

# **Regulation 1684**

## **Section 100**

Complete Rule Making File

*OAL Approval with Approved Text Regulation 1684*

*Index*

1. *Form 400 and Proposed Regulation 1684*
2. *Statement of Explanation*
3. *August 15, 2012 Certification Letter*
4. *AB 155*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 06/26/14*
- B. *Draft Minutes, 07/17/14*
- C. *Reporters Transcript, 07/17/14*

cc: Jeff McGuire

**RECEIVED**

SEP 30 2014

**State of California  
Office of Administrative Law**

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

**In re:**

**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections:**

**Amend sections: 1684**

**Repeal sections:**

**NOTICE OF APPROVAL OF CHANGES  
WITHOUT REGULATORY EFFECT**

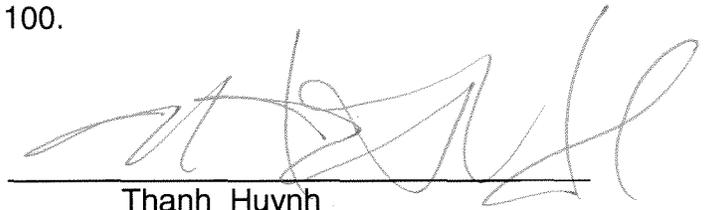
**California Code of Regulations, Title 1,  
Section 100**

**OAL File No. 2014-0818-01 N**

In this change without a regulatory effect, the Board is amending Title 18, subdivision 1684(i) to set September 15, 2012 as the effective date for the regulations adopted to implement, interpret, and make specific the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by Statutes 2011, chapter 313 (Assem. Bill No. 155, section 3). It also specifies that any 2012 amendments that implement, interpret and make specific a specific use tax collection obligation that did not exist on June 27, 2011, does not have any retroactive effect.

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

Date: 9/29/2014



Thanh Huynh  
Senior 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 *JD*  
DATE: 10/3/2014  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2014-0818-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2014-0818-01N regarding Collection of Use Tax by Retailers).

If this is an approved file, it contains a copy of the regulation(s) stamped “ENDORSED APPROVED” by the Office of Administrative Law and “ENDORSED FILED” by the Secretary of State. The effective date of an approved 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 applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain 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 once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

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

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

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

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

**DO NOT DISCARD OR DESTROY THIS FILE**

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

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

Enclosures

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2014-0818-01N</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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ENDORSED FILED  
IN THE OFFICE OF

2014 SEP 29 PM 2:14

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

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

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

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

1a. SUBJECT OF REGULATION(S) Collection of Use Tax by Retailers	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)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND 1684
TITLE(S) 18	REPEAL

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

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

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

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

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE August 18, 2014
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 29 2014

Office of Administrative Law

**Text of Proposed Changes to**

**Title 18. Public Revenue**

**1684. Collection of Use Tax by Retailers.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged):

(A) . . . (unchanged); or

(B) . . . (unchanged); or

(C) . . . (unchanged); or

(D) . . . (unchanged).

(2) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged):

(i) . . . (unchanged); and

(ii) . . . (unchanged).

(3) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged).

(4) . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged).

**Text of Proposed Changes to**

**Title 18. Public Revenue**

(5) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged):

(A) . . . (unchanged):

(i) . . . (unchanged); and

(ii) . . . (unchanged);

(B) . . . (unchanged); and

(C) . . . (unchanged).

(8) . . . (unchanged):

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

(9) Examples:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged):

(i) . . . (unchanged); and

## Text of Proposed Changes to

### Title 18. Public Revenue

(ii) . . . (unchanged).

(d) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged):

(A) . . . (unchanged);

(B) . . . (unchanged).

(e) . . . (unchanged).

(f) . . . (unchanged).

(g) . . . (unchanged).

(h) . . . (unchanged).

(i) Amendments. Statutes 2011, chapter 313 (Assem. Bill No. 155), section 3 re-enacted section 6203 of the Revenue and Taxation Code and re-enacted section 6203 became operative on September 15, 2012, in accordance with chapter 313, section 6. ~~Chapter 313, section 6, provides that the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3, shall become operative on September 15, 2012, or January 1, 2013.~~ The 2012 amendments to this regulation adopted to implement, interpret, and make specific the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3, also became operative on September 15, 2012~~shall become operative on the same date as section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3.~~ Any 2012 amendment that implements, interprets and makes specific a use tax collection obligation that did not exist on June 27, 2011,~~upon becoming operative,~~ shall not have any retroactive effect.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6203, 6204, 6226 and 7051.3, Revenue and Taxation Code; and Section 513(d)(3)(A), Internal Revenue Code (26 USC).

