provided in Exhibit 2, to:

- Clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office (such as TECRO and TECO) for official purposes to the extent that such mission or representative office has been identified by the OFM or AIT as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.
- Add references regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.
- Update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of an "official" tax exemption card and exemption letter from AIT.
- Specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office including a credit card, check, or electronic funds transfer.
- Revise the title of the regulation to include a reference to foreign missions.
- Update the reference section to include pertinent U.S. treaties and diplomatic agreements.
- Remove obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailer's record-keeping requirements with respect to such sales.

B. Pros of Alternative 1

- Provides clear guidance regarding the sale and lease of tangible personal property to a foreign mission for official purchases.
- Ensures the regulation is consistent with the OFM's current policies and procedures with respect to the issuance of tax exemption cards.
- Eliminates potential confusion by removing obsolete language.

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 a regulatory change.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 1619 and begin the formal rulemaking process. Staff will also revise the appropriate manuals that contain guidance relevant to this issue.

F. Administrative Impact of Alternative 1

1. Cost Impact

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

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

The proposed amendments to Regulation 1619 provide guidance reflective of the current transactions amongst retailers and foreign missions, representative offices, and their personnel.

H. Critical Time Frames of Alternative 1

None.

VII. Alternative 2

A. Description of Alternative 2

Do not amend Regulation 1619.

B. Pros of Alternative 2

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

C. Cons of Alternative 2

Taxpayers and BOE staff would not have complete guidance with respect to the sale and lease of tangible personal property to a foreign mission or representative office for official purposes.

D. Statutory or Regulatory Changes for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Without the regulatory amendments, the regulation is not entirely reflective of the OFM's current policies and procedures with respect to the issuance of tax exemption cards and there may be confusion as to which persons are eligible for the sales and use tax exemption.

H. Critical Time Frames for Alternative 2

None.

Preparer/Reviewer Information

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

Current as of: June 25, 2015

BOARD OF EQUALIZATION
REVENUE ESTIMATE

Proposed Amendments to Regulation 1619, *Foreign Consuls*

I. Issue

Whether the Board should amend Regulation 1619, *Foreign Consuls*, to make a specific reference to sales to a foreign consulate or representative office for official purposes and add references regarding the issuance of tax exemption cards by the American Institute of Taiwan.

II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1619, as set forth in Exhibit 2. Staff's proposed amendments clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State, Office of Foreign Missions (OFM) or the American Institute in Taiwan (AIT) as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.

III. Other Alternative(s) Considered

Do not approve the proposed amendments to Regulation 1619.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue. The proposed amendments clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative offices such as the Taipei Economic and Cultural Representative Office in the United States (TECRO) and the Taipei Economic and Cultural Offices (TECO) for official purposes to the extent that such mission or representative office has been identified by the OFM or AIT as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.

Other Alternatives Considered

There is nothing in Alternative 2 that would impact revenue. However, taxpayers and BOE staff would not have complete guidance with respect to the sale and lease of

tangible personal property to a foreign mission or representative office for official purposes.

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. Tom Trach, 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. Trach at (916) 445-0840.

Current as of June 25, 2015.

Regulation 1619. *Foreign Missions and Consuls.*

Reference: Sections 6272, 6352, and 7053, Revenue and Taxation Code.
Vienna Convention on Diplomatic Relations of April 18, 1961.
Article 34 (23 UST 3242) T.I.A.S. No. 7502.
Vienna Convention on Consular Relations of April 24, 1963.
Article 49 (21 UST 77) T.I.A.S. No. 6820.
Taiwan Relations Act (22 U.S.C. §§ 3301-3316).
Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013.
Designation and Determination under the Foreign Missions Act, 79 Fed. Reg. 16090-16091 (March 24, 2014).

(a) Application of Tax.

(1) Official Purchases - In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sole benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in a form of payment in the name of the foreign mission or representative office.

(2) Personal Purchases - In General. ~~Neither sales t~~Tax does not~~nor use tax~~ apply~~ies~~ to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U.S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

(3) Tax applies to sales of tangible personal property to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U.S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(~~2~~4) below. Also, tax applies to sales of

tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(~~2~~4) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), ~~the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~

~~Effective June 1, 2003,~~ the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if:

(A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and

(B) The retailer contacts and obtains directly from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ~~("OFM Eligibility Letter")~~.

For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code.

(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any transaction~~deduction~~ claimed as an exempt sale on its sales and use tax returns for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). In addition, to support each transaction claimed as an exempt sale or lease of a vehicle ~~to a foreign diplomat or mission not holding a Tax Exemption Card, the identification~~

~~letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer~~.

~~Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above~~, the retailer must retain a copy of the Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax~~Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family~~.

Note: For special provisions affecting record retention, see Regulation 1698.

RECEIVED
JAN - 6 2015
by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

United States Department of State

Washington, D.C. 20520

December 16, 2014

Cynthia Bridges
Executive Director
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279

Dear Ms. Bridges:

The Department of State's Office of Foreign Missions (OFM) issues tax exemption cards to eligible foreign missions and their accredited members and dependents on the basis of reciprocity and international law, which obligates the host country to provide relief from certain taxes.[1] The current card design, as illustrated on the enclosed flyer, has been in use since 2011.

Pursuant to U.S. law,[2] the Taipei Economic and Cultural Representative Office in the United States (TECRO), the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. Accordingly, the American Institute in Taiwan (AIT) has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents that incorporate the same features and design elements as OFM's tax exemption cards. Such privileges are authorized by AIT, not the Department of State. Therefore, as illustrated on the enclosed flyer, these cards read "American Institute in Taiwan" on the front and include AIT's contact information on the reverse.

The following policies are applicable to both tax exemption cards issued by AIT and those issued by OFM. As a reminder, when presented with a tax exemption card, vendors should verify the card's validity at https://ofmapps.state.gov/tecv/ or by calling the phone number on the back of the tax exemption card or on the enclosed flyer.

Types of Purchases Permitted and Not Permitted

Depending on the language printed on the card (which may contain restrictions as to amount or item), tax exemption cards can generally be used to obtain exemption in person and on point-of-sale purchases. This includes an exemption from sales taxes and other similarly imposed taxes on purchases of most goods and services, hotel stays, and restaurant meals in the United States. Exemption from taxes on purchases of motor vehicles, gasoline/diesel fuel, utility

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[1] Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations, and other treaties.

[2] Taiwan Relations Act (codified at 22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between AIT and TECRO, signed February 4, 2013; Designation and Determination under the Foreign Missions Act, No. FMA-2014-5, dated March 9, 2014.

services, or real estate is managed and authorized by different means, and requires a request to be directed to OFM or AIT.

Mission or Official Tax Exemption Cards

Tax exemption cards that are labeled as "Official Purchases Only" are used by foreign missions (including TECRO and TECO) to obtain exemption from sales and other similarly imposed taxes on purchases in the United States that are necessary for the mission's operations and functions. Hotel stays for the purpose of tourism, medical treatment, or leisure travel are not considered necessary for the mission's operations and functions. All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign government or mission, TECRO, or TECO. The individual pictured on the card is the point of contact and need not be present at the purchase.

Personal Tax Exemption Cards

Tax exemption cards that are labeled as "Personal Tax Exemption" are used by eligible personnel and their dependents to obtain exemption from sales and other similarly imposed taxes on personal purchases in the United States. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with this type of card.

Guidance Issued by California

Our research indicates that **Sales and Use Tax Regulation 18 CCR § 1619 (Foreign Consuls)** constitutes the guidance promulgated by the State of California governing the extension of exemption from sales and use tax to foreign missions and their personnel. We have also located a reference to the tax exemption program on pages 2-3 of the BOE's June 2011 Tax Information Bulletin. For Regulation 1619, we suggest including a specific reference to sales to the foreign government/consulate itself (i.e., official purchases).

Additionally, we were unable to locate any guidance governing the extension of tax exemption to TECRO, TECOs, and their personnel. OFM encourages the Department of Revenue to issue a regulation, ruling or statement mirroring the rules cited above for TECRO, TECOs, and their personnel, particularly in light of the presence of TECO offices in both Los Angeles and San Francisco. Please let us know if we have missed any relevant guidance.

The Department of State wishes to thank your office for its ongoing support of this program, which encourages vendors to extend a tax exemption with confidence. Please contact my office at 202-895-3500 ext. 2 or OFMTaxCustoms@state.gov with any questions.

Sincerely,

Cheryl A. Cappiello Edson
Program Manager (Tax)
Office of Foreign Missions

Enclosure: Updated Tax Exemption Card Flyer

OFM TAX EXEMPTION CARDS

The U.S. Department of State issues tax exemption cards to eligible foreign missions, accredited members and dependents on the basis of international law and reciprocity. These cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

✓ **YES** *most goods and services, hotel stays, and restaurant meals (subject to restrictions)*

× **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to OFM)*

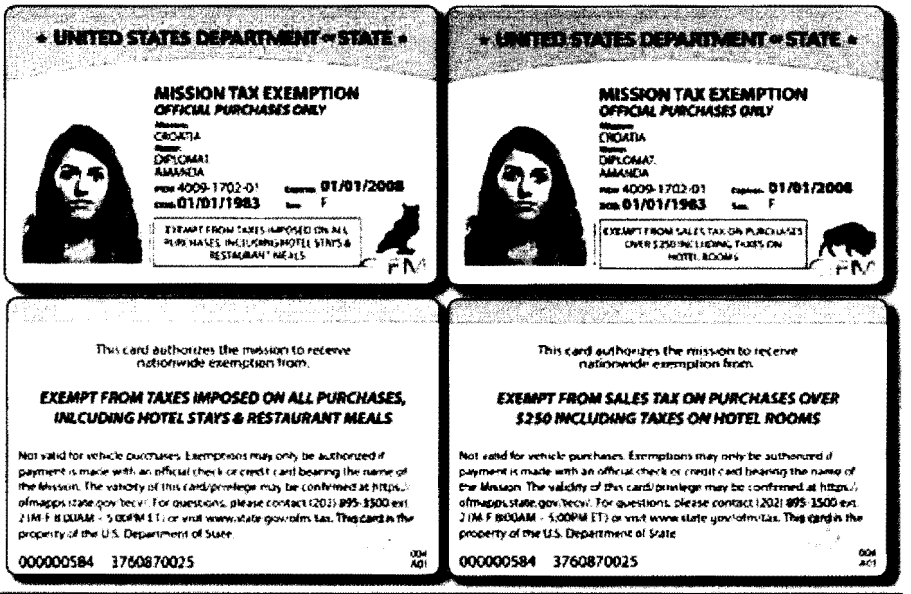
Please verify the validity of a tax exemption card at **https://ofmapps.state.gov/tecv/** or by contacting the **Office of Foreign Missions (OFM)** during business hours:

Washington, DC	(202) 895-3500 x2
Chicago	(312) 353-5762
Houston	(713) 272-2865
Los Angeles	(310) 235-6292
Miami	(305) 442-4943
New York	(646) 282-2825
San Francisco	(415) 744-2910

For more information, please visit **http://www.state.gov/ofm/tax.**

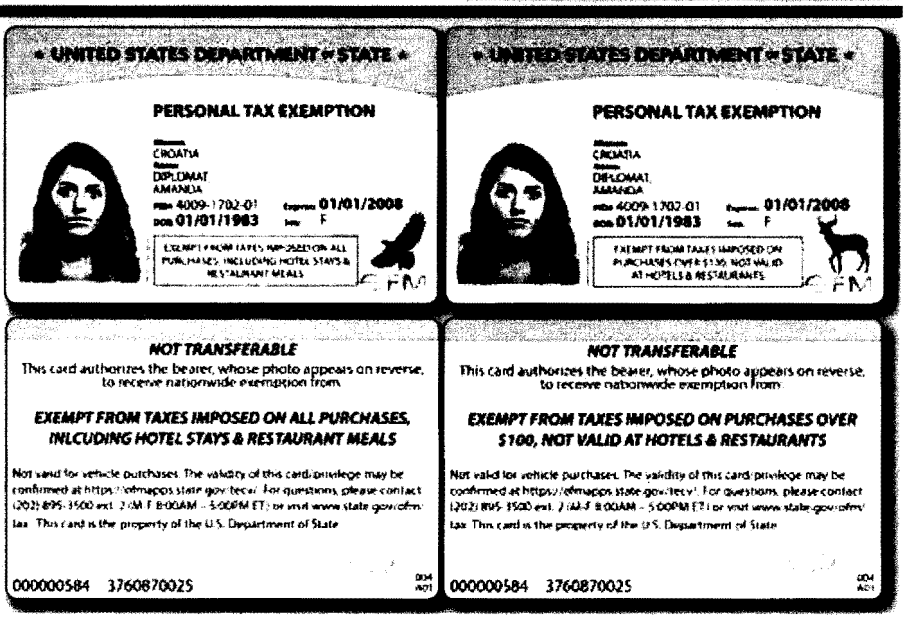
OFFICIAL PURCHASES

- Used by missions
- Payment in mission's name
- Individual pictured need not be present
- **OWL: no restrictions**
- **BUFFALO: some restrictions (please read card)**



PERSONAL PURCHASES

- Not transferable
- Any form of payment
- For benefit of individual pictured
- **EAGLE: no restrictions**
- **DEER: some restrictions (please read card)**



AMERICAN INSTITUTE IN TAIWAN
TAX EXEMPTION CARDS

Under U.S. law, the Taipei Economic and Cultural Representative Office (TECRO), Taipei Economic and Cultural Offices (TECOs), their eligible employees and dependents are also eligible for tax exemption privileges. These privileges are authorized by the **American Institute in Taiwan (AIT)** and not the U.S. Department of State.

Please verify the validity of an AIT tax exemption card at **https://ofmapps.state.gov/tecv/** or by contacting AIT during business hours at **(703) 525-8474**.

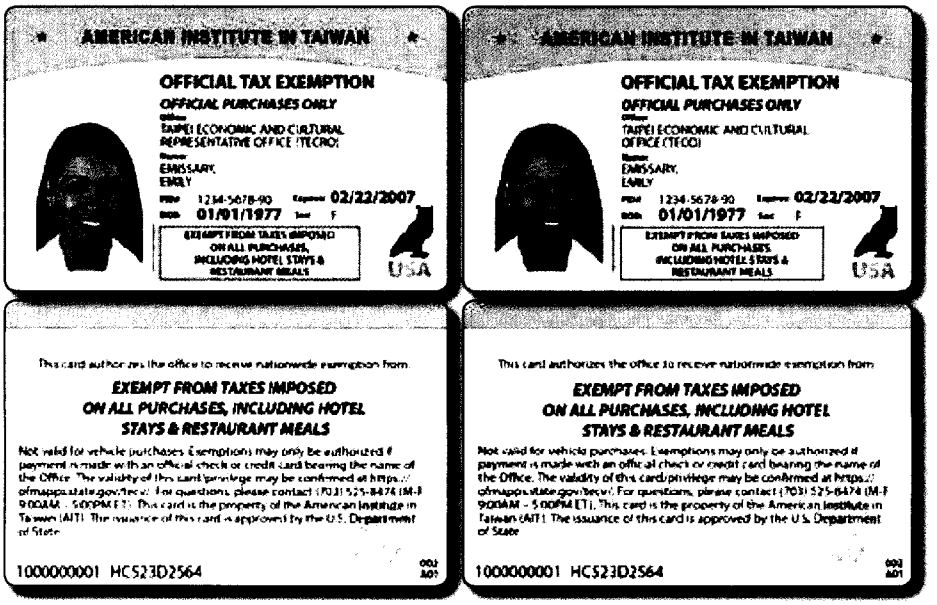
Like the other tax exemption cards, these cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

✓ **YES** *most goods and services, hotel stays, and restaurant meals*

× **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to AIT)*

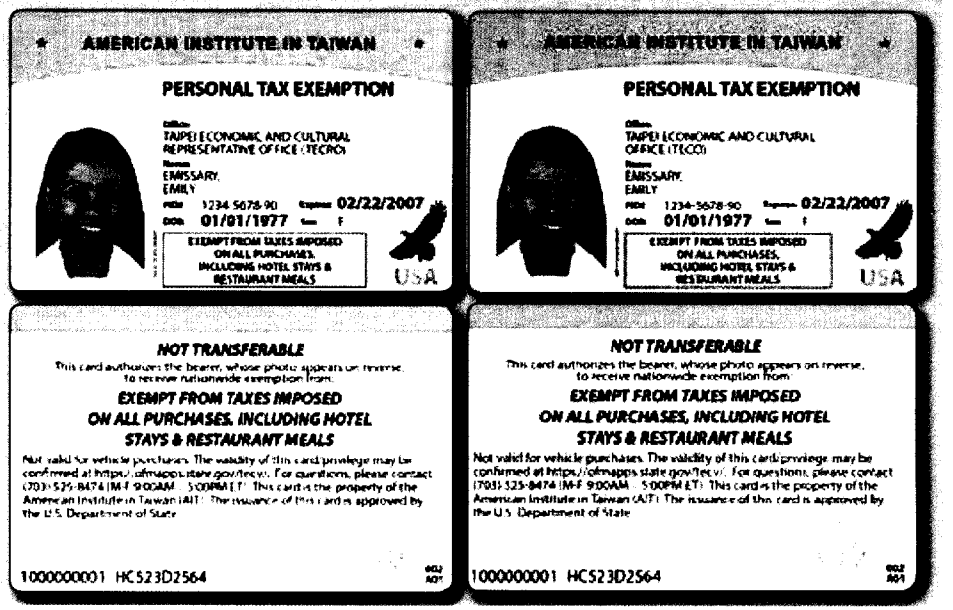
OFFICIAL PURCHASES

- Used by TECRO/TECO
- Payment in TECRO/TECO's name
- Individual pictured need not be present
- **OWL: no restrictions**



PERSONAL PURCHASES

- Not transferable
- Any form of payment
- For benefit of individual pictured
- **EAGLE: no restrictions**



BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JULY 28, 2015

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

Electronically signed by Kathleen Skidgel (601-100-826-6264) af626088-b4a3-4df2-ac4d-c474f7499284

1 P R E S E N T

2 For the Board of Equalization: Diane L. Harkey
3 Chair

4 Jerome E. Horton
Member

5

Sen. George Runner (Ret.)
6 Member

7 Fiona Ma, CPA
Member

8

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

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12 Joann Richmond
Chief
13 Board Proceedings Division

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15 For the Department: Susanne Buehler
Chief
16 Tax Policy Division

17 Monica Silva
Tax Counsel III
18 Legal Department

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 JULY 28, 2015
4 ---oOo---
5 MR. HORTON: Ms. Richmond, our next matter,
6 please.
7 MS. RICHMOND: Our next matter is the
8 Business Taxes Committee. Ms. Harkey is the Chair
9 of that committee.
10 Ms. Harkey.
11 MS. HARKEY: Thank you very much. I call
12 this Business Taxes Committee meeting to order.
13 The first item on the agenda is Regulation
14 1619, Foreign Consuls.
15 Please proceed. We have Susanne Buehler
16 and Monica Silva.
17 MS. BUEHLER: Good morning. I am Susanne
18 Buehler with the Sales and Use Tax Department. With
19 me today is Miss Monica Silva from our Legal
20 Department.
21 We have one agenda item for your
22 consideration this morning. Staff requests your
23 approval and authorization to publish proposed
24 amendments to Sales and Use Tax Regulation 1619,
25 Foreign Consuls.
26 The proposed amendments clarify that sales
27 or use tax does not apply to the sale or lease of
28 tangible personal property to an eligible foreign

Electronically signed by Kathleen Skidgel (601-100-826-6264) af626088-b4a3-4df2-ac4d-c474f7499284

1 mission or representative office for official
2 purposes.
3 They also add references regarding the
4 issuance of tax exemption cards by the American
5 Institute of Taiwan to eligible representative
6 offices and personnel.
7 We'd be happy to answer any questions you
8 may have on this topic.
9 MS. HARKEY: Thank you.
10 Are there any public speakers?
11 Members, do you have any comments or
12 questions?
13 Seeing none, is there a motion?
14 MR. HORTON: Move to approve the
15 amendments, adopt staff recommendation.
16 MS. STOWERS: Second.
17 MS. HARKEY: Okay. Mr. Horton makes the
18 motion. Ms. Stowers seconds.
19 No objection?
20 Done. Thank you.
21 MS. BUEHLER: Thank you.
22 MS. HARKEY: That concludes our Business
23 Tax Committee.
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Electronically signed by Kathleen Skidgel (601-100-826-6264) af626088-b4a3-4df2-ac4d-c474f7499284

1 REPORTER'S CERTIFICATE

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, KATHLEEN SKIDGEL, Hearing Reporter for

8 the California State Board of Equalization certify

9 that on July 28, 2015 I recorded verbatim, in

10 shorthand, to the best of my ability, the

11 proceedings in the above-entitled hearing; that I

12 transcribed the shorthand writing into typewriting;

13 and that the preceding pages 1 through 4 constitute

14 a complete and accurate transcription of the

15 shorthand writing.

16

17 Dated: July 30, 2015

18

19

20 Kathleen Skidgel

21 KATHLEEN SKIDGEL

22 Hearing Reporter

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24

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Electronically signed by Kathleen Skidgel (601-100-826-6264) af626088-b4a3-4df2-ac4d-c474f7499284

ESTIMATE OF COST OR SAVINGS RESULTING FROM PROPOSED REGULATORY ACTION

Proposed Amendment of Sales and Use Tax Regulation 1619, *Foreign Consuls*

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 9-17-15
Richard Bennion, Regulations Coordinator

Approved by _____ Date 9/17/15
Randy Ferris, Chief Counsel

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

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

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

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

Instructions and Code Citations:
SAM Section 6601-6616

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME	CONTACT PERSON	EMAIL ADDRESS	TELEPHONE NUMBER
State Board of Equalization	Richard E. Bennion	rbennion@boe.ca.gov	916-445-2130

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400	NOTICE FILE NUMBER
Title 18, Section 1619, Foreign Consuls	Z

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

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

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

Please see the attached .

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

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

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

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: _____

Instructions and Code Citations:
SAM Section 6601-6616

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

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

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

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

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

   d. Describe other economic costs that may occur: _____

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

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

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

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

   Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

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

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

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

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

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

   Explain: _____

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

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

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

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

Instructions and Code Citations:
SAM Section 6601-6616

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

Regulation: Benefit: $ _____ Cost: $ _____

Alternative 1: Benefit: $ _____ Cost: $ _____

Alternative 2: Benefit: $ _____ Cost: $ _____

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

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

Explain: _____

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

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

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

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

2. 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 through12 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: _____

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD 399 (REV. 12/2013)

SAM Section 6601-6616

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 _____

Instructions and Code Citations:
SAM Section 6601-6616

FISCAL IMPACT STATEMENT (CONTINUED)

B. 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
Joe Fitz	August 28, 2015

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

AGENCY SECRETARY	DATE
Joann Richmond	August 28, 2015

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

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER	DATE
Exempt under SAM section 6615	

Attachment to Economic and Fiscal Impact Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to California Code of Regulations, Title 18, Section 1619, *Foreign Consuls*

As explained in more detail in the initial statement of reasons, article 6, clause 2 of the U.S. Constitution provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" ("Supremacy Clause"). Therefore, federal law, including treaties, generally supersedes California law.

Revenue and Taxation Code (RTC) section 6352 specifies that there are exempted from the taxes imposed under the Sales and Use Tax Law (RTC, § 6001 et seq.) "the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State" and the exemption provided by RTC section 6352 generally ensures that California sales and use tax is not imposed on transactions that are exempt from sales and use tax under federal law.

California Code of Regulations, title 18, section (Regulation) 1619, *Foreign Consuls*, currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the United States (U.S) Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

The proposed amendments are based on a December 16, 2014, letter from the U.S. Department of State, Office of Foreign Missions (OFM), which notified that State Board of Equalization (Board) that the American Institute in Taiwan (AIT) issues tax exemption cards to certain eligible persons, the AIT has now issued tax exemption cards to the Taipei Economic and Cultural Representative Office in the United States (TECRO), the Taipei Economic and Cultural Offices (TECOs), and their eligible personnel and dependents, and that the policies regarding the use of AIT-issued tax exemption cards are the same as the policies for the OFM-issued tax exemption cards, currently referred to in Regulation 1619. The letter also suggested that the Board issue a regulation, ruling, or statement mirroring the federal rules with respect to the tax exemption for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

The proposed amendments to Regulation 1619:

- Rename the regulation from "Foreign Consuls" to "Foreign Missions and Consuls" and add additional references to a federal treaty and diplomatic agreements relating to the AIT to the regulation's reference note;
- Add a new subdivision (a)(1) to the regulation entitled "Official Purchases – In General.," to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, itself, to the extent that the such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that an exemption for the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as required by federal law;
- Renumber the first paragraph in current subdivision (a)(1) as subdivision (a)(2), add the title "Personal Purchases – In General," to the subdivision, and revise the subdivision to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States;
- Add references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel;
- Renumber the second paragraph in current subdivision (a)(1) of the regulation as subdivision (a)(3);
- Renumber current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter issued by the AIT, and remove obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including retailers' record-keeping requirements with respect to such sales;
- Add provisions to renumbered subdivision (a)(3) to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4);
- Clarify in subdivision (b) that a retailer shall retain evidence that the form of payment for purchases made as described in new proposed subdivision (a)(1) was made in the name of the foreign mission or representative office, and that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers); and
- Clarify in subdivision (b) that a retailer must retain a copy of a letter from the U.S. Department of State, Office of Foreign Missions or the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

As a result, the proposed amendments clarify the regulation by providing a specific reference to exempt sales to a foreign government mission or representative office, itself (i.e., official purchases), and generally update the guidance currently provided in the regulation so that the regulation corresponds with current federal law and practices regarding the issuance of federal tax exemption cards by the U.S. Department of State and AIT. However, the proposed amendments do not establish any new exemptions. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by federal law, the Sales and Use Tax Law, or Regulations 1619 and 1698, *Records*. And, there is nothing in the proposed amendments that would impact revenue. Therefore, the Board has determined that the proposed amendments are consistent with existing law and that there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave in the absence of the proposed amendments. The Board estimates that the proposed amendments will not have a measurable economic impact on the individuals and business. The Board has determined that the proposed amendments to Regulation 1619 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 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption.

Also, 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 1619:

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

Finally, Regulation 1619 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 1619 will not affect the benefits of Regulation 1619 to the health and welfare of California residents, worker safety, or the state's environment.

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2015-0831-01		

For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

AUG 31 '15 SEP 11 '15

Office of Administrative Law

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: State Board of Equalization

AGENCY FILE NUMBER (If any)

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Foreign Consuls	18	1619	September 11, 2015

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
[X] Notice re Proposed Regulatory Action [ ] Other	Richard E. Bennion	(916) 445-2130	(916) 324-3984

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

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

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

TITLE(S)

REPEAL

3. TYPE OF FILING

[ ] Regular Rulemaking (Gov. Code §11346)

[ ] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

[ ] Emergency (Gov. Code, §11346.1(b))

[ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

[ ] Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

[ ] Emergency Readopt (Gov. Code, §11346.1(h))

[ ] File & Print

[ ] Other (Specify) _____

[ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

[ ] Print Only

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

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

[ ] Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

[ ] Effective on filing with Secretary of State

[ ] §100 Changes Without Regulatory Effect

[ ] Effective other (Specify) _____

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

[ ] Department of Finance (Form STD. 399) (SAM §6660)

[ ] Fair Political Practices Commission

[ ] State Fire Marshal

[ ] Other (Specify) _____

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

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

TYPED NAME AND TITLE OF SIGNATORY

For use by Office of Administrative Law (OAL) only

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1619, *Foreign Consuls*

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.) 1619, *Foreign Consuls*. The proposed amendments:

- Rename the regulation from "Foreign Consuls" to "Foreign Missions and Consuls" and add additional references to a federal treaty and diplomatic agreements relating to the American Institute in Taiwan (AIT) to the regulation's reference note;
- Add a new subdivision (a)(1) to the regulation entitled "Official Purchases – In General," to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, itself, to the extent that the such mission or representative office has been identified by the United States (U.S.) Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that an exemption for the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office;
- Renumber the first paragraph in current subdivision (a)(1) as subdivision (a)(2), add the title "Personal Purchases – In General" to the subdivision, and revise the subdivision to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States;
- Add references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel;
- Renumber the second paragraph in current subdivision (a)(1) of the regulation as subdivision (a)(3);
- Renumber current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a tax exemption card and exemption letter issued by the AIT, and remove obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including retailers' record-keeping requirements with respect to such sales;

- Add provisions to renumbered subdivision (a)(3) to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4);
- Clarify in subdivision (b) that a retailer shall retain evidence that the form of payment for purchases made as described in new proposed subdivision (a)(1) was made in the name of the foreign mission or representative office, and that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers); and
- Clarify in subdivision (b) that a retailer must retain a copy of a letter from the U.S. Department of State, Office of Foreign Missions or the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on October 27, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on October 27, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1619.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6272, 6352, and 7053; Vienna Convention on Diplomatic Relations of April 18, 1961, article 34, 23 U.S.T. 3242), T.I.A.S. No. 7502; Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

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

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

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) The term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . . ." (RTC, § 6015, subd. (a)(1).) Also, retailers are generally required to keep all records necessary to determine their correct tax liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) and all records necessary for the proper completion of their sales and use tax returns. (RTC, § 7053; Reg. 1698.)

RTC section 6352 specifies that "[t]here are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State." Regulation 1619 currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the U.S Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

Office of Foreign Missions – Tax Exemption Cards
The U.S. Department of State's website explains that the Office of Foreign Missions (OFM) issues two types of diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale. (See Attachments A and B to the Initial Statement of Reasons.)

Mission Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. Also, all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission to be exempt from tax. (See Attachment A to the Initial Statement of Reasons.)

OFM will only issue mission tax exemption cards to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. However, individuals other than the person pictured on the exemption card may present the card when making purchases in the name of the mission. (See Attachment A to the Initial Statement of Reasons.)

Personal Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card. (See Attachment A to the Initial Statement of Reasons.)

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees; and
- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

In addition, other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR. (See Attachment A to the Initial Statement of Reasons.)

American Institute in Taiwan – Issues Tax Exemption Cards
The U.S. Department of State's website also explains that, in 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the AIT and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO). (See Attachment C to the Initial Statement of Reasons.)

Pursuant to federal law, TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. (Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014).) Such privileges are authorized by the AIT, not the OFM. (See Attachment D to the Initial Statement of Reasons.)

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for eligible TECRO and TECOs personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards. (See Attachment D to the Initial Statement of Reasons.)

Levels of Exemption
Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. (See Attachments A and B to the Initial Statement of Reasons.)_Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax exemption for

vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT. (See Attachment E to the Initial Statement of Reasons.)

OFM Assistance
OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at its website or by calling OFM during business hours. (See Attachment A to the Initial Statement of Reasons.)

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1619

Need for Clarification

In a December 16, 2014, letter addressed to the Board's Executive Director, the OFM notified the Board that the AIT issues tax exemption cards to certain eligible persons, as explained above, the AIT has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents, and that the policies regarding the use of AIT-issued tax exemption cards are the same as the policies for the OFM-issued tax exemption cards. The letter suggested that the Board issue a regulation, ruling, or statement mirroring the rules discussed above with respect to the tax exemption cards for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Based on the letter and a review of Regulation 1619, Board staff determined that there were issues with Regulation 1619 because:

- There were no specific references to exempt sales of tangible personal property other than vehicles to a foreign government consulate or mission, itself (i.e., official purchases);
- The regulation did not address the tax exemption for TECRO, TECOs, and their personal, or the tax exemption cards being issued by the AIT;
- There was obsolete language regarding exempt sales or leases of vehicles to individuals who do not hold a Personal Tax Exemption Card and missions that do not have a Mission Tax Exemption Card, prior to June 1, 2003; and
- There was a need to update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to conform to the requirements for the tax exemption for TECRO, TECOs, and their personal discussed above.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to Regulation 1619 to address the issues described above and a discussion paper to explain the draft amendments. Both were provided to interested parties.

On May 5, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting. However, staff did receive a May 5, 2015, email from Ms. Cheryl A. Cappiello Edson, Program Manager, Tax & Customs, Office of Foreign Missions, U.S. Department of State, after the interested parties meeting, which suggested adding citations to the following relevant treaty and diplomatic agreements relating to the AIT to the regulation's reference note: Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)). Therefore, BTC staff agreed to add the citations to the regulation's reference note.

BTC staff also received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to add provisions to the regulation regarding the type of payments that would be acceptable for official purchases by a foreign mission. It was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable and that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. BTC staff agreed to consider adding clarifying language to the draft amendments with respect to the acceptable types of payment.

Given the overall support for the draft amendments and the fact that BTC staff did not receive any written comments, other than the May 5, 2015, email, subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were cancelled.

July 28, 2015 Business Taxes Committee Meeting

Subsequently, BTC staff prepared Formal Issue Paper 15-006 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-006 recommended that the Board propose to change the name of Regulation 1619 from "Foreign Consuls" to "Foreign Missions and Consuls." The change to the title of the regulation was suggested by BTC staff as more inclusive of the proposed clarification regarding an exemption from sales or use tax for foreign missions (discussed below). The formal issue paper also recommended adding additional references to the treaty and diplomatic agreements relating to the AIT referred to in the May 5, 2015, email discussed above to Regulation 1619's reference note so that the regulation's reference note refers to the relevant treaties and the diplomatic agreements relating to the AIT that are being implemented, interpreted, and made specific by Regulation 1619.

The formal issue paper recommended that a new subdivision (a)(1), entitled "Official Purchases – In General," be added to the regulation to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or

representative office, such as TECRO or a TECO, to the extent that the such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as provided by federal law.

The formal issue paper recommended that the first paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(2), and entitled "Personal Purchases – In General." The formal issue paper recommended that renumbered subdivision (a)(2) be amended to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States, as provided by federal law. The formal issue paper also recommended adding references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.

Additionally, the formal issue paper recommended that the second paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(3). The formal issue paper recommended renumbering current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), updating the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter from the AIT, as currently provided by federal law, moving the regulation's current definition of "vehicle" to the end of renumbered subdivision (a)(4), and deleting the obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailers' record-keeping requirements with respect to such sales, from renumbered subdivision (a)(4) and current subdivision (b). The formal issue paper also recommended that renumbered subdivision (a)(3) be amended to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4).

Furthermore, the formal issue paper recommended that the Board propose amendments to updated and clarify subdivision (b) to reflect the documentation that retailers must currently have to establish that a transaction is exempt from sales and use tax under federal law. The recommended amendments clarify that a retailer shall retain evidence that the form of payment for purchases made as described in new subdivision (a)(1) was made in the name of the foreign mission or representative office, that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers), as provided by federal law, and clarify that a retailer must retain a copy of a letter from the U.S. Department of State, OFM or similar letter from the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

At the conclusion of the Board's discussion of Formal Issue Paper 15-006 during the July 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1619 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1619 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues referred to above and make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.