**Obtaining Copies of the Decree.** Interested parties may obtain a copy of the Consent Decree by contacting Ms. Rania Zabaneh at (714) 484-5479.

**Comments on the Decree.** DTSC invites any interested persons to submit comments on the Consent Decree. Comments must be **received by DTSC on or before November 10, 2014.** The comments should reference the Site name and be directed to:

Rania Zabaneh  
 Department of Toxic Substances Control  
 5796 Corporate Avenue  
 Cypress, California 90630  
[Rania.Zabaneh@dtsc.ca.gov](mailto:Rania.Zabaneh@dtsc.ca.gov)

DTSC's responses to any timely comments will be available for inspection at DTSC's office in Cypress, California.

Further information regarding this matter may be obtained by contacting any of the following persons: Deputy Attorney General Sarah Morrison at (213) 897-2640, or DTSC Attorney Ann Carroll at (916) 323-2829.

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2014-0818-01  
 BOARD OF EQUALIZATION  
 Collection of Use Tax by Retailers

In this change without a regulatory effect, the Board is amending Title 18, subdivision 1684(i) to set September 15, 2012 as the effective date for the regulations adopted to implement, interpret, and make specific the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by Statutes 2011, chapter 313 (Assem. Bill No. 155, section 3). It also specifies that any 2012 amendments that implement, interpret and make specific a specific use tax collection obligation that did not exist on June 27, 2011, does not have any retroactive effect.

Title 18  
 California Code of Regulations  
 AMEND: 1684  
 Filed 09/29/2014  
 Agency Contact:  
 Richard E. Bennion (916) 445-2130

File# 2014-0814-01  
 BOARD OF EQUALIZATION  
 Manufacturing and Research & Development Equipment

This rulemaking action by the Board of Equalization adds section 1525.4 to title 18 of the California Code of Regulations. This section implements and explains the partial exemption from sales and use tax for sales and purchases of tangible personal property for use in specified manufacturing and/or research and development activities that was established by Revenue and Taxation Code section 6377.1.

Title 18  
 California Code of Regulations  
 ADOPT: 1525.4  
 Filed 09/25/2014  
 Effective 09/25/2014  
 Agency Contact:  
 Richard E. Bennion (916) 445-2130

File# 2014-0922-04  
 CALIFORNIA HEALTH BENEFIT EXCHANGE  
 Eligibility and Enrollment Process for the Individual Exchange

This emergency action was submitted for a third re-adopt of the regulations pursuant to Government Code section 100504(a)(6). These regulations established the Health Benefit Exchange's policies and procedures for eligibility determination and redetermination, enrollment in qualified health plans, and termination of coverage through the Exchange in the individual Market. In this third re-adopt, the regulations are amended to add definitions. The amendments also expand on the procedures for annual eligibility redetermination and for termination of coverage.

Title 10  
 California Code of Regulations  
 ADOPT: 6408, 6410, 6450, 6452, 6454, 6470, 6472, 6474, 6476, 6478, 6480, 6482, 6484, 6486, 6490, 6492, 6494, 6496, 6498, 6500, 6502, 6504, 6506, 6508, 6510, 6600, 6602, 6604, 6606, 6608, 6610, 6612, 6614, 6616, 6618, 6620  
 Filed 09/30/2014  
 Effective 09/30/2014  
 Agency Contact: Bahara Hosseini (916) 228-8486

# **Regulation 1684**

## **Section 100**

### Index

1. *Form 400 and Proposed Regulation 1684*
2. *Statement of Explanation*
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4. *AB 155*

# NONSUBSTANTIVE

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 <b>Z-</b>	REGULATORY ACTION NUMBER <b>2014-0818-01N</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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2014 AUG 18 4:10:11  
OFFICE OF ADMINISTRATIVE LAW

AGENCY FILE NUMBER (if any)

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

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

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

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

1a. SUBJECT OF REGULATION(S) Collection of Use Tax by Retailers	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)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND 1684
TITLE(S) 18	REPEAL

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

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

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

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

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE August 18, 2014
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

**Text of Proposed Changes to**

**Title 18. Public Revenue**

**1684. Collection of Use Tax by Retailers.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged):

(A) . . . (unchanged); or

(B) . . . (unchanged); or

(C) . . . (unchanged); or

(D) . . . (unchanged).