The Board anticipates that the proposed amendments to Regulation 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption. The Board has performed an evaluation of whether the proposed amendments to Regulation 1619 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1619 is the only state regulation that provides specific guidance to retailers regarding the proper application of RTC section 6352 to sales to foreign missions, representative offices, foreign consular officers, and employees of foreign missions and representative offices, and their dependents. In addition, the proposed amendments do implement, interpret, and make specific provisions in federal statues (22 U.S.C § 3301-3316) and a designation and determination published in the Federal Register (79 Fed.Reg. 16090 (March 24, 2014)); however, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1619 or the proposed amendments to Regulation 1619.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

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 1619 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 1619 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has determined that the proposed amendments to Regulation 1619 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 1619 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1619 will not affect the benefits of Regulation 1619 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 1619 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

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

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

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on October 27, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1619 during the October 27, 2015 Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1619. 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 1619 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1619, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1619 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 1619, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, September 11, 2015 8:24 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Armenta, Christopher; Asprey, Kathryn E; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; Block, Susan; BOE-Board Meeting Material; Bridges, Cynthia; Brown, Michele C; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Dixon, Camille; Duran, David; Durham, Mark; Epolite, Anthony (Legal); Ferris, Randy (Legal); Folchi, Gino; Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Grant, Micah; Hamilton, Tabitha; Harrison, Michelle; Harvill, Mai; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Hite, Jay; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); Lopez, Claudia; Lowery, Russell; Matsumoto, Sid; Matthies, Ted; McElhinney, Andrew; McGuire, Jeff; Miller, Brad; Moon, Richard (Legal); Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston Ratcliff, Natasha; Renati, Lisa; Richmond, Joann; Riley, Denise (Legal); Romano, Dario; Salazar, Ramon; Sarcos, Eric; Schultz, Glenna; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vena, Emily (Legal); Wallentine, Sean; Whitaker, Lynn; White, Sharon; Wiggins, Brian; Williams, Lee; Zivkovich, Robert; Zumaeta, Jaclyn
Subject: State Board of Equalization - Announcement of Regulatory Change to Regulation 1619

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1619, Foreign Consuls, to make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on October 27, 2015.

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_1619_2015.htm.

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

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov<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.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change <Legal.Regulations@BOE.CA.GOV>
Sent: Friday, September 11, 2015 10:33 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 1619

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1619, Foreign Consuls, to make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on October 27, 2015.

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AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons will be available on the Department's website at http://www.cdcr.ca.gov, and may also be obtained from the Department's contact person.

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1619, *Foreign Consuls*

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.) 1619, *Foreign Consuls.* The proposed amendments:

- Rename the regulation from "Foreign Consuls" to "Foreign Missions and Consuls" and add additional references to a federal treaty and diplomatic agreements relating to the American Institute in Taiwan (AIT) to the regulation's reference note;
- Add a new subdivision (a)(1) to the regulation entitled "Official Purchases — In General," to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, itself, to the extent that such mission or representative office has been identified by the United States (U.S.) Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that an exemption for the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office;
- Renumber the first paragraph in current subdivision (a)(1) as subdivision (a)(2), add the title "Personal Purchases — In General" to the subdivision, and revise the subdivision to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States;
- Add references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel;
- Renumber the second paragraph in current subdivision (a)(1) of the regulation as subdivision (a)(3);
- Renumber current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a tax exemption card and exemption letter issued by the AIT, and remove obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including retailers' record–keeping requirements with respect to such sales;
- Add provisions to renumbered subdivision (a)(3) to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4);
- Clarify in subdivision (b) that a retailer shall retain evidence that the form of payment for purchases made as described in new proposed subdivision (a)(1) was made in the name of the foreign mission or representative office, and that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers); and
- Clarify in subdivision (b) that a retailer must retain a copy of a letter from the U.S. Department of State, Office of Foreign Missions or the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on October 27, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as

the matter may be heard on October 27, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1619.

AUTHORITY

RTC section 7051.

REFERENCE

RTC sections 6272, 6352, and 7053; Vienna Convention on Diplomatic Relations of April 18, 1961, article 34, 23 U.S.T. 3242), T.I.A.S. No. 7502; Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301–3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

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

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

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) The term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . . ." (RTC, § 6015, subd. (a)(1).) Also, retailers are generally required to keep all records necessary to determine their correct tax liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) and all records necessary for the proper completion of their sales and use tax returns. (RTC, § 7053; Reg. 1698.)

RTC section 6352 specifies that "[t]here are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State." Regulation 1619 currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the U.S. Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

Office of Foreign Missions — Tax Exemption Cards

The U.S. Department of State's website explains that the Office of Foreign Missions (OFM) issues two types of diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale. (See Attachments A and B to the Initial Statement of Reasons.)

Mission Tax Exemption Cards

OFM issued diplomatic tax exemption cards labeled "Mission Tax Exemption — Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the

mission's operations and functions. Also, all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission to be exempt from tax. (See Attachment A to the Initial Statement of Reasons.)

OFM will only issue mission tax exemption cards to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. However, individuals other than the person pictured on the exemption card may present the card when making purchases in the name of the mission. (See Attachment A to the Initial Statement of Reasons.)

Personal Tax Exemption Cards

OFM issued diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card. (See Attachment A to the Initial Statement of Reasons.)

Eligibility for personal tax exemption cards is determined on a case–by–case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees; and
- The members of their families forming part of their households, but in the case of a child: those aged 18–21 years, or aged 18–23 years if accredited as a justified student.

In addition, other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR. (See Attachment A to the Initial Statement of Reasons.)

American Institute in Taiwan — Issues Tax Exemption Cards

The U.S. Department of State's website also explains that, in 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the AIT and charged it with the task of fostering strong but non–diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO). (See Attachment C to the Initial Statement of Reasons).

Pursuant to federal law, TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. (Taiwan Relations Act (22 U.S.C. §§ 3301–3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014).) Such privileges are authorized by the AIT, not the OFM. (See Attachment D to the Initial Statement of Reasons.)

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for eligible TECRO and TECOs personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards. (See Attachment D to the Initial Statement of Reasons.)

Levels of Exemption

Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. (See Attachments A and B to the Initial Statement of Reasons.) Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to ob-

tain an exemption letter from the OFM or AIT. (See Attachment E to the Initial Statement of Reasons.)

OFM Assistance

OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at its website or by calling OFM during business hours. (See Attachment A to the Initial Statement of Reasons.)

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1619

Need for Clarification

In a December 16, 2014, letter addressed to the Board's Executive Director, the OFM notified the Board that the AIT issues tax exemption cards to certain eligible persons, as explained above, the AIT has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents, and that the policies regarding the use of AIT–issued tax exemption cards are the same as the policies for the OFM–issued tax exemption cards. The letter suggested that the Board issue a regulation, ruling, or statement mirroring the rules discussed above with respect to the tax exemption cards for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Based on the letter and a review of Regulation 1619, Board staff determined that there were issues with Regulation 1619 because:

- There were no specific references to exempt sales of tangible personal property other than vehicles to a foreign government consulate or mission, itself (i.e., official purchases);
- The regulation did not address the tax exemption for TECRO, TECOs, and their personnel, or the tax exemption cards being issued by the AIT;
- There was obsolete language regarding exempt sales or leases of vehicles to individuals who do not hold a Personal Tax Exemption Card and missions that do not have a Mission Tax Exemption Card, prior to June 1, 2003; and
- There was a need to update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to conform to the requirements for the tax exemption for TECRO, TECOs, and their personal discussed above.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to Regulation 1619 to address the issues described above and a discussion paper to explain the draft amendments. Both were provided to interested parties.

On May 5, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting. However, staff did receive a May 5, 2015, email from Ms. Cheryl A. Cappiello Edson, Program Manager, Tax & Customs, Office of Foreign Missions, U.S. Department of State, after the interested parties meeting, which suggested adding citations to the following relevant treaty and diplomatic agreements relating to the AIT to the regulation's reference note: Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301–3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)). Therefore, BTC staff agreed to add the citations to the regulation's reference note.

BTC staff also received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to add provisions to the regulation regarding the type of payments that would be acceptable for official purchases by a foreign mission. It was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable and that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. BTC staff agreed to consider adding clarifying language to the draft amendments with respect to the acceptable types of payment.

Given the overall support for the draft amendments and the fact that BTC staff did not receive any written comments, other than the May 5, 2015, email, subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were cancelled.

July 28, 2015 Business Taxes Committee Meeting

Subsequently, BTC staff prepared Formal Issue Paper 15–006 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15–006 recommended that the Board propose to change the name of Regulation 1619 from "Foreign Consuls" to "Foreign Missions and Consuls." The change to the title of the regulation was suggested by BTC staff as more inclusive of the proposed clarification regarding an exemption from sales or use tax for foreign missions (discussed below). The formal issue paper also recommended adding additional refer-

ences to the treaty and diplomatic agreements relating to the AIT referred to in the May 5, 2015, email discussed above to Regulation 1619's reference note so that the regulation's reference note refers to the relevant treaties and the diplomatic agreements relating to the AIT that are being implemented, interpreted, and made specific by Regulation 1619.

The formal issue paper recommended that a new subdivision (a)(1), entitled "Official Purchases — In General," be added to the regulation to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, such as TECRO or a TECO, to the extent that such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as provided by federal law.

The formal issue paper recommended that the first paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(2), and entitled "Personal Purchases — In General." The formal issue paper recommended that renumbered subdivision (a)(2) be amended to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States, as provided by federal law. The formal issue paper also recommended adding references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.

Additionally, the formal issue paper recommended that the second paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(3). The formal issue paper recommended renumbering current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), updating the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter from the AIT, as currently provided by federal law, moving the regulation's current definition of "vehicle" to the end of renumbered subdivision (a)(4), and deleting the obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailers' record–keeping requirements with respect to such sales, from renumbered subdivision (a)(4) and current subdivision (b). The formal issue paper also recommended that renumbered subdivision (a)(3) be amended to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4).

Furthermore, the formal issue paper recommended that the Board propose amendments to update and clarify subdivision (b) to reflect the documentation that retailers must currently have to establish that a transaction is exempt from sales and use tax under federal law. The recommended amendments clarify that a retailer shall retain evidence that the form of payment for purchases made as described in new subdivision (a)(1) was made in the name of the foreign mission or representative office, that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers), as provided by federal law, and clarify that a retailer must retain a copy of a letter from the U.S. Department of State, OFM or similar letter from the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

At the conclusion of the Board's discussion of Formal Issue Paper 15–006 during the July 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1619 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1619 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues referred to above and make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.

The Board anticipates that the proposed amendments to Regulation 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption. The Board has performed an evaluation of whether the proposed amendments to Regulation 1619 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1619 is the only state regulation that provides specific guidance to retailers regarding the proper application of RTC section 6352 to sales to foreign missions, representative offices, foreign con-

sular officers, and employees of foreign missions and representative offices, and their dependents. In addition, the proposed amendments do implement, interpret, and make specific provisions in federal statutes (22 U.S.C. §§ 3301–3316) and a designation and determination published in the Federal Register (79 Fed.Reg. 16090 (March 24, 2014)); however, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1619 or the proposed amendments to Regulation 1619.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non–discretionary cost or savings imposed on local agencies.

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 1619 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 1619 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has determined that the proposed amendments to Regulation 1619 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 1619 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1619 will not affect the benefits of Regulation 1619 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 1619 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Monica Gonzalez

Silva, Tax Counsel III, by telephone at (916) 323–3138, by e–mail at Monica.Silva@boe.ca.gov, or by mail at State Board of Equalization, Attn: Monica Gonzalez Silva, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279–0082.

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

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on October 27, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1619 during the October 27, 2015 Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1619. 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 1619 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1619, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1619 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 1619, 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*.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PROPOSED ACTION TO BUILDING STANDARDS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION

REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11

CERTIFICATION OF COMPLIANCE FOR EMERGENCY BUILDING STANDARDS (BSC EF–01–15)

Notice is hereby given that the California Building Standards Commission (CBSC) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 11. The CBSC is proposing build-

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

September 11, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1619, *Foreign Consuls*

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.) 1619, *Foreign Consuls*. The proposed amendments:

- Rename the regulation from "Foreign Consuls" to "Foreign Missions and Consuls" and add additional references to a federal treaty and diplomatic agreements relating to the American Institute in Taiwan (AIT) to the regulation's reference note;
- Add a new subdivision (a)(1) to the regulation entitled "Official Purchases – In General," to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, itself, to the extent that the such mission or representative office has been identified by the United States (U.S.) Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that an exemption for the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office;
- Renumber the first paragraph in current subdivision (a)(1) as subdivision (a)(2), add the title "Personal Purchases – In General" to the subdivision, and revise the subdivision to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States;

- Add references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel;
- Renumber the second paragraph in current subdivision (a)(1) of the regulation as subdivision (a)(3);
- Renumber current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a tax exemption card and exemption letter issued by the AIT, and remove obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including retailers' record-keeping requirements with respect to such sales;
- Add provisions to renumbered subdivision (a)(3) to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4);
- Clarify in subdivision (b) that a retailer shall retain evidence that the form of payment for purchases made as described in new proposed subdivision (a)(1) was made in the name of the foreign mission or representative office, and that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers); and
- Clarify in subdivision (b) that a retailer must retain a copy of a letter from the U.S. Department of State, Office of Foreign Missions or the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on October 27, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on October 27, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1619.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6272, 6352, and 7053; Vienna Convention on Diplomatic Relations of April 18, 1961, article 34, 23 U.S.T. 3242), T.I.A.S. No. 7502; Vienna Convention on Consular Relations

of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

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

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

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) The term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . . ." (RTC, § 6015, subd. (a)(1).) Also, retailers are generally required to keep all records necessary to determine their correct tax liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) and all records necessary for the proper completion of their sales and use tax returns. (RTC, § 7053; Reg. 1698.)

RTC section 6352 specifies that "[t]here are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State." Regulation 1619 currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the U.S Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation

1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

Office of Foreign Missions – Tax Exemption Cards
The U.S. Department of State's website explains that the Office of Foreign Missions (OFM) issues two types of diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale. (See Attachments A and B to the Initial Statement of Reasons.)

Mission Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. Also, all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission to be exempt from tax. (See Attachment A to the Initial Statement of Reasons.)

OFM will only issue mission tax exemption cards to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. However, individuals other than the person pictured on the exemption card may present the card when making purchases in the name of the mission. (See Attachment A to the Initial Statement of Reasons.)

Personal Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card. (See Attachment A to the Initial Statement of Reasons.)

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees; and

- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

In addition, other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR. (See Attachment A to the Initial Statement of Reasons.)

American Institute in Taiwan – Issues Tax Exemption Cards
The U.S. Department of State's website also explains that, in 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the AIT and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO). (See Attachment C to the Initial Statement of Reasons.)

Pursuant to federal law, TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. (Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014).) Such privileges are authorized by the AIT, not the OFM. (See Attachment D to the Initial Statement of Reasons.)

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for eligible TECRO and TECOs personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards. (See Attachment D to the Initial Statement of Reasons.)

Levels of Exemption
Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. (See Attachments A and B to the Initial Statement of Reasons.)_Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax

exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT. (See Attachment E to the Initial Statement of Reasons.)

OFM Assistance
OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at its website or by calling OFM during business hours. (See Attachment A to the Initial Statement of Reasons.)

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1619

Need for Clarification

In a December 16, 2014, letter addressed to the Board's Executive Director, the OFM notified the Board that the AIT issues tax exemption cards to certain eligible persons, as explained above, the AIT has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents, and that the policies regarding the use of AIT-issued tax exemption cards are the same as the policies for the OFM-issued tax exemption cards. The letter suggested that the Board issue a regulation, ruling, or statement mirroring the rules discussed above with respect to the tax exemption cards for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Based on the letter and a review of Regulation 1619, Board staff determined that there were issues with Regulation 1619 because:

- There were no specific references to exempt sales of tangible personal property other than vehicles to a foreign government consulate or mission, itself (i.e., official purchases);
- The regulation did not address the tax exemption for TECRO, TECOs, and their personal, or the tax exemption cards being issued by the AIT;
- There was obsolete language regarding exempt sales or leases of vehicles to individuals who do not hold a Personal Tax Exemption Card and missions that do not have a Mission Tax Exemption Card, prior to June 1, 2003; and
- There was a need to update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to conform to the requirements for the tax exemption for TECRO, TECOs, and their personal discussed above.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to Regulation 1619 to address the issues described above and a discussion paper to explain the draft amendments. Both were provided to interested parties.
On May 5, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting. However, staff did receive a May 5, 2015, email from Ms. Cheryl A. Cappiello Edson, Program Manager, Tax & Customs, Office of Foreign Missions, U.S. Department of State, after the interested parties meeting, which suggested adding citations to the following relevant treaty and diplomatic agreements relating to the AIT to the regulation's reference note: Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)). Therefore, BTC staff agreed to add the citations to the regulation's reference note.

BTC staff also received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to add provisions to the regulation regarding the type of payments that would be acceptable for official purchases by a foreign mission. It was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable and that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. BTC staff agreed to consider adding clarifying language to the draft amendments with respect to the acceptable types of payment.

Given the overall support for the draft amendments and the fact that BTC staff did not receive any written comments, other than the May 5, 2015, email, subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were cancelled.

July 28, 2015 Business Taxes Committee Meeting

Subsequently, BTC staff prepared Formal Issue Paper 15-006 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-006 recommended that the Board propose to change the name of Regulation 1619 from "Foreign Consuls" to "Foreign Missions and Consuls." The change to the title of the regulation was suggested by BTC staff as more inclusive of the proposed clarification regarding an exemption from sales or use tax for foreign missions (discussed below). The formal issue paper also recommended adding additional references to the treaty and diplomatic agreements relating to the AIT referred to in the May 5, 2015, email discussed above to Regulation 1619's reference note so that the regulation's reference note refers to the relevant treaties and the diplomatic agreements relating to the AIT that are being implemented, interpreted, and made specific by Regulation 1619.

The formal issue paper recommended that a new subdivision (a)(1), entitled "Official Purchases – In General," be added to the regulation to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, such as TECRO or a TECO, to the extent that the such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as provided by federal law.

The formal issue paper recommended that the first paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(2), and entitled "Personal Purchases – In General." The formal issue paper recommended that renumbered subdivision (a)(2) be amended to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States, as provided by federal law. The formal issue paper also recommended adding references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.

Additionally, the formal issue paper recommended that the second paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(3). The formal issue paper recommended renumbering current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), updating the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter from the AIT, as currently provided by federal law, moving the regulation's current definition of "vehicle" to the end of renumbered subdivision (a)(4), and deleting the obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailers' record-keeping requirements with respect to such sales, from renumbered subdivision (a)(4) and current subdivision (b). The formal issue paper also recommended that renumbered subdivision (a)(3) be amended to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4).

Furthermore, the formal issue paper recommended that the Board propose amendments to updated and clarify subdivision (b) to reflect the documentation that retailers must currently have to establish that a transaction is exempt from sales and use tax under federal law. The recommended amendments clarify that a retailer shall retain evidence that the form of payment for purchases made as described in new subdivision (a)(1) was made in the name of the foreign mission or representative office, that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house

credits, or wire transfers), as provided by federal law, and clarify that a retailer must retain a copy of a letter from the U.S. Department of State, OFM or similar letter from the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

At the conclusion of the Board's discussion of Formal Issue Paper 15-006 during the July 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1619 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1619 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues referred to above and make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.

The Board anticipates that the proposed amendments to Regulation 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption. The Board has performed an evaluation of whether the proposed amendments to Regulation 1619 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1619 is the only state regulation that provides specific guidance to retailers regarding the proper application of RTC section 6352 to sales to foreign missions, representative offices, foreign consular officers, and employees of foreign missions and representative offices, and their dependents. In addition, the proposed amendments do implement, interpret, and make specific provisions in federal statues (22 U.S.C § 3301-3316) and a designation and determination published in the Federal Register (79 Fed.Reg. 16090 (March 24, 2014)); however, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1619 or the proposed amendments to Regulation 1619.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost

to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

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 1619 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 1619 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has determined that the proposed amendments to Regulation 1619 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 1619 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1619 will not affect the benefits of Regulation 1619 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 1619 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

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

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

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on October 27, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1619 during the October 27, 2015 Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1619. 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 1619 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1619, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1619 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 1619, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Sincerely,

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION

BOARD APPROVED

At the October 27, 2015 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Initial Statement of Reasons for

Proposed Amendments to California Code of Regulations,

Title 18, Section 1619, *Foreign Consuls*

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

Current Law

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

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

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) The term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . . ." (RTC, § 6015, subd. (a)(1).) Also, retailers are generally required to keep all records necessary to determine their correct tax liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) and all records necessary for the proper completion of their sales and use tax returns. (RTC, § 7053; Reg. 1698.)

RTC section 6352 specifies that "[t]here are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State." Regulation 1619, *Foreign Consuls*, currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the United States (U.S) Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

Office of Foreign Missions – Tax Exemption Cards

The U.S. Department of State's website explains that the Office of Foreign Missions (OFM) issues two types of diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR),[1] Vienna Convention on Consular Relations (VCCR),[2] and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale. (Attachment A, Discussion of OFM Diplomatic Sales Tax Exemption Cards from U.S. Department of State's Website, and Attachment B, Discussion of Diplomatic Tax Exemptions from U.S. Department of State's Website.)

Mission Tax Exemption Cards

OFM issued diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. Also all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission to be exempt from tax. (Attachment A.)

OFM will only issue mission tax exemption cards to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. However, individuals other than the person pictured on the exemption card may present the card when making purchases in the name of the mission. (Attachment A.)

Personal Tax Exemption Cards

OFM issued diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned

[1] The VCDR provides for the establishment of permanent diplomatic missions.

[2] The VCCR provides for consular functions (as defined) to be exercised by consular officers.

to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card. (Attachment A.)

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees; and
- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

In addition, other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR. (Attachment A.)

American Institute in Taiwan – Issues Tax Exemption Cards
The U.S. Department of State's website also explains that, in 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the American Institute in Taiwan (AIT) and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO). (Attachment C, Discussion of U.S. Relations with Taiwan from U.S. Department of State's Website.)

Pursuant to federal law,[3] TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. Such privileges are authorized by the AIT, not the OFM. (Attachment D, December 2014, Tax Exemption Card Flyer from U.S. Department of State's Website.)

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for eligible TECRO and TECOs personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards. (Attachment D.)

Levels of Exemption
Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the

[3] Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. (Attachments A and B.) Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT. (Attachment E, Discussion of Vehicle Tax Exemption from U.S. Department of State's Website.)

OFM Assistance
OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at its website or by calling OFM during business hours. (Attachment A.)

Proposed Amendments

Need for Clarity

In a December 16, 2014, letter addressed to the Board's Executive Director, the OFM notified the Board that the AIT issues tax exemption cards to certain eligible persons, as explained above, the AIT has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents, and that the policies regarding the use of AIT-issued tax exemption cards are the same as the policies for the OFM-issued tax exemption cards. The letter suggested that the Board issue a regulation, ruling, or statement mirroring the rules discussed above with respect to the tax exemption for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Based on the letter from OFM and a review of Regulation 1619, Board staff determined that there were issues (or problems within the meaning Gov. Code section 11346.2, subd. (b)) with Regulation 1619 because:

- There were no specific references to exempt sales of tangible personal property other than vehicles to a foreign government consulate or mission, itself (i.e., official purchases);
- The regulation did not address the tax exemption for TECRO, TECOs, and their personal, or the tax exemption cards being issued by the AIT;
- There was obsolete language regarding exempt sales or leases of vehicles to individuals who do not hold a Personal Tax Exemption Card and missions that do not have a Mission Tax Exemption Card, prior to June 1, 2003; and

- There was a need to update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to conform to the requirements for the tax exemption for TECRO, TECOs, and their personal discussed above.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to Regulation 1619 to address the issues described above and a discussion paper to explain the draft amendments. Both were provided to interested parties.

On May 5, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting. However, staff did receive a May 5, 2015, email from Ms. Cheryl A. Cappiello Edson, Program Manager, Tax & Customs, Office of Foreign Missions, U.S. Department of State, after the interested parties meeting, which suggested adding citations to the following relevant treaty and diplomatic agreements relating to the AIT to the regulation's reference note: Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)). Therefore, BTC staff agreed to add the citations to the regulation's reference note.

BTC staff also received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to add provisions to the regulation regarding the type of payments that would be acceptable for official purchases by a foreign mission. It was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable and that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. BTC staff agreed to consider adding clarifying language to the draft amendments with respect to the acceptable types of payment.

Given the overall support for the draft amendments and the fact that BTC staff did not receive any written comments, other than the May 5, 2015, email, subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were cancelled.

July 28, 2015 Business Taxes Committee Meeting

Subsequently, BTC staff prepared Formal Issue Paper 15-006 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-006 recommended that the Board propose to change the name of Regulation 1619 from "Foreign Consuls" to "Foreign Missions and Consuls." The change to the title of the regulation was suggested by BTC staff as more inclusive of the proposed clarification regarding an exemption from sales or use tax for foreign missions (discussed below). The formal issue paper also recommended adding additional references to the treaty and diplomatic agreements relating to the AIT referred to in the May 5, 2015, email discussed above to Regulation 1619's reference

note so that the regulation's reference note refers to the relevant treaties and the diplomatic agreements relating to the AIT that are being implemented, interpreted, and made specific by Regulation 1619.

The formal issue paper recommended that a new subdivision (a)(1), entitled "Official Purchases – In General," be added to the regulation to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, such as TECRO or a TECO, to the extent that the such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as provided by federal law.

The formal issue paper recommended that the first paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(2), and entitled "Personal Purchases – In General." The formal issue paper recommended that renumbered subdivision (a)(2) be amended to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States, as provided by federal law. The formal issue paper also recommended adding references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.

Additionally, the formal issue paper recommended that the second paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(3). The formal issue paper recommended renumbering current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), updating the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter from the AIT, as currently provided by federal law, moving the regulation's current definition of "vehicle" to the end of renumbered subdivision (a)(4), and deleting the obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailers' record-keeping requirements with respect to such sales, from renumbered subdivision (a)(4) and current subdivision (b). The formal issue paper also recommended that renumbered subdivision (a)(3) be amended to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4).

Furthermore, the formal issue paper recommended that the Board propose amendments to update and clarify subdivision (b) to reflect the documentation that retailers must currently have to establish that a transaction is exempt from sales and use tax under federal law. The recommended amendments clarify that a retailer shall retain evidence that the form of payment for purchases made as described in new subdivision (a)(1) was made in the name of the foreign mission or representative office, that such payments may include official checks, official credit

cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers), as provided by federal law, and clarify that a retailer must retain a copy of a letter from the U.S. Department of State, OFM or similar letter from the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

At the conclusion of the Board's discussion of Formal Issue Paper 15-006 during the July 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1619 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1619 are reasonably necessary for the specific purpose of clarifying and updating the regulation to specifically address the issues (or problems) referred to above and make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents. The Board anticipates that the proposed amendments to Regulation 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption.

The proposed amendments to Regulation 1619 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1619 or the proposed amendments to Regulation 1619.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-006, and the exhibits to the issue paper, including the December 16, 2014, letter to the Board's Executive Director referred to above, in deciding to propose the amendments to Regulation 1619 described above during its July 28, 2015, BTC meeting.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1619 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1619 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 1619 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)

Article 6, clause 2 of the U.S. Constitution provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" ("Supremacy Clause"). Therefore, federal law, including treaties, generally supersedes California law, and the exemption provided by RTC section 6352 generally ensures that California sales and use tax is not imposed on transactions that are exempt from sales and use tax under federal law.

The proposed amendments overall clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax, add provisions regarding tax exemption cards issued by the AIT, delete obsolete language regarding the purchase or lease of vehicles prior to June 1, 2003, and clarify the type of documents retailers are currently required to retain for purposes of determining that tax does not apply to purchases made by a foreign mission or representative office or its employees.

As a result, the proposed amendments make Regulation 1619 consistent with federal law, but they do not establish any new exemptions or require retailers to maintain any documentation that they would not be required to obtain under current federal law or retain under current California law. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by federal law, the Sales and Use Tax Law, or Regulations 1619 and 1698, *Records*, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1619 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1619 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1619 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 1619 will not affect the benefits of Regulation 1619 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 1619 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1619 may affect small businesses.

Sales Tax Exemption

Diplomatic Sales Tax Exemption Cards
Types of Sales Tax Exemption Cards
Levels of Exemption
Types of Purchases Permitted and Not Permitted
State-Specific Rules, Including Streamlined Sales Tax Agreement
OFM Assistance with Refunds or Rejections
How to Apply for a Tax Exemption Card
Return of the Tax Exemption Card
Misuse of Tax Exemption Card

DIPLOMATIC SALES TAX EXEMPTION CARDS

The Department's Office of Foreign Missions (OFM) issues diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents on the basis of international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide relief from certain taxes.

The cards provide point-of-sale exemption from sales tax and other similarly imposed taxes throughout the United States. At the time of payment when making a purchase, the cardholder must present the card to the vendor in person. The vendor may verify the card's validity at **https://ofmapps.state.gov/tecv/** or by calling OFM during business hours. The vendor should retain a copy of the front and back of the card for accounting and reporting purposes.

TYPES OF SALES TAX EXEMPTION CARDS

MISSION TAX EXEMPTION CARDS

Diplomatic tax exemption cards that are labeled as "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales and other similarly imposed taxes on purchases in the United States that are necessary for the mission's operations and functions. All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission.

OFM will only issue mission tax exemption cards to an individual who (i) is a principal member or employee of the mission, (ii) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (iii) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. This individual, however, does not need to be present when purchases are made in the name of the mission.

PERSONAL TAX EXEMPTION CARDS

Diplomatic tax exemption cards that are labeled as "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption fror sales and other similarly imposed taxes on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card.

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither U.S. nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- individuals accredited as diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees;
- the members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

Other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR.

*Note that employees (and their dependents) of international organizations and the Permanent Missions to the United Nations and Organization of American States who have been granted the privileges and immunities accorded to diplomatic agents are eligible for personal tax exemption cards. These unrestricted personal tax exemption cards facilitate the United States in honoring its obligations under relevant treaties to provide relief from certain taxes.

LEVELS OF EXEMPTION

Not all missions and personnel hold diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized on the card. This level of exemption is set by OFM on the basis of reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in that foreign country. Foreign missions interested in discussing improvements to their tax exemption benefits are encouraged to contact OFM.

The cards contain text on the front and back of the card that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both.

In addition to the specific text, each tax exemption card bears one of four animal symbols indicating the specific type of tax exemption of the cardholder:

- Owl: *mission* tax exemption cards with unrestricted tax exemption.
- Buffalo: *mission* tax exemption cards with some degree of restriction.
- Eagle: *personal* tax exemption cards with unrestricted tax exemption.
- Deer: *personal* tax exemption cards with some degree of restriction.

TYPES OF PURCHASES PERMITTED AND NOT PERMITTED

Diplomatic tax exemption cards can generally be used to obtain exemption in person and at point-of-sale from sales taxes and other similarly imposed taxes on purchases of most goods and services, hotel stays, and restaurant meals in the United States. For specific policies and procedures concerning using official and personal tax exemption cards for hotel stays and lodging, missions and personnel should refer to the Department's note No. 13-619, dated July 19, 2013.

Tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. Exemption from taxes on these items is authorized using different means, which are explained at **http://www.state.gov/ofm/tax**.

Furthermore, because the nature of purchases made via the internet or by telephone does not allow for the presentation of the tax exemption card to the vendor, the card cannot be honored in such transactions. OFM is unable to provide any assistance to foreign missions or their members in obtaining an exemption or reimbursement of taxes charged on purchases not made in-store.

STATE-SPECIFIC RULES, INCLUDING STREAMLINED SALES TAX AGREEMENT

U.S. states and territories typically enact statutes and/or regulations or issue other guidance concerning the manner in which vendors in that state or territory must accoun for the diplomatic tax exemption in its records. OFM continues its efforts to ensure that tax authorities in all states and territories issue guidance supporting the diplomatic tax exemption card program so that vendors will appropriately extend a tax exemption with confidence.

Some U.S. states require their vendors to retain additional documentation in addition to a copy of the tax exemption card. For example, certain states require foreign missions and their members to complete a streamlined sales tax agreement exemption certificate. OFM has compiled relevant state guidance on its website at **http://www.state.gov/ofm/tax/sales/c63020.htm**. This may be particularly useful for foreign mission members who are traveling and expect to use the tax exemption card outside of their usual jurisdiction.

OFM ASSISTANCE WITH REFUNDS OR REJECTIONS

Missions and their members should encourage vendors to verify the card's validity at https://ofmapps.state.gov/tecv/ or by calling OFM during business hours. If a vendor is not familiar with the diplomatic tax exemption card program, they should be encouraged to visit the OFM website at **http://www.state.gov/ofm**; and especially **http://www.state.gov/ofm/tax/sales/c63020.htm**, which provides relevant state-specific guidance; or e-mail OFM for more information about the program. OFM regularly communicates with vendors to educate them about the program.

If the transaction occurs after OFM business hours, and the vendor does not accept the card, OFM will attempt to assist the mission or member in obtaining refunds of improperly imposed taxes (if more than a de minimis amount) by speaking to the vendor, but a refund cannot be guaranteed.

HOW TO APPLY FOR A TAX EXEMPTION CARD

To apply for an initial or renewal tax exemption card, eligible missions and their members should submit an application on the Department's E-Government (E-Gov) system. Applications are generally processed within five business days.

If a card is lost or stolen and the mission or member wishes to apply for a replacement card, a diplomatic note or letter must be uploaded in E-Gov (in pdf or jpg format) which explains when and where the card in question was lost or stolen. The replacement card application may be held for 30 days before it is processed.

Tax exemption cards are printed by the U.S. Government Printing Office at its facility in Washington and mailed via the U.S. Postal Service to the cardholder's residential address. Consequently, it is important that all individuals ensure that their addresses are correct with OFM.

RETURN OF TAX EXEMPTION CARDS

All tax exemption cards are the property of the U.S. government and must be returned to OFM when they have expired or been recalled, or when the cardholder's employment or assignment with a foreign mission has been terminated. When a mission member is terminated at one location and reaccredited at another location in the United States, his or her tax exemption card will be terminated. Therefore, he or she must return that card and apply for a new one.

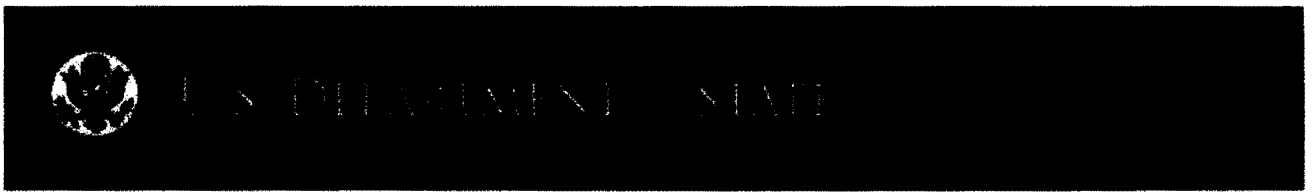
If tax exemption cards are not returned to the Department, OFM reserves the right to take appropriate action, which may include temporarily suspending the issuance of new tax exemption cards to that mission.

Tax exemption cards should be delivered to OFM's Customer Service Center at 3507 International Place NW, Washington, DC 20522, or the nearest OFM regional office (New York, Miami, Chicago, Houston, San Francisco, or Los Angeles).

MISUSE OF TAX EXEMPTION CARD

Noncompliance with the rules stated herein constitutes misuse of the card, which is a serious offense. In the event of misuse, OFM will take appropriate action, which may include: invalidating and recalling the card, delaying the issuance of new cards, and notifying law enforcement authorities.

Foreign missions, personnel, and vendors may contact OFM in Washington at **OFMTaxCustoms@state.gov** or (202) 895-3500 ext. 2. Anyone located outside of the Washington, DC, metropolitan area may contact the nearest OFM Regional Office. Information concerning OFM's regional offices is available at **www.state.gov/ofm/ro/**.



Diplomatic Tax Exemptions

In 1982, Congress passed the Foreign Missions Act, 22 U.S.C. 4301-4316, which created a new office in the United States Department of State. This office is called the Office of Foreign Missions (OFM). The purpose of OFM is to serve the foreign diplomatic and consular communities stationed in the United States, and to control their activities. All services are based on the principle of reciprocity. In other words, no privileges are granted to a foreign official here unless United States Embassy and Consular personnel receive the equivalent privileges in that country.