(2) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged):

(i) . . . (unchanged); and

(ii) . . . (unchanged).

(3) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged).

(4) . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged).

**Text of Proposed Changes to**

**Title 18. Public Revenue**

(5) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged):

(A) . . . (unchanged):

(i) . . . (unchanged); and

(ii) . . . (unchanged);

(B) . . . (unchanged); and

(C) . . . (unchanged).

(8) . . . (unchanged):

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

(9) Examples:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged):

(i) . . . (unchanged); and

**Text of Proposed Changes to**

**Title 18. Public Revenue**

- (ii) . . . (unchanged).
- (d) . . . (unchanged).
  - (1) . . . (unchanged).
  - (2) . . . (unchanged).
  - (3) . . . (unchanged):
    - (A) . . . (unchanged);
    - (B) . . . (unchanged).
- (e) . . . (unchanged).
- (f) . . . (unchanged).
- (g) . . . (unchanged).
- (h) . . . (unchanged).
- (i) Amendments. Statutes 2011, chapter 313 (Assem. Bill No. 155), section 3 re-enacted section 6203 of the Revenue and Taxation Code and re-enacted section 6203 became operative on September 15, 2012, in accordance with chapter 313, section 6. ~~Chapter 313, section 6, provides that the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3, shall become operative on September 15, 2012, or January 1, 2013.~~ The 2012 amendments to this regulation adopted to implement, interpret, and make specific the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3, also became operative on September 15, 2012~~shall become operative on the same date as section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3.~~ Any 2012 amendment that implements, interprets and makes specific a use tax collection obligation that did not exist on June 27, 2011,~~upon becoming operative,~~ shall not have any retroactive effect.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6203, 6204, 6226 and 7051.3, Revenue and Taxation Code; and Section 513(d)(3)(A), Internal Revenue Code (26 USC).

CHANGES WITHOUT REGULATORY EFFECT UNDER  
CALIFORNIA CODE OF REGULATIONS, TITLE 18, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1684, *Collection of Use Tax by Retailers*

**A. Factual Basis**

Currently, subdivision (i) of California Code of Regulations, title 18, section (Regulation) Regulation 1684, *Collection of Use Tax by Retailers*, provides that Revenue and Taxation Code (RTC) section 6203, as re-enacted by Statutes 2011, chapter 313 (hereafter, chapter 313), section 3 shall become operative on September 15, 2012, or January 1, 2013, and that the 2012 amendments to Regulation 1684 adopted to implement, interpret, and make specific RTC section 6203, as re-enacted by chapter 313, shall be operative on the same date. This is because chapter 313, section 6, subdivision (b) provides that re-enacted RTC section 6203 shall become operative on either:

- January 1, 2013, if a federal law is enacted on or before July 31, 2012, authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, and the state does not, on or before September 14, 2012, elect to implement that law; or
- September 15, 2012, if such a federal law is not enacted on or before July 31, 2012.

And, chapter 313, section 6, subdivision (c), also required the Director of Finance to certify in writing whether or not such a federal law had been enacted on or before July 31, 2012.

On August 15, 2012, the Director of Finance certified that no such federal legislation was enacted by the July 31, 2012, deadline. Therefore, RTC section 6203, as re-enacted by section 3 of chapter 313 became operative on September 15, 2012, and the 2012 amendments to Regulation 1684 adopted to implement, interpret, and make specific RTC section 6203, as re-enacted by chapter 313, became operative on the same date.

As a result, the State Board of Equalization (Board) proposes to make non-substantive changes to Regulation 1684, subdivision (i), to identify September 15, 2012, as the operative date of RTC section 6203, as re-enacted by chapter 313, and the operative date of the 2012 amendments to Regulation 1684 implementing, interpreting, and making specific RTC section 6203, as re-

enacted by chapter 313, under California Code of Regulations, title 1, section (Rule) 100. The Board has determined that the proposed changes are appropriate for processing under Rule 100 because the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

**B. Proposed Changes**

The following Rule 100 changes are proposed to Regulation 1684, subdivision (i):

TEXT OF PROPOSED CHANGES

**1684. Collection of Use Tax by Retailers.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged):

(A) . . . (unchanged); or

(B) . . . (unchanged); or

(C) . . . (unchanged); or

(D) . . . (unchanged).

(2) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged):

(i) . . . (unchanged); and

(ii) . . . (unchanged).

(3) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged).

(4) . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged).