OFM responsibilities include the Diplomatic Tax Exemption Program, which provides sales and use, occupancy, food, airline, gas, and utility tax exemptions to eligible foreign officials on assignment in the United States. Tax exemption privileges for foreign diplomats, consular officers, and staff members are generally based on two treaties: the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. These treaties have been ratified by the United States and are the supreme law of the land under Article VI of the Constitution.

Not all foreign missions and their personnel are entitled to tax exemption, because this privilege is based on reciprocity and not all foreign countries grant such tax exemption to American Embassies and personnel.

*Note that diplomatic tax exemption cards are issued on the basis of international law and treaties to eligible international organizations and the Permanent Missions to the United Nations and Organization of American States, and to employees (and their dependents) of such offices who have been granted the privileges and immunities accorded to diplomatic agents.

Questions concerning bookkeeping requirements should be directed to the appropriate City or State Department of Revenue. Any questions regarding the eligibility of diplomatic or consular officers for sales and use tax exemption should be directed to the Office of Foreign Missions by electronic mail at **OFMTaxCustoms@state.gov** or:

Office of Foreign Missions
3507 International Place, NW
Washington, DC 20522-3303
(202) 895-3500

Office of Foreign Missions
Chicago Regional Office
77 W. Jackson Blvd, Ste 2122
Chicago, IL 60604-1503
(312) 353-5762

Office of Foreign Missions
Houston Regional Office
8701 S. Gessner Suite 906
Houston, Texas 77074
(713) 272-2865

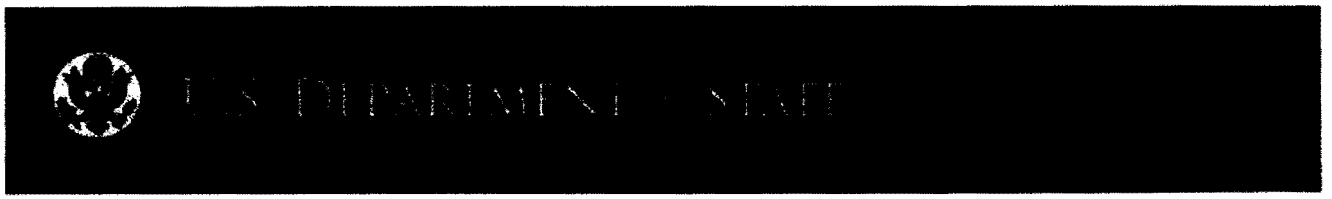
Office of Foreign Missions
Los Angeles Regional Office
10940 Wilshire Blvd, Ste 1425
Los Angeles, CA 90024
(310) 235-6292

Office of Foreign Missions
Miami Regional Office
95 Merrick Way, Suite 505
Coral Gables, FL 33134
(305) 442-4943

Office of Foreign Missions
New York Regional Office
799 United Nations Plaza, 8th floor
New York, NY 10017
(646) 282-2825

Office of Foreign Missions
San Francisco Regional Office
One Market, Spear Tower, Suite 1375

San Francisco, CA 94105-1839
(415) 744-2910



U.S. Relations With Taiwan

BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS
Fact Sheet
February 12, 2015

More information about Taiwan is available on the Taiwan Page and from other Department of State publications and other sources listed at the end of this fact sheet.

U.S.-TAIWAN RELATIONS

The United States and Taiwan enjoy a robust unofficial relationship. The 1979 U.S.-P.R.C. Joint Communique switched diplomatic recognition from Taipei to Beijing. In the Joint Communique, the United States recognized the Government of the People's Republic of China as the sole legal government of China, acknowledging the Chinese position that there is but one China and Taiwan is part of China. The Joint Communique also stated that the people of the United States will maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The American Institute in Taiwan (AIT) is responsible for implementing U.S. policy toward Taiwan.
The United States does not support Taiwan independence. Maintaining strong, unofficial relations with Taiwan is a major U.S. goal, in line with the U.S. desire to further peace and stability in Asia. The 1979 Taiwan Relations Act provides the legal basis for the unofficial relationship between the United States and Taiwan, and enshrines the U.S. commitment to assist Taiwan in maintaining its defensive capability. The United States insists on the peaceful resolution of cross-Strait differences, opposes unilateral changes to the status quo by either side , and encourages dialogue to help advance such an outcome.

U.S. Assistance to Taiwan
U.S. development assistance to Taiwan in the 1950s and 1960s helped Taiwan create the prosperous economy it enjoys today. Currently, the United States provides no development assistance to Taiwan.

Economic Relations
The United States has maintained and enhanced its commercial ties with Taiwan since 1979. Taiwan is the United States' 10th largest trading partner, and the United States is Taiwan's largest foreign investor. Taiwan enjoys Export-Import Bank financing, Overseas Private Investment Corporation guarantees, normal trade relations status, and ready access to U.S. markets. AIT has been engaged in a series of trade discussions that have focused on protection of intellectual property rights and market access for U.S. goods and services. The United States hes a trade and investment framework agreement with Taiwan under the auspices of AIT and the Taipei Economic and Cultural Representative Office in the United States.

Taiwan's Membership in International Organizations
The United States supports Taiwan's membership in international organizations that do not require statehood as a condition of membership and encourages Taiwan's meaningful participation in international organizations where its membership is not possible. Taiwan and the United States belong to a number of the same international organizations, including the World Trade Organization, the Asia-Pacific Economic Cooperation forum, and the Asian Development Bank.

Foreign Representation
The United States maintains unofficial relations with the people on Taiwan through the American Institute in Taiwan, a private nonprofit corporation, which performs citizen and consular services similar to those at diplomatic posts. The Director of AIT is Christopher J. Marut. Other principal officials are listed on **AIT's site**.

Taiwan maintains the Taipei Economic and Cultural Representative Office in the United States at 4201 Wisconsin Avenue, NW, Washington, DC 20016 (tel: 202-895-1800).

More information about Taiwan is available from the Department of State and other sources, some of which are listed here:

Department of State Taiwan Page
CIA World Factbook Taiwan Page
History of U.S. Relations With Taiwan (see China)
Human Rights Reports
International Religious Freedom Reports
Trafficking in Persons Reports
Narcotics Control Reports
Investment Climate Statements
Office of the U.S. Trade Representative Countries Page
U.S. Census Bureau Foreign Trade Statistics
Export.gov International Offices Page
Travel and Business Information

OFM TAX EXEMPTION CARDS

The U.S. Department of State issues tax exemption cards to eligible foreign missions, accredited members and dependents on the basis of international law and reciprocity. These cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

✓ **YES** *most goods and services, hotel stays, and restaurant meals (subject to restrictions)*

× **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to OFM)*

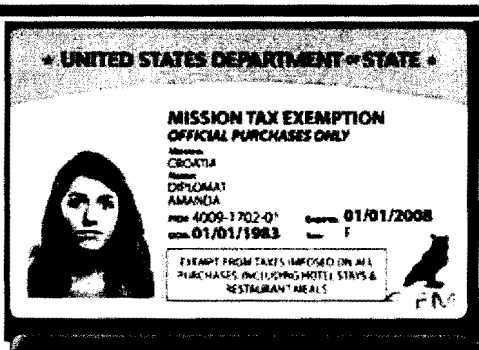
Please verify the validity of a tax exemption card at **https://ofmapps.state.gov/tecv/** or by contacting the **Office of Foreign Missions (OFM)** during business hours:

Washington, DC	(202) 895-3500 x2
Chicago	(312) 353-5762
Houston	(713) 272-2865
Los Angeles	(310) 235-6292
Miami	(305) 442-4943
New York	(646) 282-2825
San Francisco	(415) 744-2910

For more information, please visit **http://www.state.gov/ofm/tax.**

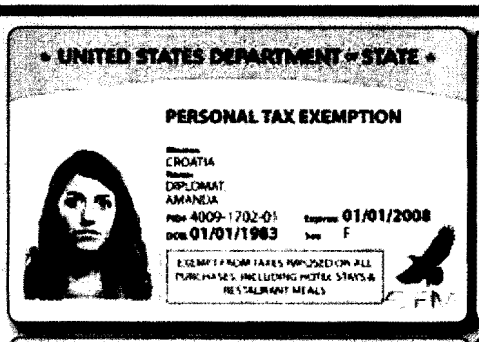
OFFICIAL PURCHASES

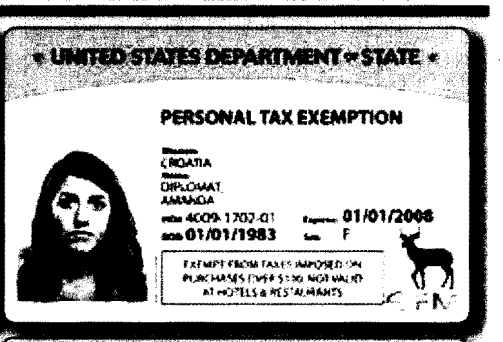
- Used by missions
- Payment in mission's name
- Individual pictured need not be present
- **OWL: no restrictions**
- **BUFFALO: some restrictions (please read card)**

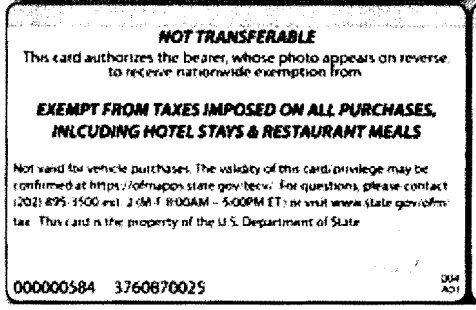


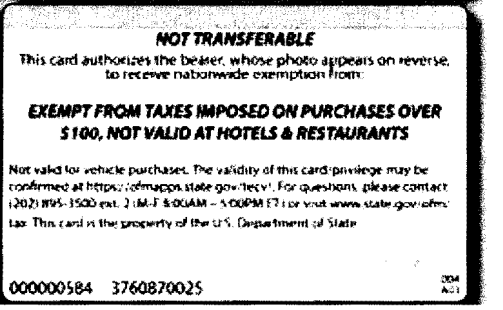
PERSONAL PURCHASES

- Not transferable
- Any form of payment
- For benefit of individual pictured
- **EAGLE: no restrictions**
- **DEER: some restrictions (please read card)**









AMERICAN INSTITUTE IN TAIWAN
TAX EXEMPTION CARDS

Under U.S. law, the Taipei Economic and Cultural Representative Office (TECRO), Taipei Economic and Cultural Offices (TECOs), their eligible employees and dependents are also eligible for tax exemption privileges. These privileges are authorized by the **American Institute in Taiwan (AIT)** and not the U.S. Department of State.

Please verify the validity of an AIT tax exemption card at **https://ofmapps.state.gov/tecv/** or by contacting AIT during business hours at **(703) 525-8474**.

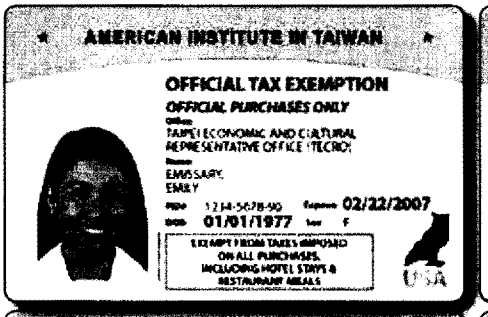
Like the other tax exemption cards, these cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

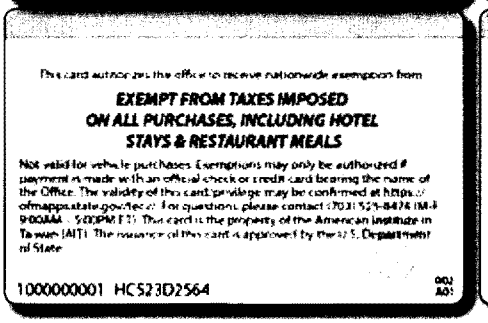
✓ **YES** *most goods and services, hotel stays, and restaurant meals*

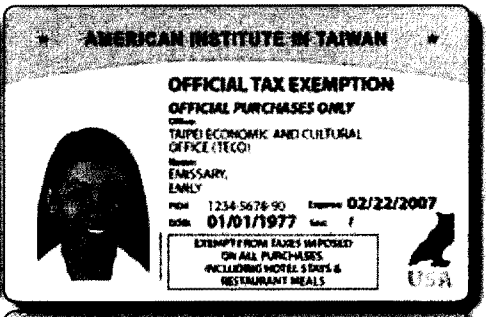
× **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to AIT)*

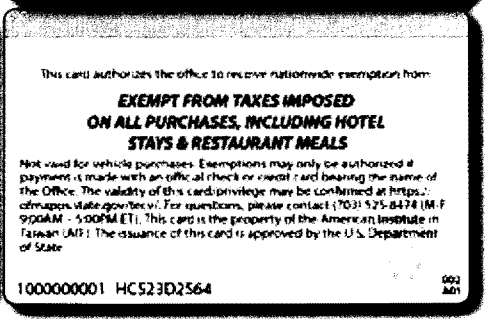
OFFICIAL PURCHASES

- Used by TECRO/TECO
- Payment in TECRO/TECO's name
- Individual pictured need not be present
- **OWL: no restrictions**



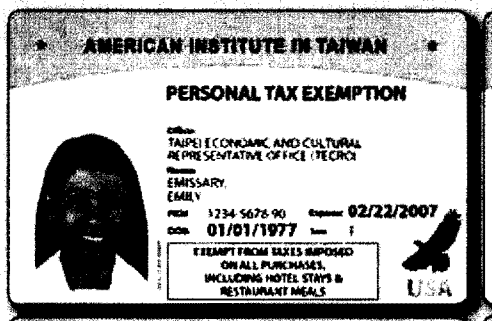


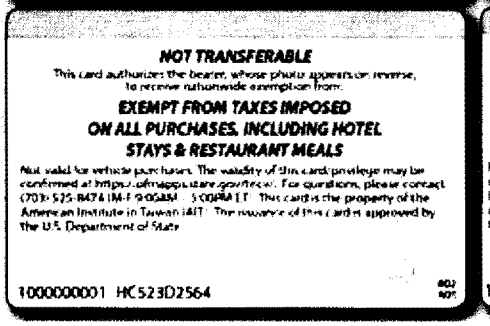


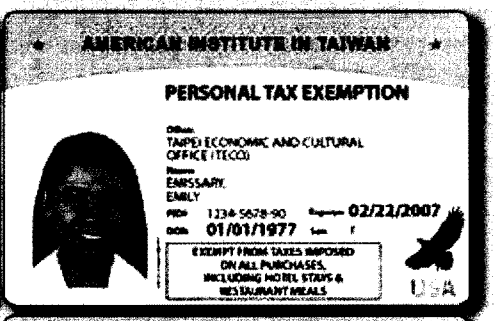


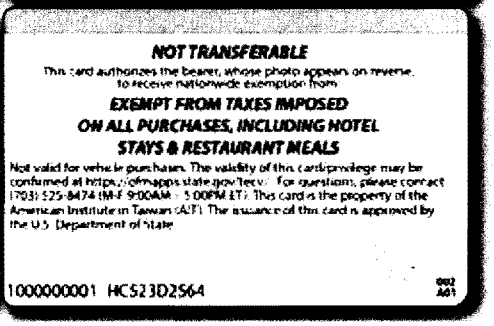
PERSONAL PURCHASES

- Not transferable
- Any form of payment
- For benefit of individual pictured
- **EAGLE: no restrictions**









Vehicle Tax Exemption

The Office of Foreign Missions (OFM) enforces the exemption of eligible foreign missions and their members from payment of any taxes when purchasing, leasing, registering or titling a vehicle. The following procedures are associated with requesting and obtaining a tax exemption on purchases or leases of official or personal motor vehicles by eligible foreign missions and their members in the United States. A "motor vehicle" is defined as any self-propelled vehicle, including but not limited to automobiles, motorcycles, boats, and aircraft.

The exemption of sales and use taxes imposed on purchases or leases of motor vehicles in the United States on the basis of the diplomatic or consular status or accreditation of the purchasing foreign mission or accredited mission member and their dependents is solely authorized via the issuance of a *Motor Vehicle Tax-Exemption Letter* by the Department's Office of Foreign Missions (OFM) to the seller or lessor of such motor vehicle. **Note that *Diplomatic Tax Exemption Cards* are not valid for exemption from taxes imposed on purchases of motor vehicles.**

Therefore, prior to finalizing a purchase or lease of a motor vehicle, all foreign missions and their accredited members must instruct the seller/lessor to directly contact OFM during normal business hours to request the issuance of a *Motor Vehicle Tax-Exemption Letter*.

Motor vehicle sellers/lessors may make such requests by electronic mail or telephone.

Sellers/lessors in Maryland, Virginia, or the District of Columbia should direct requests to **OFMTaxCustoms@state.gov** or (202) 895-3500, x2. Sellers/lessors outside this area should direct requests to the nearest **OFM Regional Office:**

- Chicago: **OFMCGCustomerService@state.gov** or (312) 353-5762
- Houston: **OFMHOCustomerService@state.gov** or (713) 272-2865
- Los Angeles: **OFMLACustomerService@state.gov** or (310) 235-6292
- Miami: **OFMMICustomerService@state.gov** or (305) 442-4943
- New York: **OFMNYCustomerService@state.gov** or (646) 282-2825
- San Francisco: **OFMSFCustomerService@state.gov** or (415) 744-2910

Sellers/lessors must provide the following information to OFM:

1. The seller/lessor's name, mailing address, and telephone and fax numbers;

2. The color, year, make, and model of the motor vehicle that the mission or accredited mission member is planning to acquire; and

3. For official motor vehicles: the name of the foreign mission that is purchasing or leasing a motor vehicle; or

4. For personal motor vehicles: the name (as it appears on their current "A or G series" visa) of the accredited mission member or their dependent who is purchasing or leasing a motor vehicle, the name of the foreign mission to which the individual is assigned, and the individual's Department-issued Personal Identification Number (PID). (Note that individuals must present proof of accreditation to the seller/lessor – i.e., valid passport which contains their current "A or G series" visa, or Department-issued protocol identification card, or Department-issued driver's license, or Department-issued Diplomatic Tax Exemption Card.)

OFM strives to transmit *Motor Vehicle Tax-Exemption Letters* to the requesting seller/lessor by either electronic mail or facsimile within two hours of receiving the request.

Sellers/lessors are required to send all original ownership documents directly to OFM so that the motor vehicle can be properly registered and titled. Auto dealerships and state motor vehicle administrations should treat this transaction as an out of state registration. OFM will issue a registration card and federal license plates once proper documentation is received. Also, a title will be sent to the indicated lien holder to protect the interest of the lender.

For more information on these procedures, see the **Department's note No. 12-331, dated December 3, 2012**

For more information on registration and titling, visit **http://www.state.gov/ofm/dmv/index.htm**.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1619

1619. Foreign Missions and Consuls.

(a) Application of Tax.

(1) Official Purchases – In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sole benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in the form of payment in the name of the foreign mission or representative office.

(2~~1~~) Personal Purchases - In General. ~~Neither sales t~~Tax does not~~nor use tax~~ apply~~ies~~ to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U. S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

(3) Tax applies to sales of tangible personal property to foreign missions or representatives offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U. S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(4~~2~~) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(4~~2~~) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), ~~the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of~~

~~a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~

~~Effective June 1, 2003,~~ the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if:

(A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and

(B) The retailer contacts and obtains directly from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ~~("OFM Eligibility Letter")~~.

For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code.

(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any transaction~~deduction~~ claimed as an exempt sale on its sales and use tax return~~s~~ for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). In addition, to support each transaction claimed as an exempt sale or lease of a vehicle ~~to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer.~~

~~Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above~~, the retailer must retain a copy of the Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax~~Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family~~.

Note: For special provisions affecting record retention, see Regulation 1698.

Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6272, 6352 and 7053, Revenue and Taxation Code; ~~and~~ Vienna Convention on Diplomatic Relations of April 18, 1961, a~~A~~rticle 34, ~~(~~23 U.S.T. 3242,~~)~~ T.I.A.S. No. 7502~~.~~; Vienna Convention on Consular Relations of April 24, 1963, article 49, ~~(~~21 U.S.T. 77~~)~~, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1619

Title: *Foreign Consuls*

Preparation: Monica Silva
Legal Contact: Monica Silva

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1619, *Foreign Consuls*, to make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.

History of Proposed Regulation:

October 27, 2015	Public Hearing
September 11, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
August 31, 2015	Notice to OAL
July 28, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Taxes Regulation 1619, *Foreign Consuls*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on September 11, 2015, 46 days prior to the public hearing.

November 5, 2015

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

OCTOBER 27, 2015

F PUBLIC HEARING

F1 PROPOSED AMENDMENTS TO

REGULATION 1619

FOREIGN CONSULS

Reported by: Juli Price Jackson

No. CSR 5214

Electronically signed by Juli Jackson (001-065-206-4972) b907374a-28dd-4005-9279-ca2048b975f8

1 P R E S E N T

2

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

4

5 Sen. George Runner (Ret.)
Vice-Chairman

6

7 Fiona Ma, CPA
Member

8

9 Diane L. Harkey
Member

10

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

14

Joann Richmond
15 Chief, Board
Proceedings Division

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18 ---oOo---

19 For the Department: Monica Silva
Legal Department
20 Tax Counsel III

21 Bradley Heller
Legal Department
22 Tax Counsel IV

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 OCTOBER 27, 2015
4 ---oOo---
5 MR. HORTON: Ms. Richmond, what is our next
6 matter?
7 MS. RICHMOND: Our next matter is item F,
8 we have a public hearing, item F1, Proposed
9 Amendments to Sales and Use Tax Regulation 1619,
10 Foreign Consuls.
11 MR. HORTON: Thank you.
12 Ms. Silva, will you please introduce the
13 issues?
14 MS. SILVA: Good afternoon. Monica Silva
15 and Bradley Heller here for the Legal Department for
16 this public hearing for proposed amendments to
17 Regulation 1619.
18 The proposed amendments make the regulation
19 consistent with current federal law regarding exempt
20 sales to foreign missions, representative offices,
21 their employees and their dependents.
22 We have no public comments for today's
23 hearing. Therefore, we request that the Board vote
24 to adopt the proposed amendments to Regulation 1619.
25 MR. RUNNER: Move -- move adoption.
26 MR. HORTON: Member Runner moves adoption,
27 Ms. Stowers seconds.
28 Without objection, such will be the order.

1 Thank you very much.
2 MS. SILVA: Thank you.
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1 REPORTER'S CERTIFICATE.

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, JULI PRICE JACKSON, Hearing Reporter for

8 the California State Board of Equalization certify

9 that on OCTOBER 27, 2015 I recorded verbatim, in

10 shorthand, to the best of my ability, the

11 proceedings in the above-entitled hearing; that I

12 transcribed the shorthand writing into typewriting;

13 and that the preceding pages 1 through 4 constitute

14 a complete and accurate transcription of the

15 shorthand writing.

16

17 Dated: NOVEMBER 2, 2015

18

19

20

21 JULI PRICE JACKSON

22 Hearing Reporter

23

24

25

26

27

28

Electronically signed by Juli Jackson (001-065-206-4972) b907374a-28dd-4005-9279-ca2048b975f8

2015 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, October 27, 2015

[C] SALES AND USE TAX APPEALS HEARING

C4 Valeriy Popov, 790387 (UT)
01/30/13, $1,440.00 Tax, $00.00 Penalty
C5 Nikolay Lomov, 781912 (UT)
02/08/13, $1,120.00 Tax, $00.00 Penalty
For Petitioner: Nadezhda Solovyeva, Representative
Vladimir Kofeynikov, Representative
For Sales and Use Tax Department: Kevin Smith, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether petitioner's purchase and use of the vehicle in California is subject to use tax.
Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board ordered that the petition be submitted for decision.

PUBLIC HEARINGS

F1 Proposed Adoption of Amendments to Sales and Use Tax Regulation 1619, *Foreign Consuls*

Monica Silva, Tax counsel, Tax & Fee's Program Division, Legal Department, and Bradley Heller, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents (Exhibit 10.1).

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

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulation 1619, as published.

Exhibits to these minutes are incorporated by reference.

SPECIAL PRESENTATION (CONTINUED)

Lavern Bush, Chairperson of Disability Advisory Committee (DAC) spoke on behalf of the recipients on the 2015 DAC of the Year Award. The award represents the goals and accomplishments for representing of the Board employees with disabilities which includes giving the employees the proper education of their rights under the American Disability Act.

Members gave there congratulations and expressed their appreciation to the award winners.

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

CYNTHIA BRIDGES
Executive Director

September 11, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1619, *Foreign Consuls*

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.) 1619, *Foreign Consuls*. The proposed amendments:

- Rename the regulation from "Foreign Consuls" to "Foreign Missions and Consuls" and add additional references to a federal treaty and diplomatic agreements relating to the American Institute in Taiwan (AIT) to the regulation's reference note;
- Add a new subdivision (a)(1) to the regulation entitled "Official Purchases – In General," to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, itself, to the extent that the such mission or representative office has been identified by the United States (U.S.) Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that an exemption for the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office;
- Renumber the first paragraph in current subdivision (a)(1) as subdivision (a)(2), add the title "Personal Purchases – In General" to the subdivision, and revise the subdivision to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States;

- Add references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel;
- Renumber the second paragraph in current subdivision (a)(1) of the regulation as subdivision (a)(3);
- Renumber current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a tax exemption card and exemption letter issued by the AIT, and remove obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including retailers' record-keeping requirements with respect to such sales;
- Add provisions to renumbered subdivision (a)(3) to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4);
- Clarify in subdivision (b) that a retailer shall retain evidence that the form of payment for purchases made as described in new proposed subdivision (a)(1) was made in the name of the foreign mission or representative office, and that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers); and
- Clarify in subdivision (b) that a retailer must retain a copy of a letter from the U.S. Department of State, Office of Foreign Missions or the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on October 27, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on October 27, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1619.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6272, 6352, and 7053; Vienna Convention on Diplomatic Relations of April 18, 1961, article 34, 23 U.S.T. 3242), T.I.A.S. No. 7502; Vienna Convention on Consular Relations

of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

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

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

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) The term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . . ." (RTC, § 6015, subd. (a)(1).) Also, retailers are generally required to keep all records necessary to determine their correct tax liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) and all records necessary for the proper completion of their sales and use tax returns. (RTC, § 7053; Reg. 1698.)

RTC section 6352 specifies that "[t]here are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State." Regulation 1619 currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the U.S Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation

1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

Office of Foreign Missions – Tax Exemption Cards
The U.S. Department of State's website explains that the Office of Foreign Missions (OFM) issues two types of diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale. (See Attachments A and B to the Initial Statement of Reasons.)

Mission Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. Also, all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission to be exempt from tax. (See Attachment A to the Initial Statement of Reasons.)

OFM will only issue mission tax exemption cards to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. However, individuals other than the person pictured on the exemption card may present the card when making purchases in the name of the mission. (See Attachment A to the Initial Statement of Reasons.)

Personal Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card. (See Attachment A to the Initial Statement of Reasons.)

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees; and

- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

In addition, other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR. (See Attachment A to the Initial Statement of Reasons.)

American Institute in Taiwan – Issues Tax Exemption Cards
The U.S. Department of State's website also explains that, in 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the AIT and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO). (See Attachment C to the Initial Statement of Reasons.)

Pursuant to federal law, TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. (Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014).) Such privileges are authorized by the AIT, not the OFM. (See Attachment D to the Initial Statement of Reasons.)

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for eligible TECRO and TECOs personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards. (See Attachment D to the Initial Statement of Reasons.)

Levels of Exemption
Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. (See Attachments A and B to the Initial Statement of Reasons.)_Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax

exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT. (See Attachment E to the Initial Statement of Reasons.)

OFM Assistance
OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at its website or by calling OFM during business hours. (See Attachment A to the Initial Statement of Reasons.)

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1619

Need for Clarification

In a December 16, 2014, letter addressed to the Board's Executive Director, the OFM notified the Board that the AIT issues tax exemption cards to certain eligible persons, as explained above, the AIT has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents, and that the policies regarding the use of AIT-issued tax exemption cards are the same as the policies for the OFM-issued tax exemption cards. The letter suggested that the Board issue a regulation, ruling, or statement mirroring the rules discussed above with respect to the tax exemption cards for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Based on the letter and a review of Regulation 1619, Board staff determined that there were issues with Regulation 1619 because:

- There were no specific references to exempt sales of tangible personal property other than vehicles to a foreign government consulate or mission, itself (i.e., official purchases);
- The regulation did not address the tax exemption for TECRO, TECOs, and their personal, or the tax exemption cards being issued by the AIT;
- There was obsolete language regarding exempt sales or leases of vehicles to individuals who do not hold a Personal Tax Exemption Card and missions that do not have a Mission Tax Exemption Card, prior to June 1, 2003; and
- There was a need to update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to conform to the requirements for the tax exemption for TECRO, TECOs, and their personal discussed above.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to Regulation 1619 to address the issues described above and a discussion paper to explain the draft amendments. Both were provided to interested parties.
On May 5, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting. However, staff did receive a May 5, 2015, email from Ms. Cheryl A. Cappiello Edson, Program Manager, Tax & Customs, Office of Foreign Missions, U.S. Department of State, after the interested parties meeting, which suggested adding citations to the following relevant treaty and diplomatic agreements relating to the AIT to the regulation's reference note: Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)). Therefore, BTC staff agreed to add the citations to the regulation's reference note.

BTC staff also received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to add provisions to the regulation regarding the type of payments that would be acceptable for official purchases by a foreign mission. It was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable and that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. BTC staff agreed to consider adding clarifying language to the draft amendments with respect to the acceptable types of payment.

Given the overall support for the draft amendments and the fact that BTC staff did not receive any written comments, other than the May 5, 2015, email, subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were cancelled.

July 28, 2015 Business Taxes Committee Meeting

Subsequently, BTC staff prepared Formal Issue Paper 15-006 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-006 recommended that the Board propose to change the name of Regulation 1619 from "Foreign Consuls" to "Foreign Missions and Consuls." The change to the title of the regulation was suggested by BTC staff as more inclusive of the proposed clarification regarding an exemption from sales or use tax for foreign missions (discussed below). The formal issue paper also recommended adding additional references to the treaty and diplomatic agreements relating to the AIT referred to in the May 5, 2015, email discussed above to Regulation 1619's reference note so that the regulation's reference note refers to the relevant treaties and the diplomatic agreements relating to the AIT that are being implemented, interpreted, and made specific by Regulation 1619.

The formal issue paper recommended that a new subdivision (a)(1), entitled "Official Purchases – In General," be added to the regulation to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, such as TECRO or a TECO, to the extent that the such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties or other diplomatic agreement with the United States, and specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as provided by federal law.

The formal issue paper recommended that the first paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(2), and entitled "Personal Purchases – In General." The formal issue paper recommended that renumbered subdivision (a)(2) be amended to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States, as provided by federal law. The formal issue paper also recommended adding references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.

Additionally, the formal issue paper recommended that the second paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(3). The formal issue paper recommended renumbering current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), updating the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter from the AIT, as currently provided by federal law, moving the regulation's current definition of "vehicle" to the end of renumbered subdivision (a)(4), and deleting the obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailers' record-keeping requirements with respect to such sales, from renumbered subdivision (a)(4) and current subdivision (b). The formal issue paper also recommended that renumbered subdivision (a)(3) be amended to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4).

Furthermore, the formal issue paper recommended that the Board propose amendments to updated and clarify subdivision (b) to reflect the documentation that retailers must currently have to establish that a transaction is exempt from sales and use tax under federal law. The recommended amendments clarify that a retailer shall retain evidence that the form of payment for purchases made as described in new subdivision (a)(1) was made in the name of the foreign mission or representative office, that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house

credits, or wire transfers), as provided by federal law, and clarify that a retailer must retain a copy of a letter from the U.S. Department of State, OFM or similar letter from the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

At the conclusion of the Board's discussion of Formal Issue Paper 15-006 during the July 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1619 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1619 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues referred to above and make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.

The Board anticipates that the proposed amendments to Regulation 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption. The Board has performed an evaluation of whether the proposed amendments to Regulation 1619 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1619 is the only state regulation that provides specific guidance to retailers regarding the proper application of RTC section 6352 to sales to foreign missions, representative offices, foreign consular officers, and employees of foreign missions and representative offices, and their dependents. In addition, the proposed amendments do implement, interpret, and make specific provisions in federal statues (22 U.S.C § 3301-3316) and a designation and determination published in the Federal Register (79 Fed.Reg. 16090 (March 24, 2014)); however, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1619 or the proposed amendments to Regulation 1619.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1619 will result in no direct or indirect cost

to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

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 1619 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 1619 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has determined that the proposed amendments to Regulation 1619 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 1619 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1619 will not affect the benefits of Regulation 1619 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 1619 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

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

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

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on October 27, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1619 during the October 27, 2015 Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1619. 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 1619 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1619, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1619 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 1619, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

JR:reb

Initial Statement of Reasons for

Proposed Amendments to California Code of Regulations,

Title 18, Section 1619, *Foreign Consuls*

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

Current Law

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

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

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) The term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . . ." (RTC, § 6015, subd. (a)(1).) Also, retailers are generally required to keep all records necessary to determine their correct tax liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) and all records necessary for the proper completion of their sales and use tax returns. (RTC, § 7053; Reg. 1698.)

RTC section 6352 specifies that "[t]here are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State." Regulation 1619, *Foreign Consuls*, currently implements, interprets, and makes specific RTC section 6352 as it applies to sales and leases of tangible personal property, including vehicles (as defined in RTC, § 6272), to certain persons affiliated with foreign consulates that have been identified by the United States (U.S)

Department of State as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also currently prescribes a retailer's general record keeping requirements in order to support any deduction claimed on sales tax returns for exempt sales to persons associated with foreign consulates.

Office of Foreign Missions – Tax Exemption Cards
The U.S. Department of State's website explains that the Office of Foreign Missions (OFM) issues two types of diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR),[1] Vienna Convention on Consular Relations (VCCR),[2] and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale. (Attachment A, Discussion of OFM Diplomatic Sales Tax Exemption Cards from U.S. Department of State's Website, and Attachment B, Discussion of Diplomatic Tax Exemptions from U.S. Department of State's Website.)

Mission Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. Also all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission to be exempt from tax. (Attachment A.)

OFM will only issue mission tax exemption cards to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. However, individuals other than the person pictured on the exemption card may present the card when making purchases in the name of the mission. (Attachment A.)

Personal Tax Exemption Cards
OFM issued diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card. (Attachment A.)

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers,

[1] The VCDR provides for the establishment of permanent diplomatic missions.
[2] The VCCR provides for consular functions (as defined) to be exercised by consular officers.

and consular employees; and

- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

In addition, other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR. (Attachment A.)

American Institute in Taiwan – Issues Tax Exemption Cards
The U.S. Department of State's website also explains that, in 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the American Institute in Taiwan (AIT) and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO). (Attachment C, Discussion of U.S. Relations with Taiwan from U.S. Department of State's Website.)

Pursuant to federal law,[3] TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. Such privileges are authorized by the AIT, not the OFM. (Attachment D, December 2014, Tax Exemption Card Flyer from U.S. Department of State's Website.)

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for eligible TECRO and TECOs personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards. (Attachment D.)

Levels of Exemption
Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. (Attachments A and B.) Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the

[3] Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

OFM or AIT. With respect to the sales and use tax exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT. (Attachment E, Discussion of Vehicle Tax Exemption from U.S. Department of State's Website.)

OFM Assistance
OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at its website or by calling OFM during business hours. (Attachment A.)