(5) . . . (unchanged):

(A) . . . (unchanged); and

(B) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged):

(A) . . . (unchanged):

(i) . . . (unchanged); and

(ii) . . . (unchanged);

(B) . . . (unchanged); and

(C) . . . (unchanged).

(8) . . . (unchanged):

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

(9) Examples:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged):

(i) . . . (unchanged); and

(ii) . . . (unchanged).

(d) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged):

(A) . . . (unchanged);

(B) . . . (unchanged).

(e) . . . (unchanged).

(f) . . . (unchanged).

(g) . . . (unchanged).

(h) . . . (unchanged).

(i) Amendments. Statutes 2011, chapter 313 (Assem. Bill No. 155), section 3 re-enacted section 6203 of the Revenue and Taxation Code and re-enacted section 6203 became operative on September 15, 2012, in accordance with chapter 313, section 6. Chapter 313, section 6, provides that the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3, shall become operative on September 15, 2012, or January 1, 2013. The 2012 amendments to this regulation adopted to implement, interpret, and make specific the provisions of section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3, also became operative on September 15, 2012 ~~shall become operative on the same date as section 6203 of the Revenue and Taxation Code as re-enacted by chapter 313, section 3.~~ Any 2012 amendment that implements, interprets and makes specific a use tax collection obligation that did not exist on June 27, 2011, ~~upon becoming operative,~~ shall not have any retroactive effect.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6203, 6204, 6226 and 7051.3, Revenue and Taxation Code; and Section 513(d)(3)(A), Internal Revenue Code (26 USC).



August 15, 2012

Governor Edmund G. Brown Jr.

Members of the Board of Equalization

Honorable Darrell Steinberg  
President pro Tempore

Honorable John A. Perez  
Speaker of the Assembly

**Use Tax Collection Nexus**

Chapter 313, Statutes of 2011 (AB 155) requires the Director of Finance to certify by August 15, 2012 whether or not federal law was enacted on or before July 31, 2012, authorizing states to require a seller to collect taxes on the sales of goods or services to in-state purchasers without regard to the location of the seller.

This letter confirms that no such Federal legislation was passed by the July 31, 2012 deadline. Therefore, Section 3 of Chapter 313 is operative September 15, 2012. As a result, the **state** will begin employing the expanded use-tax collection requirement on that date.

Sincerely,

ANA MATOSANTOS  
Director

cc: Honorable Bob Dutton, Vice Chair, Senate Rules Committee  
Honorable Elaine Alquist, Senate Rules Committee  
Honorable Kevin de León, Senate Rules Committee  
Honorable Jean Fuller, Senate Rules Committee

## Assembly Bill No. 155

### CHAPTER 313

An act to repeal and add Section 6203 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 2011. Filed with  
Secretary of State September 23, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 155, Charles Calderon. State Board of Equalization: administration: retailer engaged in business in this state.

Existing law imposes a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, and a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. That law requires every retailer engaged in business in this state, as defined, and making sales of tangible personal property for storage, use, or other consumption in this state to collect the tax from the purchaser. Existing law defines a "retailer engaged in business in this state" to include a retailer that has substantial nexus with this state and a retailer upon whom federal law permits the state to impose a use tax collection duty; a retailer entering into an agreement or agreements under which a person or persons in this state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet Web site, or otherwise, provided that 2 specified conditions are met, including the condition that the retailer, within the preceding 12 months, has total cumulative sales of tangible personal property to purchasers in this state in excess of \$500,000; and a retailer that is a member of a commonly controlled group, as defined under the Corporation Tax Law, and a member of a combined reporting group, as defined, that includes another member of the retailer's commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer.

This bill would revise the definition of a "retailer engaged in business in this state" to temporarily eliminate the above-mentioned inclusions in that definition, and would condition the commencement of the operation of these inclusions upon the enactment of a certain federal law and the state's election to implement that law. This bill, for purposes of one of those inclusions, would revise the cumulative sales condition to increase the amount of total

cumulative sales of tangible personal property to purchasers in this state to an amount in excess of \$1,000,000.

This bill would provide that certain provisions of this bill are severable.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 6203 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 6203 is added to the Revenue and Taxation Code, to read:

6203. (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) "Retailer engaged in business in this state" as used in this section and Section 6202 means and includes any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) (A) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

(B) This paragraph shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.

(5) Notwithstanding Section 7262, a retailer specified in paragraph (4), and not specified in paragraph (1), (2), or (3), is a “retailer engaged in business in this state” for the purposes of this part and Part 1.5 (commencing with Section 7200) only.