Proposed Amendments

Need for Clarity

In a December 16, 2014, letter addressed to the Board's Executive Director, the OFM notified the Board that the AIT issues tax exemption cards to certain eligible persons, as explained above, the AIT has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents, and that the policies regarding the use of AIT-issued tax exemption cards are the same as the policies for the OFM-issued tax exemption cards. The letter suggested that the Board issue a regulation, ruling, or statement mirroring the rules discussed above with respect to the tax exemption for TECRO, TECOs, and their personnel, "particularly in light of the presence of TECO offices in both Los Angeles and San Francisco." The letter also suggested that the Board revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Based on the letter from OFM and a review of Regulation 1619, Board staff determined that there were issues (or problems within the meaning Gov. Code section 11346.2, subd. (b)) with Regulation 1619 because:

- There were no specific references to exempt sales of tangible personal property other than vehicles to a foreign government consulate or mission, itself (i.e., official purchases);
- The regulation did not address the tax exemption for TECRO, TECOs, and their personnel, or the tax exemption cards being issued by the AIT;
- There was obsolete language regarding exempt sales or leases of vehicles to individuals who do not hold a Personal Tax Exemption Card and missions that do not have a Mission Tax Exemption Card, prior to June 1, 2003; and
- There was a need to update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to conform to the requirements for the tax exemption for TECRO, TECOs, and their personnel discussed above.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to Regulation 1619 to address the issues described above and a discussion paper to explain the draft amendments. Both were provided to interested parties.

On May 5, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting. However, staff did receive a May 5, 2015, email from Ms. Cheryl A. Cappiello Edson, Program Manager, Tax & Customs, Office of Foreign Missions, U.S. Department of State, after the interested parties meeting, which suggested adding citations to the following relevant treaty and diplomatic agreements relating to the AIT to the regulation's reference note: Vienna Convention on Consular Relations of April 24, 1963, article 49, 21 U.S.T. 77, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)). Therefore, BTC staff agreed to add the citations to the regulation's reference note.

BTC staff also received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to add provisions to the regulation regarding the type of payments that would be acceptable for official purchases by a foreign mission. It was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable and that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. BTC staff agreed to consider adding clarifying language to the draft amendments with respect to the acceptable types of payment.

Given the overall support for the draft amendments and the fact that BTC staff did not receive any written comments, other than the May 5, 2015, email, subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were cancelled.

July 28, 2015 Business Taxes Committee Meeting

Subsequently, BTC staff prepared Formal Issue Paper 15-006 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-006 recommended that the Board propose to change the name of Regulation 1619 from "Foreign Consuls" to "Foreign Missions and Consuls." The change to the title of the regulation was suggested by BTC staff as more inclusive of the proposed clarification regarding an exemption from sales or use tax for foreign missions (discussed below). The formal issue paper also recommended adding additional references to the treaty and diplomatic agreements relating to the AIT referred to in the May 5, 2015, email discussed above to Regulation 1619's reference note so that the regulation's reference note refers to the relevant treaties and the diplomatic agreements relating to the AIT that are being implemented, interpreted, and made specific by Regulation 1619.

The formal issue paper recommended that a new subdivision (a)(1), entitled "Official Purchases – In General," be added to the regulation to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office, such as TECRO or a TECO, to the extent that the such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax pursuant to treaties

or other diplomatic agreement with the United States, and specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office, as provided by federal law.

The formal issue paper recommended that the first paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(2), and entitled "Personal Purchases – In General." The formal issue paper recommended that renumbered subdivision (a)(2) be amended to clarify that sales or use tax does not apply to the sale or lease of tangible personal property sold or leased to a representative office's employees and members of their families, to the extent that such persons have been identified by the AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States, as provided by federal law. The formal issue paper also recommended adding references to new subdivision (a)(1) and renumbered subdivision (a)(2) regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.

Additionally, the formal issue paper recommended that the second paragraph in current subdivision (a)(1) of the regulation be renumbered as subdivision (a)(3). The formal issue paper recommended renumbering current subdivision (a)(2), which is entitled "Vehicles," as subdivision (a)(4), updating the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of a "valid" tax exemption card and exemption letter from the AIT, as currently provided by federal law, moving the regulation's current definition of "vehicle" to the end of renumbered subdivision (a)(4), and deleting the obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailers' record-keeping requirements with respect to such sales, from renumbered subdivision (a)(4) and current subdivision (b). The formal issue paper also recommended that renumbered subdivision (a)(3) be amended to clarify that tax does apply to sales of tangible personal property to foreign missions or representatives offices or to a representative office's employees and members of their families who do not hold a Tax Exemption Card issued by the U. S. Department of State or the AIT, except as provided in renumbered subdivision (a)(4).

Furthermore, the formal issue paper recommended that the Board propose amendments to update and clarify subdivision (b) to reflect the documentation that retailers must currently have to establish that a transaction is exempt from sales and use tax under federal law. The recommended amendments clarify that a retailer shall retain evidence that the form of payment for purchases made as described in new subdivision (a)(1) was made in the name of the foreign mission or representative office, that such payments may include official checks, official credit cards, or electronic funds transfers (automated clearing house debits, automated clearing house credits, or wire transfers), as provided by federal law, and clarify that a retailer must retain a copy of a letter from the U.S. Department of State, OFM or similar letter from the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax that the retailer is required to obtain under federal law.

At the conclusion of the Board's discussion of Formal Issue Paper 15-006 during the July 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1619 recommended in the formal issue paper. The Board determined that the

proposed amendments to Regulation 1619 are reasonably necessary for the specific purpose of clarifying and updating the regulation to specifically address the issues (or problems) referred to above and make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.[4] The Board anticipates that the proposed amendments to Regulation 1619 will promote fairness and benefit foreign missions, representative offices, and their respective representatives and employees as well as retailers, Board staff, and the Board by providing updated guidance about how the exemption provided by RTC section 6352 applies and what identification and documents must be provided to the retailer and retained by the retailer for purposes of claiming the exemption.

The proposed amendments to Regulation 1619 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1619 or the proposed amendments to Regulation 1619.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-006, and the exhibits to the issue paper, including the December 16, 2014, letter to the Board's Executive Director referred to above, in deciding to propose the amendments to Regulation 1619 described above during its July 28, 2015, BTC meeting.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1619 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1619 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 1619 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)

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[4] This specifically includes the VCDR, VCCR, Taiwan Relations Act (22 U.S.C. §§ 3301-3316), Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013, and Designation and Determination under the Foreign Missions Act, dated March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)), discussed above.

Article 6, clause 2 of the U.S. Constitution provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" ("Supremacy Clause"). Therefore, federal law, including treaties, generally supersedes California law, and the exemption provided by RTC section 6352 generally ensures that California sales and use tax is not imposed on transactions that are exempt from sales and use tax under federal law.

The proposed amendments overall clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State or the AIT as exempt from the tax, add provisions regarding tax exemption cards issued by the AIT, delete obsolete language regarding the purchase or lease of vehicles prior to June 1, 2003, and clarify the type of documents retailers are currently required to retain for purposes of determining that tax does not apply to purchases made by a foreign mission or representative office or its employees.

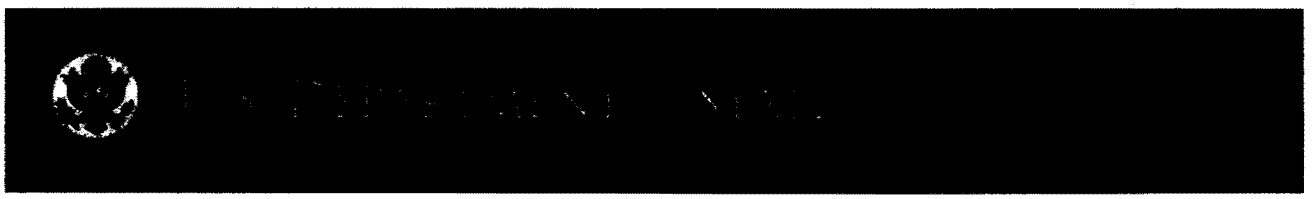
As a result, the proposed amendments make Regulation 1619 consistent with federal law, but they do not establish any new exemptions or require retailers to maintain any documentation that they would not be required to obtain under current federal law or retain under current California law. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by federal law, the Sales and Use Tax Law, or Regulations 1619 and 1698, *Records*, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1619 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1619 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1619 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 1619 will not affect the benefits of Regulation 1619 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 1619 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1619 may affect small businesses.



Sales Tax Exemption

Diplomatic Sales Tax Exemption Cards
Types of Sales Tax Exemption Cards
Levels of Exemption
Types of Purchases Permitted and Not Permitted
State-Specific Rules, Including Streamlined Sales Tax Agreement
OFM Assistance with Refunds or Rejections
How to Apply for a Tax Exemption Card
Return of the Tax Exemption Card
Misuse of Tax Exemption Card

DIPLOMATIC SALES TAX EXEMPTION CARDS

The Department's Office of Foreign Missions (OFM) issues diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents on the basis of international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide relief from certain taxes.

The cards provide point-of-sale exemption from sales tax and other similarly imposed taxes throughout the United States. At the time of payment when making a purchase, the cardholder must present the card to the vendor in person. The vendor may verify the card's validity at **https://ofmapps.state.gov/tecv/** or by calling OFM during business hours. The vendor should retain a copy of the front and back of the card for accounting and reporting purposes.

TYPES OF SALES TAX EXEMPTION CARDS

MISSION TAX EXEMPTION CARDS

Diplomatic tax exemption cards that are labeled as "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales and other similarly imposed taxes on purchases in the United States that are necessary for the mission's operations and functions. All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission.

OFM will only issue mission tax exemption cards to an individual who (i) is a principal member or employee of the mission, (ii) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (iii) is not considered to be "permanently resident in" the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. This individual, however, does not need to be present when purchases are made in the name of the mission.

PERSONAL TAX EXEMPTION CARDS

Diplomatic tax exemption cards that are labeled as "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption fror sales and other similarly imposed taxes on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with the card.

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither U.S. nationals nor permanently resident in the United States for purposes of the VCDR or VCCR:

- individuals accredited as diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees;
- the members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.

Other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR.

*Note that employees (and their dependents) of international organizations and the Permanent Missions to the United Nations and Organization of American States who have been granted the privileges and immunities accorded to diplomatic agents are eligible for personal tax exemption cards. These unrestricted personal tax exemption cards facilitate the United States in honoring its obligations under relevant treaties to provide relief from certain taxes.

LEVELS OF EXEMPTION

Not all missions and personnel hold diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized on the card. This level of exemption is set by OFM on the basis of reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in that foreign country. Foreign missions interested in discussing improvements to their tax exemption benefits are encouraged to contact OFM.

The cards contain text on the front and back of the card that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both.

In addition to the specific text, each tax exemption card bears one of four animal symbols indicating the specific type of tax exemption of the cardholder:

- Owl: *mission* tax exemption cards with unrestricted tax exemption.
- Buffalo: *mission* tax exemption cards with some degree of restriction.
- Eagle: *personal* tax exemption cards with unrestricted tax exemption.
- Deer: *personal* tax exemption cards with some degree of restriction.

TYPES OF PURCHASES PERMITTED AND NOT PERMITTED

Diplomatic tax exemption cards can generally be used to obtain exemption in person and at point-of-sale from sales taxes and other similarly imposed taxes on purchases of most goods and services, hotel stays, and restaurant meals in the United States. For specific policies and procedures concerning using official and personal tax exemption cards for hotel stays and lodging, missions and personnel should refer to the Department's note No. 13-619, dated July 19, 2013.

Tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. Exemption from taxes on these items is authorized using different means, which are explained at **http://www.state.gov/ofm/tax**.

Furthermore, because the nature of purchases made via the internet or by telephone does not allow for the presentation of the tax exemption card to the vendor, the card cannot be honored in such transactions. OFM is unable to provide any assistance to foreign missions or their members in obtaining an exemption or reimbursement of taxes charged on purchases not made in-store.

STATE-SPECIFIC RULES, INCLUDING STREAMLINED SALES TAX AGREEMENT

U.S. states and territories typically enact statutes and/or regulations or issue other guidance concerning the manner in which vendors in that state or territory must accoun for the diplomatic tax exemption in its records. OFM continues its efforts to ensure that tax authorities in all states and territories issue guidance supporting the diplomatic tax exemption card program so that vendors will appropriately extend a tax exemption with confidence.

Some U.S. states require their vendors to retain additional documentation in addition to a copy of the tax exemption card. For example, certain states require foreign missions and their members to complete a streamlined sales tax agreement exemption certificate. OFM has compiled relevant state guidance on its website at **http://www.state.gov/ofm/tax/sales/c63020.htm**. This may be particularly useful for foreign mission members who are traveling and expect to use the tax exemption card outside of their usual jurisdiction.

OFM ASSISTANCE WITH REFUNDS OR REJECTIONS

Missions and their members should encourage vendors to verify the card's validity at https://ofmapps.state.gov/tecv/ or by calling OFM during business hours. If a vendor is not familiar with the diplomatic tax exemption card program, they should be encouraged to visit the OFM website at **http://www.state.gov/ofm**; and especially **http://www.state.gov/ofm/tax/sales/c63020.htm**, which provides relevant state-specific guidance; or e-mail OFM for more information about the program. OFM regularly communicates with vendors to educate them about the program.

If the transaction occurs after OFM business hours, and the vendor does not accept the card, OFM will attempt to assist the mission or member in obtaining refunds of improperly imposed taxes (if more than a de minimis amount) by speaking to the vendor, but a refund cannot be guaranteed.

HOW TO APPLY FOR A TAX EXEMPTION CARD

To apply for an initial or renewal tax exemption card, eligible missions and their members should submit an application on the Department's E-Government (E-Gov) system. Applications are generally processed within five business days.

If a card is lost or stolen and the mission or member wishes to apply for a replacement card, a diplomatic note or letter must be uploaded in E-Gov (in pdf or jpg format) which explains when and where the card in question was lost or stolen. The replacement card application may be held for 30 days before it is processed.

Tax exemption cards are printed by the U.S. Government Printing Office at its facility in Washington and mailed via the U.S. Postal Service to the cardholder's residential address. Consequently, it is important that all individuals ensure that their addresses are correct with OFM.

RETURN OF TAX EXEMPTION CARDS

All tax exemption cards are the property of the U.S. government and must be returned to OFM when they have expired or been recalled, or when the cardholder's employment or assignment with a foreign mission has been terminated. When a mission member is terminated at one location and reaccredited at another location in the United States, his or her tax exemption card will be terminated. Therefore, he or she must return that card and apply for a new one.

If tax exemption cards are not returned to the Department, OFM reserves the right to take appropriate action, which may include temporarily suspending the issuance of new tax exemption cards to that mission.

Tax exemption cards should be delivered to OFM's Customer Service Center at 3507 International Place NW, Washington, DC 20522, or the nearest OFM regional office (New York, Miami, Chicago, Houston, San Francisco, or Los Angeles).

MISUSE OF TAX EXEMPTION CARD

Noncompliance with the rules stated herein constitutes misuse of the card, which is a serious offense. In the event of misuse, OFM will take appropriate action, which ma include: invalidating and recalling the card, delaying the issuance of new cards, and notifying law enforcement authorities.

Foreign missions, personnel, and vendors may contact OFM in Washington at **OFMTaxCustoms@state.gov** or (202) 895-3500 ext. 2. Anyone located outside of the Washington, DC, metropolitan area may contact the nearest OFM Regional Office. Information concerning OFM's regional offices is available at **www.state.gov/ofm/ro/**.

Diplomatic Tax Exemptions

In 1982, Congress passed the Foreign Missions Act, 22 U.S.C. 4301-4316, which created a new office in the United States Department of State. This office is called the Office of Foreign Missions (OFM). The purpose of OFM is to serve the foreign diplomatic and consular communities stationed in the United States, and to control their activities. All services are based on the principle of reciprocity. In other words, no privileges are granted to a foreign official here unless United States Embassy and Consular personnel receive the equivalent privileges in that country.

OFM responsibilities include the Diplomatic Tax Exemption Program, which provides sales and use, occupancy, food, airline, gas, and utility tax exemptions to eligible foreign officials on assignment in the United States. Tax exemption privileges for foreign diplomats, consular officers, and staff members are generally based on two treaties: the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. These treaties have been ratified by the United States and are the supreme law of the land under Article VI of the Constitution.

Not all foreign missions and their personnel are entitled to tax exemption, because this privilege is based on reciprocity and not all foreign countries grant such tax exemption to American Embassies and personnel.

*Note that diplomatic tax exemption cards are issued on the basis of international law and treaties to eligible international organizations and the Permanent Missions to the United Nations and Organization of American States, and to employees (and their dependents) of such offices who have been granted the privileges and immunities accorded to diplomatic agents.

Questions concerning bookkeeping requirements should be directed to the appropriate City or State Department of Revenue. Any questions regarding the eligibility of diplomatic or consular officers for sales and use tax exemption should be directed to the Office of Foreign Missions by electronic mail at **OFMTaxCustoms@state.gov** or:

Office of Foreign Missions
3507 International Place, NW
Washington, DC 20522-3303
(202) 695-3500

Office of Foreign Missions
Chicago Regional Office
77 W. Jackson Blvd, Ste 2122
Chicago, IL 60604-1503
(312) 353-5762

Office of Foreign Missions
Houston Regional Office
8701 S. Gessner Suite 906
Houston, Texas 77074
(713) 272-2865

Office of Foreign Missions
Los Angeles Regional Office
10940 Wilshire Blvd, Ste 1425
Los Angeles, CA 90024
(310) 235-6292

Office of Foreign Missions
Miami Regional Office
95 Merrick Way, Suite 505
Coral Gables, FL 33134
(305) 442-4943

Office of Foreign Missions
New York Regional Office
799 United Nations Plaza, 8th floor
New York, NY 10017
(646) 282-2825

Office of Foreign Missions
San Francisco Regional Office
One Market, Spear Tower, Suite 1375

San Francisco, CA 94105-1839
(415) 744-2910

U.S. Relations With Taiwan

BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS
Fact Sheet
February 12, 2015

More information about Taiwan is available on the Taiwan Page and from other Department of State publications and other sources listed at the end of this fact sheet.