(d) (1) For purposes of this section, “engaged in business in this state” does not include the taking of orders from customers in this state through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of online communications services other than the displaying and taking of orders for products.

(2) This subdivision shall become inoperative upon the operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.

(e) Except as provided in this subdivision, a retailer is not a “retailer engaged in business in this state” under paragraph (2) of subdivision (c) if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of its representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(f) Any limitations created by this section upon the definition of “retailer engaged in business in this state” shall apply only for purposes of tax liability under this code. Nothing in this section is intended to affect or limit, in any way, civil liability or jurisdiction under Section 410.10 of the Code of Civil Procedure.

SEC. 3. Section 6203 is added to the Revenue and Taxation Code, to read:

6203. (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give

to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) “Retailer engaged in business in this state” as used in this section and Section 6202 means any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty. “Retailer engaged in business in this state” specifically includes, but is not limited to, any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) Any retailer that is a member of a commonly controlled group, as defined in Section 25105, and is a member of a combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, that includes another member of the retailer’s commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer, including, but not limited to, design and development of tangible personal property sold by the retailer, or the solicitation of sales of tangible personal property on behalf of the retailer.

(5) (A) Any retailer entering into an agreement or agreements under which a person or persons in this state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet Web site, or otherwise, provided that both of the following conditions are met:

(i) The total cumulative sales price from all of the retailer’s sales, within the preceding 12 months, of tangible personal property to purchasers in this state that are referred pursuant to all of those agreements with a person or persons in this state, is in excess of ten thousand dollars (\$10,000).

(ii) The retailer, within the preceding 12 months, has total cumulative sales of tangible personal property to purchasers in this state in excess of one million dollars (\$1,000,000).

(B) An agreement under which a retailer purchases advertisements from a person or persons in this state, to be delivered on television, radio, in print,

on the Internet, or by any other medium, is not an agreement described in subparagraph (A), unless the advertisement revenue paid to the person or persons in this state consists of commissions or other consideration that is based upon sales of tangible personal property.

(C) Notwithstanding subparagraph (B), an agreement under which a retailer engages a person in this state to place an advertisement on an Internet Web site operated by that person, or operated by another person in this state, is not an agreement described in subparagraph (A), unless the person entering the agreement with the retailer also directly or indirectly solicits potential customers in this state through use of flyers, newsletters, telephone calls, electronic mail, blogs, microblogs, social networking sites, or other means of direct or indirect solicitation specifically targeted at potential customers in this state.

(D) For purposes of this paragraph, “retailer” includes an entity affiliated with a retailer within the meaning of Section 1504 of the Internal Revenue Code.

(E) This paragraph shall not apply if the retailer can demonstrate that the person in this state with whom the retailer has an agreement did not engage in referrals in the state on behalf of the retailer that would satisfy the requirements of the commerce clause of the United States Constitution.

(d) Except as provided in this subdivision, a retailer is not a “retailer engaged in business in this state” under paragraph (2) of subdivision (c) if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(e) Any limitations created by this section upon the definition of “retailer engaged in business in this state” shall only apply for purposes of tax liability under this code. Nothing in this section is intended to affect or limit, in any way, civil liability or jurisdiction under Section 410.10 of the Code of Civil Procedure.

SEC. 5. The provisions contained in Section 3 of this act are severable. If any provision of Section 3 of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. (a) Sections 1 and 2 of this act shall become operative on the effective date of this act.

(b) Section 3 of this act shall become operative on either of the following dates:

(1) If federal law is enacted on or before July 31, 2012, authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, and the state does not, on or before September 14, 2012, elect to implement that law, Section 3 of this act shall become operative on January 1, 2013, and Section 2 of this act shall become inoperative on that same date.

(2) If federal law is not enacted on or before July 31, 2012, authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, Section 3 of this act shall become operative on September 15, 2012, and Section 2 of this act shall become inoperative on that same date.

(c) The Director of Finance shall, on or before August 15, 2012, certify in writing to the Governor, the Senate Committee on Rules, the Speaker of the Assembly, and the State Board of Equalization whether or not federal law has been enacted on or before July 31, 2012, authorizing the states to require a seller to collect taxes on sales of goods or services to in-state purchasers without regard to the location of the seller.

(d) For the period between June 28, 2011, and the effective date of this act, state law regarding the imposition and collection of use taxes, including, but not limited to, any reporting requirement imposed on a seller, shall be administered and applied in accordance with state law as it read on June 27, 2011.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify and confirm at the earliest possible time the obligations of certain retailers to collect use taxes from California purchasers, it is necessary that this act take effect immediately.

# Memorandum

**To** : Ms. Cynthia Bridges  
Executive Director (MIC 73)

**Date:** June 26, 2014

**From** : Randy Ferris, Chief Counsel  
Legal Department (MIC 83)



**Subject** : **Board Meeting, July 17-18, 2014**  
**Item J - Chief Counsel's Rulemaking Calendar**  
**Regulation 1684, Collection of Use Tax by Retailers**

We request your approval to place proposed changes to Sales and Use Tax Regulation 1684, *Collection of Use Tax by Retailers*, on the Chief Counsel's Rulemaking Calendar for the July 17-18, 2014, Board meeting. Currently, Regulation 1684, subdivision (i), provides that Revenue and Taxation Code (RTC) section 6203, as re-enacted by Statutes 2011, chapter 313 (hereafter, chapter 313), section 3 shall become operative on September 15, 2012, or January 1, 2013, and that the 2012 amendments to Regulation 1684 adopted to implement, interpret, and make specific RTC section 6203, as re-enacted by chapter 313, shall be operative on the same date. The proposed non-substantive changes to Regulation 1684, subdivision (i), identify September 15, 2012, as the operative date of RTC section 6203, as re-enacted by chapter 313, and the operative date of the 2012 amendments to Regulation 1684 implementing, interpreting, and making specific RTC section 6203, as re-enacted by chapter 313.

Chapter 313, section 6, subdivision (b) provides that re-enacted RTC section 6203 shall become operative on either:

- January 1, 2013, if a federal law is enacted on or before July 31, 2012, authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, and the state does not, on or before September 14, 2012, elect to implement that law; or
- September 15, 2012, if such a federal law is not enacted on or before July 31, 2012.

Chapter 313, section 6, subdivision (c), also required the Director of Finance to certify in writing whether or not such a federal law had been enacted on or before July 31, 2012. As a result, on August 15, 2012, the Director of Finance certified that no such federal legislation was enacted by the July 31, 2012, deadline. Therefore, RTC section 6203, as re-enacted by section 3 of Chapter 313 became operative on September 15, 2012.

We will request the Board's authorization to make the changes to Regulation 1684 to identify the operative date of RTC section 6203, as re-enacted by chapter 313, and the operative date

cc: Mr. Jeffrey L. McGuire MIC: 43  
Ms. Joann Richmond MIC: 80  
Mr. Robert Tucker MIC: 82  
Ms. Susanne Buehler MIC: 92  
Mr. Bradley M. Heller MIC: 82  
Ms. Kirsten Stark MIC: 50  
Mr. Clifford Oakes MIC:50  
Ms. Kim Rios MIC: 50

Text of Proposed Changes to  
California Code of Regulations, Title 18, Section 1684

**Regulation 1684. COLLECTION OF USE TAX BY RETAILERS.**

(a) Collection of Use Tax by Retailers Engaged in Business in this State. Retailers engaged in business in this state as defined in section 6203 of the Revenue and Taxation Code and making sales of tangible personal property, the storage, use, or other consumption of which is subject to the tax must register with the Board and, at the time of making the sales, or, if the storage, use or other consumption of the tangible personal property is not then taxable, at the time it becomes taxable, collect the tax from the purchaser and give the purchaser a receipt therefor.

(b) General Definition and Rebuttable Presumption.

(1) A retailer is engaged in business in this state as defined in section 6203 of the Revenue and Taxation Code if the retailer has a substantial nexus with this state for purposes of the Commerce Clause (art. I, § 8, cl. 3) of the United States Constitution or federal law otherwise permits this state to impose a use tax collection duty on the retailer. Retailers engaged in business in this state include, but are not limited to, retailers described in subdivision (c).

(2) Except as provided in subdivisions (c) and (d), there is a presumption that a retailer is engaged in business in this state as defined in section 6203 of the Revenue and Taxation Code if the retailer has any physical presence in California. A retailer may rebut the presumption if the retailer can substantiate that its physical presence is so slight that the United States Constitution prohibits this state from imposing a use tax collection duty on the retailer.

(3) A retailer does not have a physical presence in California solely because the retailer engages in interstate communications with customers in California via common carrier, the United States mail, or interstate telecommunication, including, but not limited to, interstate telephone calls and emails. The rebuttable presumption in subdivision (b)(2) does not apply to a retailer that does not have a physical presence in California.

(c) Nonexhaustive Examples of Retailers Engaged in Business in this State.

(1) A retailer is engaged in business in this state as defined in section 6203 of the Revenue and Taxation Code if:

(A) The retailer owns or leases real or tangible personal property, including, but not limited to, a computer server, in California; or

(B) The retailer derives rentals from a lease of tangible personal property situated in California (under such circumstances the retailer is required to collect the tax at the time rentals are paid by the lessee); or

(C) The retailer maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of

(B) The retailer, within the preceding 12 months, has total cumulative sales of tangible personal property to purchasers in California in excess of one million dollars (\$1,000,000).

The determination as to whether a retailer has made the requisite amount of sales to purchasers in California during the preceding 12-month period shall be made at the end of each calendar quarter. A retailer is not engaged in business in this state pursuant to this paragraph if the total cumulative sales price of all of the tangible personal property the retailer sold to purchasers in California that were referred to the retailer by a person or persons in California pursuant to an agreement or agreements described above, in the preceding 12 months, is not in excess of ten thousand dollars (\$10,000), or if the retailer's total cumulative sales of tangible personal property to purchasers in California were not in excess of one million dollars (\$1,000,000) in the preceding 12 months.

For purposes of this paragraph, the term "retailer" includes an entity affiliated with a retailer within the meaning of Internal Revenue Code section 1504, which defines the term "affiliated group" for federal income tax purposes.

(4) Paragraph (3) does not apply to an agreement under which a retailer purchases advertisements from a person in California, to be delivered on television, radio, in print, on the Internet, or by any other medium, unless:

(A) The advertisement revenue paid to the person in California consists of commissions or other consideration that is based upon completed sales of tangible personal property, and

(B) The person entering into the agreement with the retailer also directly or indirectly solicits potential customers in California through the use of flyers, newsletters, telephone calls, electronic mail, blogs, microblogs, social networking sites, or other means of direct or indirect solicitation specifically targeted at potential customers in this state.

(5) For purposes of paragraph (3):

(A) A person that is an individual is in this state when the person is physically present within the boundaries of California; and

(B) A person other than an individual is in this state when there is at least one individual physically present in California on the person's behalf.

(6) Paragraph (3) does not apply to a retailer's agreement with any person, unless an individual solicits potential customers under the agreement while the individual is physically present within the boundaries of California, including, but not limited to, an individual who entered into the agreement directly with the retailer, an individual, such as an employee, who is performing activities in California directly for a person that entered into the agreement with the retailer, and any individual who is performing activities in California indirectly for

ads, Cost Per Action ads, links to retailers' websites, and similar online advertising services, are advertisements and not solicitations.

(B) "Individual" means a natural person.

(C) "Person" means and includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

(D) "Solicit" means to communicate directly or indirectly to a specific person or specific persons in California in a manner that is intended to and calculated to incite the person or persons to purchase tangible personal property from a specific retailer or retailers.

(E) "Solicitation" means a direct or indirect communication to a specific person or specific persons done in a manner that is intended to and calculated to incite the person or persons to purchase tangible personal property from a specific retailer or retailers.

(F) "Solicit," "solicitation," "refer," and "referral" do not mean or include online advertising generated as a result of generic algorithmic functions that is anonymous and passive in nature, such as ads tied to Internet search engines, banner ads, click-through ads, Cost Per Action ads, links to retailers' websites, and similar online advertising services.

(9) Examples:

(A) Corporation X is physically located in California and maintains a website at [www.corporationx.com](http://www.corporationx.com). Corporation X enters into agreements with one or more hiking gear and accessories retailers under which Corporation X maintains click-through advertisements or links to each retailer's website on Corporation X's website at [www.corporationx.com](http://www.corporationx.com) and Corporation X's webpage at [www.socialnetwork.com/corporationx](http://www.socialnetwork.com/corporationx) in return for commissions based upon the retailers' completed sales made to customers who click-through the ads or links on Corporation X's website and webpage. Corporation X also posts reviews at [www.corporationx.com](http://www.corporationx.com) of the products sold through the click-through ads and links on its website and webpage. However, Corporation X does not engage in any solicitation activities in California that refer potential customers to the retailer or retailers who have click-through ads or links on its website or webpage. Therefore, paragraph (3) does not apply to the agreements between Corporation X and the retailer or retailers who have ads or links on Corporation X's website or webpage.

(B) Same as (A) above, except that Corporation X also enters into an agreement under which Advertising Corporation places advertisements for [www.corporationx.com](http://www.corporationx.com) on other businesses' websites and webpages, and mails or emails advertisements for

owner” means a stock holder, bond holder, partner, or other person holding an ownership interest.

(3) Convention and Trade Show Activities. For purposes of this subdivision, the term “convention and trade show activity” means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

Except as provided in this paragraph, a retailer is not “engaged in business in this state” based solely on the retailer's convention and trade show activities provided that:

(A) For the period commencing on January 1, 1998 and ending on December 31, 2000, the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than seven days, in whole or in part, in this state during any 12-month period and did not derive more than ten thousand dollars (\$10,000) of gross income from those activities in this state during the prior calendar year;

(B) For the period commencing on January 1, 2001, the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than fifteen days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year.

A retailer coming within the provisions of this subdivision is, however, “engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the retailer's convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(e) Retailers Not Engaged in Business in State. Retailers who are not engaged in business in this state may apply for a Certificate of Registration-Use Tax. Holders of such certificates are required to collect tax from purchasers, give receipts therefor, and pay the tax to the Board in the same manner as retailers engaged in business in this state. As used in this regulation, the term “Certificate of Registration-Use Tax” shall include Certificates of Authority to Collect Use Tax issued prior to September 11, 1957.

(f) Use Tax Direct Payment Permit Exemption Certificates. Notwithstanding subdivisions (a) and (d)(3), a retailer who takes a use tax direct payment exemption certificate in good faith from a person holding a use tax direct payment permit is relieved from the duty of collecting use tax

Thursday, July 17, 2014

Charles P. Franklin, 417829

2000, \$96,210.00 Assessment

Considered by the Board: November 17, 2010

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Camino Medical Group, Inc., 719011

2005, \$1,028,094.13 Claim for Refund

Considered by the Board: Summary Decision (Rev. &amp; Tax. Code, § 40)

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

Action: The Board deferred consideration of the matter to the August 2014, Culver City Board meeting.

## **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

### **OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board approved the Offer in Compromise Recommendations of *Accettura Bros., Inc.*; *Khachik Chris Chibilyan*; *Inmar West Company, Inc.*; *Cory Anthony Iturribarria*; *Yong Heui Lee*; and, *Rocio Ramos*; as recommended by staff.

## **CHIEF COUNSEL MATTERS**

### **RULEMAKING**

#### **Section 100 Changes**

##### **Sales and Use Tax Regulation 1684, *Collection of Use Tax by Retailers***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to identify the operative dates of Revenue and Taxation Code section 6203, and of the 2012 amendments to Regulation 1684, as re-enacted by Statutes 2011, chapter 313 (Exhibit 7.4).

Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board approved authorization to make Rule 100 changes to Regulation 1684 as recommended by staff.

## **ADMINISTRATIVE SESSION**

### **OTHER ADMINISTRATIVE MATTERS**

#### **Executive Director's Report**

Cynthia Bridges, Executive Director, provided a report regarding a time extension to Napa County to complete and submit the 2014/15 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 (Exhibit 7.5).

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JULY 17, 2014

CHIEF COUNSEL MATTERS

J RULEMAKING

SECTION 100 CHANGES

J1 SALES AND USE TAX REGULATION 1684, COLLECTION OF

USE TAX BY RETAILERS

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board  
of Equalization:

Jerome E. Horton  
Chairman

Betty T. Yee  
Member

George Runner  
Member

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

Joann Richmond  
Chief  
Board Proceedings  
Division

For Board of  
Equalization Staff:

Bradley Heller  
Tax Counsel IV  
Legal Department

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1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 JULY 17, 2014

4 ---oOo---

5 MS. RICHMOND: Our next item is Chief  
6 Counsel Matters. Item J, rulemaking. We have a  
7 Section 100 change; J1, Sales and Use Tax Regulation  
8 1684, Collection of Use Tax by Retailers.

9 MR. RUNNER: Move adoption.

10 MR. HELLER: Thank you, Chairman Horton.  
11 I'm Bradley Heller from the Board's Legal  
12 Department, here to request that the Board authorize  
13 staff to complete Rule 100 changes to Regulation  
14 1684.

15 MR. RUNNER: Move adoption.

16 MR. HORTON: Member Runner moves adoption.  
17 Member Mandel seconds.

18 Without objection, Members, such will be  
19 the order.

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REPORTER'S CERTIFICATE

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State of California )  
 ) ss  
County of Sacramento )

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on July 17, 2014 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 3 constitute a complete and accurate transcription of the shorthand writing.

Dated: July 24, 2014

Kathleen Skidgel  
KATHLEEN SKIDGEL, CSR #9039  
Hearing Reporter