U.S.-TAIWAN RELATIONS

The United States and Taiwan enjoy a robust unofficial relationship. The 1979 U.S.-P.R.C. Joint Communique switched diplomatic recognition from Taipei to Beijing. In the Joint Communique, the United States recognized the Government of the People's Republic of China as the sole legal government of China, acknowledging the Chinese position that there is but one China and Taiwan is part of China. The Joint Communique also stated that the people of the United States will maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The American Institute in Taiwan (AIT) is responsible for implementing U.S. policy toward Taiwan.
The United States does not support Taiwan independence. Maintaining strong, unofficial relations with Taiwan is a major U.S. goal, in line with the U.S. desire to further peace and stability in Asia. The 1979 Taiwan Relations Act provides the legal basis for the unofficial relationship between the United States and Taiwan, and enshrines the U.S. commitment to assist Taiwan in maintaining its defensive capability. The United States insists on the peaceful resolution of cross-Strait differences, opposes unilateral changes to the status quo by either side , and encourages dialogue to help advance such an outcome.

U.S. Assistance to Taiwan
U.S. development assistance to Taiwan in the 1950s and 1960s helped Taiwan create the prosperous economy it enjoys today. Currently, the United States provides no development assistance to Taiwan.

Economic Relations
The United States has maintained and enhanced its commercial ties with Taiwan since 1979. Taiwan is the United States' 10th largest trading partner, and the United States is Taiwan's largest foreign investor. Taiwan enjoys Export-Import Bank financing, Overseas Private Investment Corporation guarantees, normal trade relations status, and ready access to U.S. markets. AIT has been engaged in a series of trade discussions that have focused on protection of intellectual property rights and market access for U.S. goods and services. The United States has a trade and investment framework agreement with Taiwan under the auspices of AIT and the Taipei Economic and Cultural Representative Office in the United States.

Taiwan's Membership in International Organizations
The United States supports Taiwan's membership in international organizations that do not require statehood as a condition of membership and encourages Taiwan's meaningful participation in international organizations where its membership is not possible. Taiwan and the United States belong to a number of the same international organizations, including the World Trade Organization, the Asia-Pacific Economic Cooperation forum, and the Asian Development Bank.

Foreign Representation
The United States maintains unofficial relations with the people on Taiwan through the American Institute in Taiwan, a private nonprofit corporation, which performs citizen and consular services similar to those at diplomatic posts. The Director of AIT is Christopher J. Marut. Other principal officials are listed on **AIT's site**.

Taiwan maintains the Taipei Economic and Cultural Representative Office in the United States at 4201 Wisconsin Avenue, NW, Washington, DC 20016 (tel: 202-895-1800).

More information about Taiwan is available from the Department of State and other sources, some of which are listed here:

Department of State Taiwan Page
CIA World Factbook Taiwan Page
History of U.S. Relations With Taiwan (see China)
Human Rights Reports
International Religious Freedom Reports
Trafficking in Persons Reports
Narcotics Control Reports
Investment Climate Statements
Office of the U.S. Trade Representative Countries Page
U.S. Census Bureau Foreign Trade Statistics
Export.gov International Offices Page
Travel and Business Information

OFM TAX EXEMPTION CARDS

The U.S. Department of State issues tax exemption cards to eligible foreign missions, accredited members and dependents on the basis of international law and reciprocity. These cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

✓ **YES** *most goods and services, hotel stays, and restaurant meals (subject to restrictions)*

× **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to OFM)*

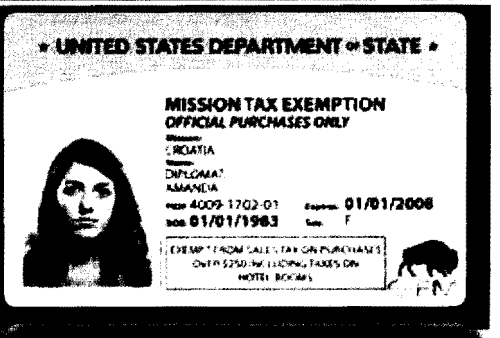
Please verify the validity of a tax exemption card at **https://ofmapps.state.gov/tecv/** or by contacting the **Office of Foreign Missions (OFM)** during business hours:

Washington, DC	(202) 895-3500 x2
Chicago	(312) 353-5762
Houston	(713) 272-2865
Los Angeles	(310) 235-6292
Miami	(305) 442-4943
New York	(646) 282-2825
San Francisco	(415) 744-2910

For more information, please visit **http://www.state.gov/ofm/tax.**

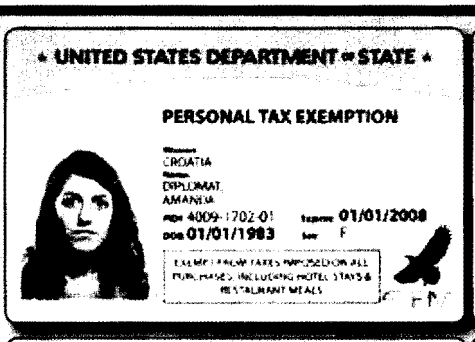
OFFICIAL PURCHASES

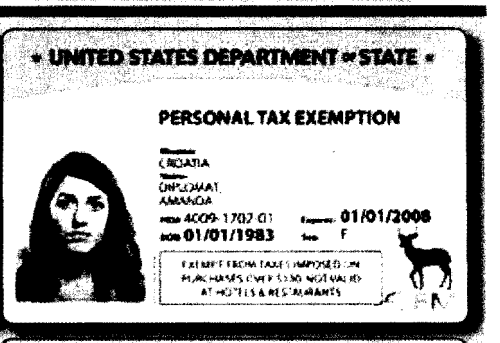
- Used by missions
- Payment in mission's name
- Individual pictured need not be present
- **OWL: no restrictions**
- **BUFFALO: some restrictions (please read card)**

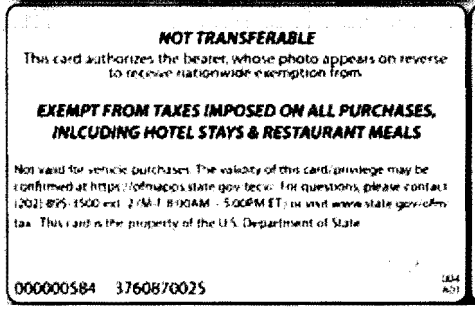


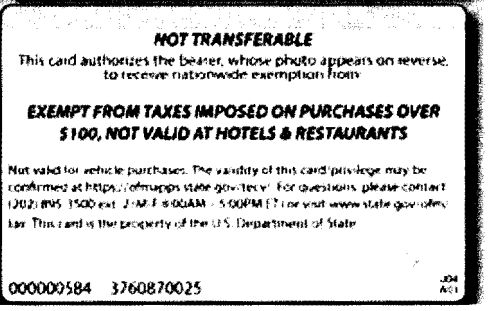
PERSONAL PURCHASES

- Not transferable
- Any form of payment
- For benefit of individual pictured
- **EAGLE: no restrictions**
- **DEER: some restrictions (please read card)**









AMERICAN INSTITUTE IN TAIWAN
TAX EXEMPTION CARDS

Under U.S. law, the Taipei Economic and Cultural Representative Office (TECRO), Taipei Economic and Cultural Offices (TECOs), their eligible employees and dependents are also eligible for tax exemption privileges. These privileges are authorized by the **American Institute in Taiwan (AIT)** and not the U.S. Department of State.

Please verify the validity of an AIT tax exemption card at **https://ofmapps.state.gov/tecv/** or by contacting AIT during business hours at **(703) 525-8474.**

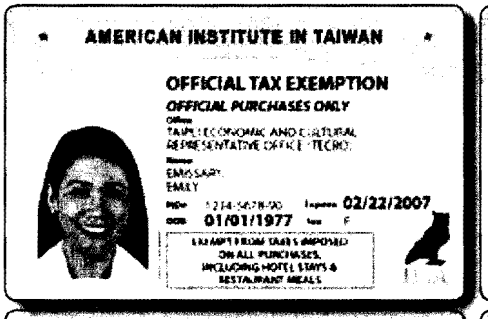
Like the other tax exemption cards, these cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

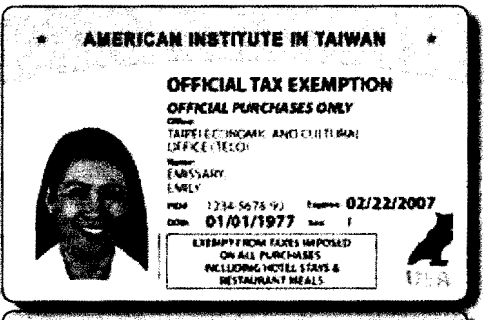
✓ **YES** *most goods and services, hotel stays, and restaurant meals*

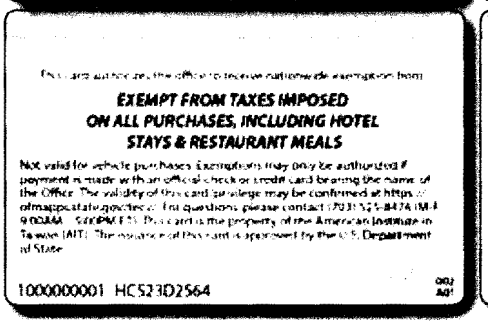
× **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to AIT)*

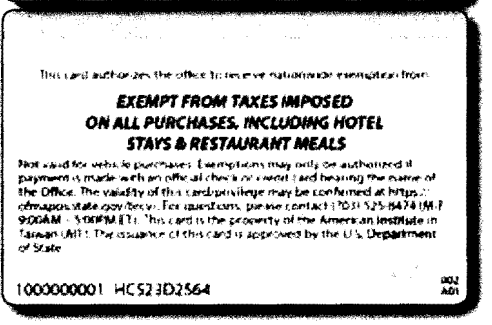
OFFICIAL PURCHASES

- Used by TECRO/TECO
- Payment in TECRO/TECO's name
- Individual pictured need not be present
- **OWL: no restrictions**



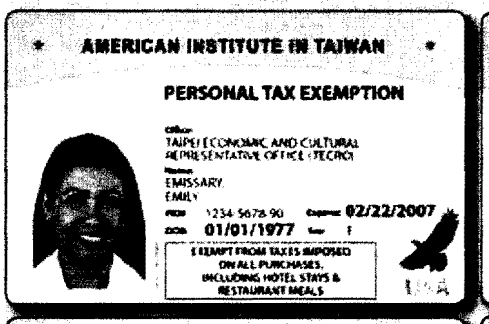


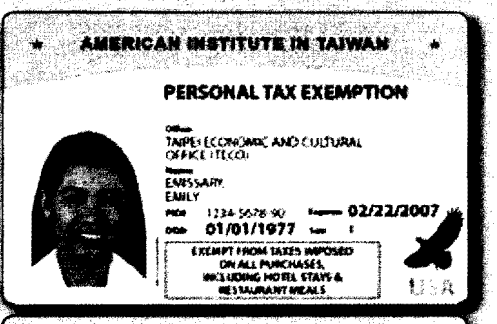


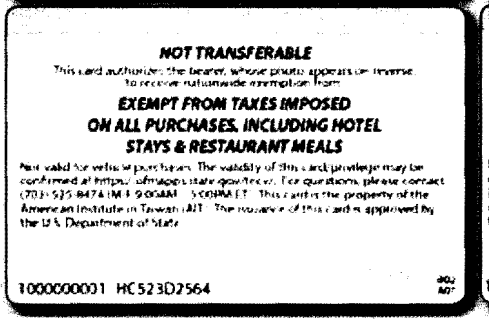


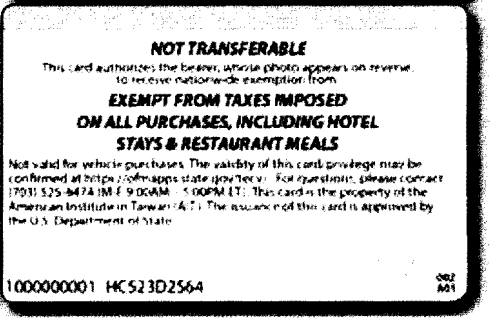
PERSONAL PURCHASES

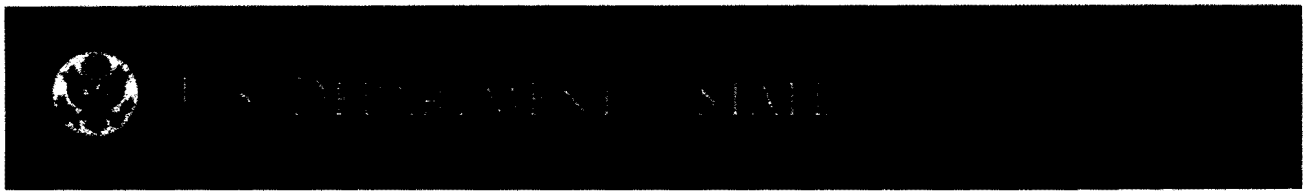
- Not transferable
- Any form of payment
- For benefit of individual pictured
- **EAGLE: no restrictions**











Vehicle Tax Exemption

The Office of Foreign Missions (OFM) enforces the exemption of eligible foreign missions and their members from payment of any taxes when purchasing, leasing, registering or titling a vehicle. The following procedures are associated with requesting and obtaining a tax exemption on purchases or leases of official or personal motor vehicles by eligible foreign missions and their members in the United States. A "motor vehicle" is defined as any self-propelled vehicle, including but not limited to automobiles, motorcycles, boats, and aircraft.

The exemption of sales and use taxes imposed on purchases or leases of motor vehicles in the United States on the basis of the diplomatic or consular status or accreditation of the purchasing foreign mission or accredited mission member and their dependents is solely authorized via the issuance of a *Motor Vehicle Tax-Exemption Letter* by the Department's Office of Foreign Missions (OFM) to the seller or lessor of such motor vehicle. **Note that *Diplomatic Tax Exemption Cards* are not valid for exemption from taxes imposed on purchases of motor vehicles.**

Therefore, prior to finalizing a purchase or lease of a motor vehicle, all foreign missions and their accredited members must instruct the seller/lessor to directly contact OFM during normal business hours to request the issuance of a *Motor Vehicle Tax-Exemption Letter*.

Motor vehicle sellers/lessors may make such requests by electronic mail or telephone.

Sellers/lessors in Maryland, Virginia, or the District of Columbia should direct requests to **OFMTaxCustoms@state.gov** or (202) 895-3500, x2. Sellers/lessors outside this area should direct requests to the nearest **OFM Regional Office:**

- Chicago: **OFMCGCustomerService@state.gov** or (312) 353-5762
- Houston: **OFMHOCustomerService@state.gov** or (713) 272-2865
- Los Angeles: **OFMLACustomerService@state.gov** or (310) 235-6292
- Miami: **OFMMICustomerService@state.gov** or (305) 442-4943
- New York: **OFMNYCustomerService@state.gov** or (646) 282-2825
- San Francisco: **OFMSFCustomerService@state.gov** or (415) 744-2910

Sellers/lessors must provide the following information to OFM:

1. The seller/lessor's name, mailing address, and telephone and fax numbers;

2. The color, year, make, and model of the motor vehicle that the mission or accredited mission member is planning to acquire; and

3. For official motor vehicles: the name of the foreign mission that is purchasing or leasing a motor vehicle; or

4. For personal motor vehicles: the name (as it appears on their current "A or G series" visa) of the accredited mission member or their dependent who is purchasing or leasing a motor vehicle, the name of the foreign mission to which the individual is assigned, and the individual's Department-issued Personal Identification Number (PID). (Note that individuals must present proof of accreditation to the seller/lessor -- i.e., valid passport which contains their current "A or G series" visa, or Department-issued protocol identification card, or Department-issued driver's license, or Department-issued Diplomatic Tax Exemption Card.)

OFM strives to transmit *Motor Vehicle Tax-Exemption Letters* to the requesting seller/lessor by either electronic mail or facsimile within two hours of receiving the request.

Sellers/lessors are required to send all original ownership documents directly to OFM so that the motor vehicle can be properly registered and titled. Auto dealerships and state motor vehicle administrations should treat this transaction as an out of state registration. OFM will issue a registration card and federal license plates once proper documentation is received. Also, a title will be sent to the indicated lien holder to protect the interest of the lender.

For more information on these procedures, see the **Department's note No. 12-331, dated December 3, 2012**

For more information on registration and titling, visit **http://www.state.gov/ofm/dmv/index.htm**.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1619

1619. Foreign Missions and Consuls.

(a) Application of Tax.

(1) Official Purchases – In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sole benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in the form of payment in the name of the foreign mission or representative office.

(2~~1~~) Personal Purchases - In General. ~~Neither sales t~~Tax does not~~nor use tax~~ apply~~ies~~ to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U. S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

(3) Tax applies to sales of tangible personal property to foreign missions or representatives offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U. S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(4~~2~~) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(4~~2~~) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), ~~the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of~~

~~a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~

~~Effective June 1, 2003,~~ the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if:

(A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and

(B) The retailer contacts and obtains directly from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ~~("OFM Eligibility Letter")~~.

For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code.

(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any transaction~~deduction~~ claimed as an exempt sale on its sales and use tax returns for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). In addition, to support each transaction claimed as an exempt sale or lease of a vehicle ~~to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer.~~

~~Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above~~, the retailer must retain a copy of the Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax~~Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family~~.

Note: For special provisions affecting record retention, see Regulation 1698.

Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6272, 6352 and 7053, Revenue and Taxation Code; ~~and~~ Vienna Convention on Diplomatic Relations of April 18, 1961, a~~A~~rticle 34, ~~(~~23 U.S.T. 3242,~~)~~ T.I.A.S. No. 7502~~.~~; Vienna Convention on Consular Relations of April 24, 1963, article 49, ~~(~~21 U.S.T. 77~~)~~, T.I.A.S. No. 6820; Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; and Designation and Determination under the Foreign Missions Act, March 9, 2014 (79 Fed.Reg. 16090 (March 24, 2014)).

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1619

Title: *Foreign Consuls*

Preparation: Monica Silva
Legal Contact: Monica Silva

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1619, *Foreign Consuls*, to make the regulation consistent with current federal law regarding exempt sales to foreign missions, representative offices, their employees and their dependents.

History of Proposed Regulation:

October 27, 2015	Public Hearing
September 11, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
August 31, 2015	Notice to OAL
July 28, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA