

Rulemaking File  
Table of Contents  
Title18. Public Revenue  
Sales and Use Tax  
Regulation 1698, *Records*,  
and Special Taxes and Fees Regulation 4901, *Records*

*OAL Approval*

*Index*

1. Final Statement of Reasons
2. Updated Informative Digest
3. Business Tax Committee Minutes, October 27, 2015
4. Reporter's Transcript Business Taxes Committee, October 27, 2015
5. Estimate of Cost or Savings, January 21, 2016
6. Economic and Fiscal Impact Statements, January 19, 2016
7. Notice of Publications
8. Notice to Interested Parties, January 29, 2016
9. Statement of Compliance
10. Reporter's Transcript, Item F1, March 29, 2016
11. Minutes, March 29, 2016, and Exhibits

**State of California  
Office of Administrative Law**

In re:  
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1698, 4901

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY  
ACTION

Government Code Section 11349.3

OAL Matter Number: 2016-0516-02

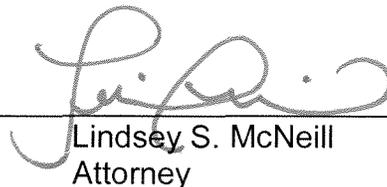
OAL Matter Type: Regular (S)

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This rulemaking action by the Board of Equalization amends sections 1698 and 4901 of title 18 of the California Code of Regulations to update terminology related to electronic records and update the definition of "applicable tax laws."

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

Date: June 28, 2016



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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  
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**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: June 29, 2016  
RE: Return of Rulemaking Materials  
OAL Matter Number 2016-0516-02  
OAL Matter Type Regular (S)

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

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

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

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

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

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

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

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

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

**DO NOT DISCARD OR DESTROY THIS FILE**

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

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

Enclosures

**M e m o r a n d u m**

**To** : Lindsey McNeill  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Date: June 27, 2016

**From** : Richard Bennion  
Regulations Coordinator  
Board Proceedings Division, MIC: 80

**Subject** : *OAL File No.* 2016-0516-02S  
Regulation 1698. Records  
Regulation 4901. Records

The Office of Administrative Law (OAL) is authorized to make the following substitutions and corrections in connection with the above-referenced rulemaking file:

1. Please replace the final text of Regulations 1698 and 4901 with the revised text of Regulations 1698 and 4901 attached to the email I sent to you.
2. Please replace the Final Statement of Reasons behind tab 1 with the attached revised Final Statement of Reasons in the email I have sent to you.
3. Please replace the Verification Page behind the Index tab with the attached Verification Page in the email I have sent you.

If you have any questions or comments, please notify me at (916) 445-2130 or email at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov).

REB

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0119-02	REGULATORY ACTION NUMBER 2016-0516-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE  AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	REGULATIONS  2016 MAY 16 P 2:31  OFFICE OF ADMINISTRATIVE LAW
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**ENDORSED - FILED**  
 in the office of the Secretary of State  
 of the State of California

JUN 28 2016

1:45PM

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 <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER	PUBLICATION DATE
<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn				2016 05-2	1/29/2016

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

1a. SUBJECT OF REGULATION(S) Records	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1698, 4901
TITLE(S) 18	REPEAL

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

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

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

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

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE May 16, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 28 2016

Office of Administrative Law

**Final Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1698**

**1698. Records.**

(a) Definitions.

(1) "Database Management System" - a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic cash register" - a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

(23) "Electronic data interchange" or "EDI technology" - the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) ~~"Hardcopy" - any document, record, report or other data maintained in a paper format.~~

(4) ~~"Machine-sensible Electronic record" - a collection of related information in an electronic, machine-sensible format. Machine-sensible Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.~~

(5) "Hardcopy" - any document, record, report or other data maintained in a paper format.

(56) "Taxpayer" - every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

(b) General.

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~ electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) Hardcopy Records.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) Alternative Storage Media.

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, ~~or~~ microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, ~~and~~ microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

- a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and
2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and
  3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 7054 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~ electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~ electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

**Final Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 4901**

**4901. Records.**

(a) Definitions.

(1) "Applicable Tax Laws" means any of the following:

(A) Aircraft Jet Fuel Tax, Revenue and Taxation Code ~~Sections 7385-7398, and 7486-8406;~~

(B) Alcoholic Beverage Tax, Revenue and Taxation Code ~~Sections 32001-32557;~~

(C) ~~Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;~~

(D) ~~California Tire Fee, Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381;~~

(E) Childhood Lead Poisoning Prevention Fee, Health and Safety Code ~~Section 105310; Revenue and Taxation Code Sections 43001-43651;~~

(F) Cigarette and Tobacco Products Tax, Revenue and Taxation Code ~~Sections 30001-30481;~~

(G) Diesel Fuel Tax, Revenue and Taxation Code ~~Sections 60001-60709;~~

(H) Emergency Telephone Users Surcharge, Revenue and Taxation Code ~~Sections 41001-41176;~~

(I) Energy Resources Surcharge, Revenue and Taxation Code ~~Sections 40001-40216;~~

(J) Fee Collection Procedures Law, Revenue and Taxation Code sections 55001-55381 (see Reg. 3500);

(K) Hazardous Substances Tax, Health and Safety Code ~~Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code Sections 43001-43651;~~

(L) Integrated Waste Management Fee, Public Resources Code ~~Sections 40000-48008; Revenue and Taxation Code Sections 45001-45984;~~

(M) Motor Vehicle Fuel Tax, Revenue and Taxation Code ~~Sections 7301-8526;~~

(N) ~~Natural Gas Surcharge, Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381;~~

(1) A taxpayer shall maintain and make available for examination on request by the ~~h~~Board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code ~~Sections~~ 8301-8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172-40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, and 60604-60606, ~~Revenue and Taxation Code.~~

(c-) ~~Machine-Sensible~~Electronic Records.

(1) General.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the ~~h~~Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the ~~h~~Board has the technological capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) Electronic Data Interchange Requirements.

between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

(d) ~~Machine-Sensible~~Electronic Records Maintenance Requirements

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The ~~b~~Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) Access to ~~Machine-Sensible~~Electronic Records.

(1) The manner in which the ~~b~~Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the ~~b~~Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

regulation to storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) Record Retention - Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

evaluation made under this regulation is not an “examination of records” under the applicable tax law.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the ~~h~~BBoard.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer’s signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the ~~h~~BBoard may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129, ~~30~~, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605 and 60606, Revenue and Taxation Code.

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

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

File# 2016-0512-01  
Board for Professional Engineers, Land Surveyors and Geologists  
Waiver of Fundamentals Examination

The Board of Professional Engineers, Land Surveyors, and Geologists (Board) in this action is amending title 16, section 438 of the California Code of Regulations. This rulemaking removes language that identifies an eight-hour written examination for the Fundamentals of Engineering examination (FE) and the Fundamentals of Surveying examination (FS) because individuals are no longer tested within an eight-hour time frame. FE and FS examinees are tested on the content of the exam and not the timeframe. Additionally, this rulemaking removes the ability of individuals who hold an Engineer-in-Training certificate (EIT) to waive the Land Surveyor-in-Training certificate (SIT). This change is necessary due to the passage of Senate Bill 1576 (Statutes of 2012, Chapter 661) which limits the exemption to persons who are registered as California civil engineers instead of simply an engineer-in-training.

Title 16  
AMEND: 438  
Filed 06/22/2016  
Effective 10/01/2016  
Agency Contact: Kara Williams (916) 263-5438

File# 2016-0516-02  
Board of Equalization  
Records

This rulemaking action by the Board of Equalization amends sections 1698 and 4901 of title 18 of the California Code of Regulations to update terminology related to electronic records and update the definition of "applicable tax laws."

Title 18  
AMEND: 1698, 4901  
Filed 06/28/2016  
Effective 10/01/2016  
Agency Contact: Richard Bennion (916) 445-2130

File# 2016-0510-02  
Commission on Peace Officer Standards and Training  
Field Training Program & Certificates (Forms)

This rulemaking by the Commission on Peace Officer Standards and Training (POST) amends sections in Title 11 of the California Code of Regulations regarding field training program and certificates. POST is incorporating three forms by reference: POST-Approved Field Training Program (FTP) Or Police Training Program (PTP) Application, POST 2-229; Request For Reissuance of POST Certificate, POST 2-250; and Certificate Application — Reserve Peace Officer, POST 2-256. The regulation text is amended to update the names of the forms and the new revision dates, as applicable.

Title 11  
AMEND: 1004, 1011  
Filed 06/22/2016  
Effective 10/01/2016  
Agency Contact: Patti Kaida (916) 227-4847

File# 2016-0616-03  
Department of Food and Agriculture  
Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action by the Department of Food and Agriculture expands the quarantine area for the Asian Citrus Psyllid ((ACP) Diaphorina citri) by approximately 147 square miles in the Fresno and Clovis areas of Fresno County. The effect of the emergency action provides authority for the state to perform quarantine activities against ACP within this additional area, along with the many existing regulated areas in the state.

Title 3  
AMEND: 3435(b)  
Filed 06/22/2016  
Effective 06/22/2016  
Agency Contact: Sara Khalid (916) 403-6625

File# 2016-0616-04  
Department of Food and Agriculture  
Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action by the Department of Food and Agriculture establishes a quarantine area for the Asian Citrus Psyllid ((ACP) Diaphorina citri) of approximately 106 square miles in the Merced area of Merced County. The effect of the emergency action provides authority for the state to perform quarantine

Rulemaking File Index

Title 18. Public Revenue

Sales and Use Tax

Regulation 1698, *Records*,

and Special Taxes and Fees Regulation 4901, *Records*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Business Tax Committee Minutes, October 27, 2015](#)
  - Minutes
  - Chief of Tax Policy Division memo dated October 16, 2015
  - BTC Agenda
  - Formal Issue Paper Number 15-011
  - Exhibit 1 Revenue Estimate
  - Exhibit 2 Text Regulation 1698
  - Exhibit 3 Text Regulation 4901
  - Email from Bob Jones dated July 1, 2015
4. [Reporter's Transcript Business Taxes Committee, October 27, 2015](#)
5. [Estimate of Cost or Savings, January 21, 2016](#)
6. [Economic and Fiscal Impact Statements, January 19, 2016](#)
7. [Notice of Publications](#)
  - Form 400 and Notice, Publication Date January 29, 2016
  - Email sent to Interested Parties, January 29, 2016
  - CA Regulatory Notice Register 2016, Volume No. 05-Z
8. [Notice to Interested Parties, January 29, 2016](#)

The following items are exhibited:

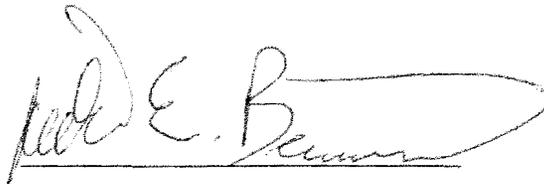
  - Notice of Hearing
  - Initial Statement of Reasons
  - Proposed Text of Regulations 1698 and 4901
  - Regulation History
9. [Statement of Compliance](#)
10. [Reporter's Transcript, Item F1, March 29, 2016](#)
11. [Minutes, March 29, 2016, and Exhibits](#)
  - Notice of Proposed Regulatory Action
  - Initial Statement of Reasons
  - Proposed Text of Regulations 1698 and 4901
  - 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 May 16, 2016 and was reopened on June 27, 2016 for the purpose of amending the Final Statement of Reasons, final text for regulations 1698 and 4901, and replace the Verification, and was closed on June 27, 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.

June 27, 2016

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

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

**Final Statement of Reasons for  
Proposed Amendments to California Code of Regulations,  
Title 18, Section 1698, *Records*, and Section 4901, *Records***

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, sections (Regulations) 1698, *Records*, and 4901, *Records*, on March 29, 2016. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1698 and Regulation 4901 with a few minor non-substantial changes.<sup>1</sup> The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on March 29, 2016, 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 Regulations 1698 and 4901 are the same as provided in the initial statement of reasons.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including point-of-sale (POS) systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the Fee Collection Procedures Law.

The adoption of proposed amendments to Regulations 1698 and 4901 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.

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<sup>1</sup> The Board inserted inadvertently omitted periods at the ends of subdivisions (c)(2)(A) and (k) in Regulation 1698. The Board added ~~strikeout~~ to delete an extra space before the word “microfiche” in Regulation 1698, subdivision (a)(4), and Regulation 4901, subdivision (a)(5). The Board deleted an extra space after “Collection” in and added a parenthetical cross-reference to Regulation 3500, *Application of the Fee Collection Procedures Law*, which lists the fees and taxes collected pursuant to the Fee Collections Procedures Law, to new subdivision (a)(1)(H) in Regulation 4901. The Board added an inadvertently omitted “s” to the end of “sections” in renumbered subdivision (a)(1)(N), which is in the current text of the subdivision, and added an inadvertently omitted space between subdivision (c)(2)(A) and newly numbered subdivision (c)(2)(A)1 in Regulation 4901. The Board also added ~~strikeout~~ to delete “.30” from the reference to section “41129.30” in Regulation 4901’s reference note to correct a typographical error in the current text of the reference note.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulations 1698 and 4901 may affect small business.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 does not impose a mandate on local agencies or school districts.

#### Public Comments

The Board did not receive any written public comments regarding the proposed regulatory action, and no interested parties appeared at the public hearing on March 29, 2016, to comment on the proposed regulatory action.

#### Determination Regarding Alternatives

By its motion on March 29, 2016, the Board determined that no alternative to the proposed amendments to Regulations 1698 and 4901 would be more effective in carrying out the purposes for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board did not reject any reasonable alternative to proposed amendments to Regulations 1698 and 4901 that would lessen any adverse impact the proposed regulatory action may have on small business.

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

**Updated Informative Digest for the State Board of Equalization's  
Adoption of Proposed Amendments to California Code of Regulations,  
Title 18, Section 1698, *Records*, and Section 4901, *Records***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1698, *Records*, and Regulation 4901, *Records*, on March 29, 2016. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1698 and Regulation 4901 with a few minor non-substantial changes (discussed in the final statement of reasons).

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on March 29, 2016, to comment on the proposed regulatory action.

There have not been any changes to the applicable laws or the effects of, the objectives of, and anticipated benefits from the adoption of the proposed amendments to Regulations 1698 and 4901 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:

Current Law

*Sales and Use Tax*

The Board administers California's sales and use taxes. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs, including performing audits to ensure that sales and use taxes are reported properly.

There are two statutes related to the retention and examination of records for sales and use tax purposes. RTC section 7053 provides that "[e]very seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the [B]oard may require."

RTC section 7054 specifies that the Board, or any person authorized in writing by it, "may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax." It further specifies that the Board "may investigate the character of the business of the person in order to verify the accuracy of any return made" or "if no return is made by the person, to ascertain and determine the amount required to be paid."

The Board adopted Regulation 1698 to implement, interpret, and make specific RTC sections 7053 and 7054 by specifying the types of records that must be maintained and made available for examination on request by the Board for sales and use tax purposes. The regulation currently allows records to be maintained and made available in hardcopy or electronic format. The regulation also generally requires all records to be preserved for a period of not less than four years, except for records for reporting periods beginning before January 1, 2003, that are subject to the extended ten year statute of limitations contained in RTC section 7073(d), which the regulation requires to be preserved for a period of not less than ten years. The Board made amendments that substantially updated Regulation 1698 in 1997, and added the provisions regarding records for reporting periods beginning before January 1, 2003, in 2005. However, Regulation 1698 has not been substantially updated since 1997.

As relevant here, Regulation 1698 currently defines the terms “database management system,” “electronic data interchange” or “EDI Technology,” “hardcopy,” and “machine-sensible record.” It explains that machine-sensible records do not include hardcopy records “stored in or by a storage-only imaging system such as microfilm or microfiche.” It also provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as microfilm and microfiche.”

#### *Special Taxes and Fees*

The Board also administers a number of special taxes and fees, in addition to the sales and use taxes. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Law (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the FCPL, and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

As relevant here, the Covered Electronic Waste Recycling Fee imposed by Public Resources Code (PRC) section 42464 is administered under the FCPL pursuant to PRC section 42464.2. The California Tire Fee imposed by PRC section 42885 is administered under the FPCL pursuant to PRC section 42882. The Lumber Products Assessment imposed by PRC

section 4629.5 is administered under the FCPL pursuant to PRC section 4629.5. The Marine Invasive Species Fee imposed by PRC section 42885 is administered under the FCPL pursuant to RTC sections 44002 and 44003. The Natural Gas Surcharge imposed by Public Utilities Code (PUC) section 890 is administered under the FCPL pursuant to PUC section 893. The Prepaid Mobile Telephony Services Surcharge imposed by RTC section 42010 and Local Charges as defined in RTC section 42101 that are required to be collected by sellers other than direct sellers are administered under the FCPL pursuant to RTC sections 42020 and 42103. And, the Water Rights Fee imposed by Water Code sections 1525 and 13160.1 is administered under the FCPL pursuant to Water Code section 1552.

The Board's Special Taxes and Fee Department is responsible for administering the Board's special taxes and fees programs under the special tax and fee laws.

The Board adopted Regulation 4901 in 2003 to implement, interpret, and make specific the statutes related to the retention and examination of records under the special tax and fee laws, which are similar to RTC sections 7053 and 7054 (discussed above). (RTC §§ 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606.) As relevant here, Regulation 4901 contains a list of "Applicable Tax Laws" and prescribes the types of records that must be maintained and made available for examination on request by the Board to determine taxpayers' and fee payers' correct liabilities under the applicable tax laws. Regulation 4901 generally mirrors the provisions of Regulation 1698, except that it provides the requirements for hardcopy records to be converted to "storage-only imaging media, such as *microfilm, microfiche or other media used in electronic imaging.*" (Italics added.)

Regulation 4901 was amended in 2010 to clarify that it applies to the Water Rights Fee (enacted in 2003) and Cover Electronic Waste Recycling Fee (enacted in 2004). However, Regulation 4901 has not been substantially updated since it was adopted in 2003 and does not currently refer to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge, which were enacted, or Local Charges, which the Board was first required to administer under the FCPL, after the regulation was last amended.

### *Electronic Cash Registers*

Cash registers have existed for many years. They offer business owners an organized place to ring up sales and store money from their sales

transactions. Electronic cash registers have also been in use for some time and now include a wide range of devices, such as integrated [point-of-sale or] POS systems.

POS systems are sophisticated computer systems that use commercially available operating systems to record each sale when it happens. In recent years, POS systems have become more popular than traditional cash registers with business owners because of their user-friendly interface, data tracking capabilities, and increased affordability. These systems are also popular because they can be integrated with third-party accounting software, online ordering, and credit and debit card processors.

The Legislature added RTC section 7153.6 to the Sales and Use Tax Law (RTC § 6001 et seq.) and RTC section 55363.5 to the FCPL, effective January 1, 2014. (Stats. 2013, ch. 532.) As relevant here, both statutes define the term “electronic cash register” to mean “a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner” and both statutes indicate that electronic cash registers include POS systems.

#### Effect, Objectives, and Benefits of the Proposed Amendments

##### *Need to Update Regulation 1698*

As new technologies and business practices emerge, the Board must adapt to the new technologies and keep taxpayers informed with relevant guidance using the current terminology in the industry. Board staff determined that there was an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) because Regulation 1698 currently defines the outdated term “machines-sensible record” and generally uses the term to refer to information in an “electronic format,” which is now simply referred to as “electronic records.” Staff determined that there was an issue (or problem) with Regulation 1698 because it does not define the commonly used term electronic cash register or refer to POS systems. Staff also determined that there was an issue with Regulation 1698 because it did not provide guidance to business owners with POS systems that overwrite data after a period of time about how to maintain their data before it is overwritten.

##### *Interested Parties Process*

As a result, the Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1698 and address the issues

described above, and a discussion paper explaining the draft amendments. Both were provided to interested parties.

Staff's draft amendments to Regulations 1698:

- Defined the term “electronic cash register” and explained that the term includes integrated POS systems.
- Replaced the term “machine-sensible record” with “electronic record” and explained that electronic records included records recorded and maintained by electronic cash registers.
- Changed the format of the example provided in subdivision (c)(2)(A).
- Added an example to subdivision (i) to further explain how business owners should maintain their data if they have POS systems that overwrite data after a period of time.

On June 17, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. Following the meeting, staff received a submission, dated July 1, 2015, from Mr. Robert Jones of Collins, Mason & Company LLP. Mr. Jones proposed that each occurrence of “microfilm or microfiche” in the regulation be replaced with “microfilm, microfiche, or pdf.”

PDF or “portable document format” is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agreed with Mr. Jones that PDF is an acceptable record storage format, and as such agreed to add PDF to the regulation where it refers to microfilm and microfiche.

When preparing the second discussion paper and revising the draft amendments to Regulation 1698, BTC staff determined that Regulation 4901 generally mirrors Regulation 1698 (as discussed above). BTC staff also noticed that Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that refers to “microfilm, microfiche or other media used in electronic imaging” (as discussed above). As such, staff revised its draft amendments to Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of “microfilm or microfiche” with “microfilm, microfiche, PDF files, or other media used in electronic imaging.”

In addition, BTC staff prepared drafted amendments to update Regulation 4901 that mirrored the amendments to Regulation 1698, discussed above,

including adding “PDF files” to subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901 to ensure consistency between Regulations 1698 and 4901. Also, to further update Regulation 4901, staff drafted amendments to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from subdivision (a)(1)’s list of applicable tax laws and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

On August 11, 2015, BTC staff conducted a second interested parties meeting to discuss the draft amendments to Regulations 1698 and 4901. At the meeting, there was overall support for the proposed amendments. Also at the meeting, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested that Excel worksheets and Access databases be included as acceptable forms of records in the regulations. Although staff did not receive a written submission for this request, staff did consider the suggestion. Staff determined that worksheets and database files are not necessarily source data and that they are often summaries or analyses of source data. Staff determined that worksheets and databases are already required to be maintained and made available to the Board under the provisions in subdivision (b)(1)(C) of both regulations, which refer to “schedules or working papers used in connection with the preparation of tax returns.” Additionally, staff determined that it would be unnecessarily restrictive to revise the regulation to refer to specific proprietary software products, such as Excel and Access. For these reasons, BTC staff did not agree to incorporate Mr. Brandeis’s suggestion into staff’s draft amendments.

*October 27, 2015, BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-011 and distributed it to the Board Members for consideration at the Board’s October 27, 2015, BTC meeting. Formal Issue Paper 15-011 recommended that the Board propose to add a definition for “electronic cash register” to subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901 to address the second issue (or problem) referred to above. The definitions in the regulations are in alphabetical order, therefore the issue paper recommended that the definition for “electronic cash register” be inserted alphabetically, and the remaining definitions be renumbered.

Subdivision (i) of both regulations explains that records must be kept for a period of not less than four years. The formal issue paper recommended that the Board propose to add an example to this subdivision to address the third issue (or problem) referred to above by explaining that if the

taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified period.

The formal issue paper recommended that the Board propose to update the term "machine-sensible records" to "electronic records" throughout the regulations to address the first issue (or problem) referred to above. "Machine-sensible records" is an outdated term, and "electronic records" is a current and readily understood term. Board staff also recommended that the Board propose to change the formatting of the regulations in subdivision (c)(2)(A) where they provide examples of what retained records should contain when a taxpayer uses electronic data interchange processes and technology. The recommended amendments reformatted the examples as numbered lists for easier reading and consistent formatting with other subdivisions in the regulations.

Additionally, the formal issue paper recommended that the Board revise Regulation 4901 to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from the list of applicable tax laws under subdivision (a)(1) and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL. The recommended amendments to subdivision (a)(1) were also arranged in alphabetical order.

Furthermore, the formal issue paper recommended that the Board propose to amend Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging" and propose to amend Regulation 4901 to add "PDF files" to subdivisions (a)(5), (h)(1), and (h)(2), to address Mr. Jones's submission, which was included as Exhibit 4 to the formal issue paper.

At the conclusion of the Board's discussion of Formal Issue Paper 15-011 during the October 27, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulations 1698 and 4901 recommended in the formal issue paper. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of clarifying and updating the regulations to address the issues (or problems) referred to above and respond to Mr. Jones's submission.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers,

including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1698 and 4901 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulations 1698 and 4901 are the only regulations that specify the types of records that must be maintained and made available for examination on request by the Board under the Sales and Use Tax Law and special tax and fee laws, and the Board is making consistent amendments to both regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.



## BOARD OF EQUALIZATION

**BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: OCTOBER 27, 2015, TIME: 10:00 A.M.

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**ACTION ITEMS & STATUS REPORT ITEMS****Agenda Item No: 1****Title: Proposed revisions to Regulation 1668, *Sales for Resale*****Issue/Topic:**

Whether the Board should amend Regulation 1668, *Sales for Resale*, to state that sales or purchases of counterfeit goods by a convicted seller or purchaser are subject to tax regardless of whether their intentions were to resell them.

**Committee Discussion:**

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

**Committee Action/Recommendation/Direction:**

Upon motion by Mr. Runner and seconded by Ms. Ma, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 1668, *Sales for Resale*. A copy of the proposed amendments to Regulation 1668 is attached.

**Agenda Item No.: 2****Title: Proposed Amendments to Regulation 1698, *Records* and Regulation 4901, *Records*****Issue:**

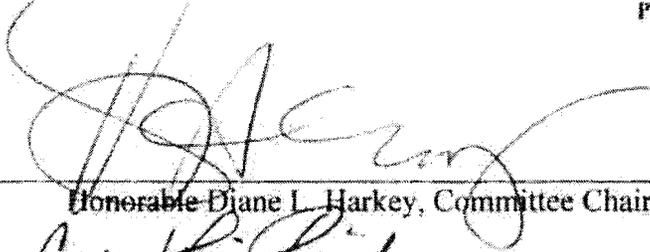
Whether the Board should amend Sales and Use Tax Regulation 1698, *Records*, and Special Taxes and Fees Regulation 4901, *Records*, to include and define electronic cash register, computerized point of sale systems, and electronic records.

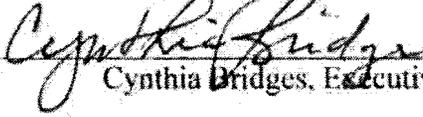
**Committee Discussion:**

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

**Committee Action:**

Upon motion by Mr. Horton, seconded by Ms. Stowers, without objection, the Committee approved and authorized for publication the proposed regulatory amendments. A copy of the proposed amendments to Regulation 1698 and Regulation 4901 are attached.

  
\_\_\_\_\_  
Honorable Diane L. Harkey, Committee Chair

  
\_\_\_\_\_  
Cynthia Bridges, Executive Director

BOARD APPROVED

at the October 27, 2015 Board Meeting

  
\_\_\_\_\_  
Joann Richmond, Chief  
Board Proceedings Division

**§ 1668. Sales for Resale.**

Note: Authority cited: Section 7051, Revenue and Taxation Code.

Reference: Sections 6007, 6009.2, 6012.8, 6012.9, 6072, 6091-6095, 6241-6245, 6484, 6485 and 7153, Revenue and Taxation Code.

(a) Resale Certificate.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "~~Permits~~Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) Form of Certificate.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this ~~State~~state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

\*\*\*

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

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in subdivision (b)(1) is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)-(4) below.

(4) Qualified Resale Certificate. If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be presumed that the property covered by that purchase order was not purchased for resale and that sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials for resale and also for tooling used to process the raw materials should specify that the raw materials are purchased for resale and that the sale of the tooling is subject to tax.

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The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) Good Faith. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) Improper Use of Certificate. Except when a resale certificate is issued in accordance with subdivisions (h), ~~(i)~~ or (j):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) Other Evidence to Rebut Presumption of Taxability. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in subdivision (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

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(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) Use of XYZ Letters. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of the person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

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(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts (“tangible personal property”); or tax has been paid measured by the purchase price or fair rental value (“mobile transportation equipment”);

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis; or

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, {verify the information provided in the response to the XYZ letter,} including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use {or whether tax was paid by the purchaser.} When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) Purchaser's Liability for Tax. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as

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purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) Mobilehomes. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to ~~Section~~section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to ~~Section~~section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by ~~Sections~~sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, ~~effective September 19, 1985,~~ a mobilehome retailer, licensed as a mobilehome dealer under ~~Section~~section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to ~~Section~~section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to ~~Section~~section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

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(i) Mobile Transportation Equipment. Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

(j) Counterfeit Goods. A sale of tangible personal property with a counterfeit mark on, or in connection with, that sale by a convicted seller is included in the definition of “retail sale” per Revenue and Taxation Code section 6007, and therefore taxable. “Storage” and “use” as defined in Revenue and Taxation Code section 6009.2, includes any purchase of tangible personal property with a counterfeit mark on, or in connection with, that purchase by a convicted purchaser and is subject to tax. This is regardless of whether the counterfeit goods were sold for resale or held with the intent to be resold. A “counterfeit mark” is a spurious mark that is used in a manner described in section 2320 of Title 18 of the United States Code.

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**REGULATION 1698. RECORDS.**

*Reference:* Sections 6455, 7053, and 7054, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic cash register"— a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

(~~2~~3) "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) ~~"Hardcopy"—any document, record, report or other data maintained in a paper format.~~

(4) ~~"Machine-sensible~~Electronic records"—a collection of related information in an electronic, machine-sensible format. ~~Machine-sensible~~Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, ~~or microfiche,~~ PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

(5) "Hardcopy"—any document, record, report or other data maintained in a paper format.

(~~5~~6) "Taxpayer"—every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

**(b) GENERAL.**

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

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(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code sections 7053 and 7054.

**(c) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

(1) GENERAL.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1.    vendor name,
2.    invoice date,
3.    product description,
4.    quantity purchased,
5.    price,

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6. amount of tax,

7. indication of tax status (e.g., for resale), and

8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) BUSINESS PROCESS INFORMATION.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

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(C) The following specific documentation is required for ~~machine-sensible~~electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

**(d) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS MAINTENANCE REQUIREMENTS.**

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~electronic~~machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

**(e) ~~ACCESS TO MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

(1) The manner in which the Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

(C) The taxpayer may convert the ~~machine-sensible~~electronic records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

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(D) The taxpayer and the Board may agree on other means of providing access to the machine-sensible electronic records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, ~~or~~ microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include,

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but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, ~~and microfiche~~, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

**(i) RECORD RETENTION—TIME PERIOD.** All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For reporting periods beginning before January 1, 2003 that are subject to the extended ten-year statute of limitations contained in Revenue and Taxation Code section 7073(d), records required to be retained under this regulation must be preserved for a period of not less than ten years.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that

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would have been overwritten or otherwise removed from the system for the required time periods indicated above.

**(j) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~electronic~~ machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the Board, which may include, but is not limited to, any one or more of the following issues:
  - a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and
2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and
3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

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(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 7054 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.**

Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

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**REGULATION 4901. RECORDS.**

*Reference:* Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) "Applicable Tax Laws" means any of the following:

**(A)** Aircraft Jet Fuel Tax, Revenue and Taxation Code ~~Sections 7385–7398, and~~ 7486–8406;

**(B)** Alcoholic Beverage Tax, Revenue and Taxation Code ~~Sections 32001–32557;~~

~~(C) Marine Invasive Species Fee, Public Resources Code Sections 71200–71271; Revenue and Taxation Code Sections 44000–44008, 55001–55381;~~

~~(D) California Tire Fee, Public Resources Code Sections 42860–42895; Revenue and Taxation Code Sections 55001–55381;~~

**(E)** Childhood Lead Poisoning Prevention Fee, Health and Safety Code ~~Section 105310;~~ Revenue and Taxation Code ~~Sections 43001–43651;~~

**(F)** Cigarette and Tobacco Products Tax, Revenue and Taxation Code ~~Sections 30001–30481;~~

**(G)** Diesel Fuel Tax, Revenue and Taxation Code ~~Sections 60001–60709;~~

**(H)** Emergency Telephone Users Surcharge, Revenue and Taxation Code ~~Sections 41001–41176;~~

**(I)** Energy Resources Surcharge, Revenue and Taxation Code ~~Sections 40001–40216;~~

**(J)** Fee Collection Procedures Law, Revenue and Taxation Code sections 55001-55381.

**(K)** Hazardous Substances Tax, Health and Safety Code ~~Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7;~~ Revenue and Taxation Code ~~Sections 43001–43651;~~

**(L)** Integrated Waste Management Fee, Public Resources Code ~~Sections 40000–48008;~~ Revenue and Taxation Code ~~Sections 45001–45984;~~

**(M)** Motor Vehicle Fuel Tax, Revenue and Taxation Code ~~Sections 7301–8526;~~

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~~(M) Natural Gas Surcharge, Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381;~~

~~(NL) Occupational Lead Poisoning Prevention Fee, Health and Safety Code Section 105190; Revenue and Taxation Code Sections 43001-43651;~~

~~(OM) Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001-46751;~~

~~(PN) Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Sections 50101-50162; and~~

~~(QO) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;~~

~~(R) Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;~~

~~(S) Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.~~

(2) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(3) "Electronic cash register"— a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

(34) "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.

(4) ~~"Hardcopy"—any document, record, report or other data maintained in a paper format.~~

(5) ~~"Machine-sensible~~Electronic record"—a collection of related information in an electronic format. Machine-sensibleElectronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

(6) "Hardcopy"—any document, record, report or other data maintained in a paper format.

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(67) "Taxpayer" includes "fee payer" and means any person liable for the payment of a tax or a fee specified under any of the applicable tax laws.

(78) "Tax" includes "fee" and means any amount of tax or fee specified under any of the applicable tax laws.

**(b) GENERAL.**

(1) A taxpayer shall maintain and make available for examination on request by the ~~h~~Board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code Sections 8301-8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172-40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, and 60604-60606, ~~Revenue and Taxation Code.~~

**(c) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

**(1) GENERAL.**

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the ~~h~~Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the ~~h~~Board has the technological

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capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~ electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1.    vendor name,
2.    invoice date,
3.    product description,
4.    quantity purchased,
5.    price,
6.    amount of tax,
7.    indication of tax status (e.g., exempt), and
8.    shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the ~~h~~Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code

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description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) **ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS.** The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) **BUSINESS PROCESS INFORMATION.**

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~ electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

(d) ~~MACHINE-SENSIBLE~~ **ELECTRONIC RECORDS MAINTENANCE REQUIREMENTS.**

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~ electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of

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electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

**(e) ACCESS TO MACHINE-SENSIBLE ELECTRONIC RECORDS.**

(1) The manner in which the Board is provided access to machine-sensible electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the machine-sensible electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible electronic records.

(C) The taxpayer may convert the machine-sensible electronic records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

(D) The taxpayer and the Board may agree on other means of providing access to the machine-sensible electronic records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by

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existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

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(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) **RECORD RETENTION—TIME PERIOD.** All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

**(j) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The ~~b~~Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~machine-sensible~~electronic records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the ~~b~~Board, which may include, but is not limited to, any one or more of the following issues:
  - a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and

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2. specifically identify which of the taxpayer's records the bBoard determines are not necessary for retention and which the taxpayer may discard, and
3. authorize variances, if any, from the normal provisions of this regulation.

(B) The bBoard shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The bBoard's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the bBoard when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The bBoard shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under the applicable tax law.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the bBoard.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation

(3) In addition to the record retention evaluation under subdivision (j)(2), the bBoard may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of

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EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

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STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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Fourth District, Orange County

BETTY T. YEE  
State Controller

CYNTHIA BRIDGES  
Executive Director

October 16, 2015

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Sales and Use Tax Regulation 1698, *Records*, and Special Taxes Regulation 4901, *Records*, which will be presented at the Board's October 27, 2015 Business Taxes Committee meeting. The proposed amendments define electronic cash register, computerized point of sale systems, and electronic records.

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 October 27, 2015** in Room 121 at the address shown above.

Sincerely,

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

SB:tmc

Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)

Honorable Jerome E. Horton, Chairman, Third District

Senator George Runner (Ret.), Vice Chair, First District

Honorable Fiona Ma, CPA, Member, Second District

Honorable Diane L. Harkey, Member, Fourth District

Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)

Ms. Kari Hammond, Board Member's Office, Third District  
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. Cary Huxsoll, Board Member's Office, First District  
Mr. Alfred Buck, Board Member's Office, First District  
Mr. Jim Kuhl, Board Member's Office, Second District  
Ms. Kathryn Asprey, Board Member's Office, Second District  
Mr. John Vigna, Board Member's Office, Second District  
Mr. Tim Morland, Board Member's Office, Second District  
Ms. Lizette Mata, Board Member's Office, Second District  
Mr. Russell Lowery, Board Member's Office, Fourth District  
Mr. Ted Matthies, Board Member's Office, Fourth District  
Ms. Lisa Renati, Board Member's Office, Fourth District  
Mr. Clifford Oakes, Board Member's Office, Fourth District  
Ms. Lynne Kinst, Board Member's Office, Fourth District  
Mr. Ramon Salazar, State Controller's Office (MIC 73)  
Ms. Cynthia Bridges (MIC 73)  
Mr. Randy Ferris (MIC 83)  
Mr. David Gau (MIC 101)  
Ms. Lynn Bartolo (MIC 43)  
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. Pam Mash (MIC 82)  
Ms. Kirsten Stark (MIC 50)  
Mr. Marc Alviso (MIC 101)  
Mr. Chris Lee (MIC 101)  
Ms. Laureen Simpson (MIC 70)  
Ms. Karina Magana (MIC 47)  
Mr. Bradley Miller (MIC 92)  
Mr. Bill Benson (MIC 67)  
Mr. Robert Wilke (MIC 50)  
Ms. Tracy McCrite (MIC 50)

**Agenda – October 27, 2015 Business Taxes Committee Meeting  
Records**

<p><b>Action 1 – Agreed Upon Items</b></p> <p>Proposed amendments to Regulation 1698, <i>Records</i> and Regulation 4901, <i>Records</i>.</p>	<p><b>Alternative 1</b></p> <p>Approve and authorize publication of proposed amendments to Regulation 1698, <i>Records</i> and Regulation 4901, <i>Records</i>.</p> <p>(See Formal Issue Paper 15-011, Exhibits 2 and 3 respectively)</p> <p style="text-align: center;">OR</p> <p><b>Alternative 2</b></p> <p>Do not approve proposed amendments to Regulations 1698 and 4901.</p>
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Issue Paper Number 15-011



BOARD OF EQUALIZATION  
**Key Agency Issue**

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

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## Regulations 1698, *Records* and 4901, *Records*

### I. Issue

Whether the Board should amend Sales and Use Tax Regulation 1698, *Records*, and Special Taxes and Fees Regulation 4901, *Records*, to include and define electronic cash register, computerized point of sale systems, and electronic records.

### II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1698, as set forth in Exhibit 2, and Regulation 4901, as set forth in Exhibit 3. Staff's proposed amendments include and define electronic cash register, computerized point of sale systems, and electronic records.

### III. Other Alternative(s) Considered

Do not approve the proposed amendments to Regulations 1698 and 4901.

## V. Background

Currently, there are two statutes related to the retention and examination of records for the Sales and Use Tax Law. Revenue and Taxation Code (RTC) section 7053, *Records*, provides that every seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Board may require.

RTC section 7054, *Examination of Records*, specifies that the Board of Equalization (BOE), or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax. It further specifies that the BOE may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid.

Regulation 1698, *Records*, implements and makes specific RTC sections 7053 and 7054 with regard to the types of records that must be maintained. The regulation prescribes the allowable format of the records and the record retention requirements.

During the interested parties process, staff determined that Special Taxes and Fees Regulation 4901, *Records*, mirrors Regulation 1698 for implementing and making specific the record keeping requirements for Special Taxes and Fees programs. Staff proposes to parallel the amendments to Regulation 1698, as discussed below, in Regulation 4901 to ensure consistency among the Sales and Use Tax and Special Taxes and Fees regulations.

## 7. Discussion

Staff held an interested parties meeting on August 11, 2015, and discussed the proposed amendments to both regulations. At the meeting, there was overall support for the proposed amendments.

At the interested parties meetings, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested Excel worksheets and Access databases be included as acceptable forms of records in the regulation. Although we did not receive a written submission for this request, staff did consider the suggestion. Worksheets and database files are not necessarily source data and are often summaries or analyses of source data. Staff believes worksheets and databases are already included in the regulation in subdivision (b)(1)(C) as "schedules or working papers used in connection with the preparation of tax returns." Additionally, including specific proprietary software products is too restrictive for regulation language.

### Electronic Imaging

Staff received a submission (Exhibit 4) from Mr. Robert Jones of Collins, Mason & Company LLP, that proposed that each occurrence of "microfilm or microfiche" in the regulation be replaced with "microfilm, microfiche, or pdf."

PDF or "portable document format" is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agrees with Mr. Jones that PDF is an acceptable record storage format, and as such, proposes to add PDF to the regulations where they reference microfilm and microfiche.

**FORMAL ISSUE PAPER 15-011**

Currently, Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that states "microfilm, microfiche or other media used in electronic imaging." As such, staff proposes to amend Regulation 1698 subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging," and add "PDF files" in subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901.

### Definitions

Staff proposes to add a definition for "electronic cash register" as subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901. The definitions in the regulations are in alphabetical order therefore "electronic cash register" was inserted alphabetically and the remaining definitions were renumbered.

### Record Retention

In both Regulations 1698 and 4901, subdivision (i) explains that records must be kept for a period of not less than four years. Staff proposes to add an example to this subdivision explaining that if the taxpayer's electronic cash register periodically overwrites stored data, the taxpayer should maintain a copy of any and all records for the specified period as required for record retention. For example, if a taxpayer has a POS system that does not retain the electronic file for the entire statute period, they should maintain a backup copy of the data that will be overwritten, for all periods that record retention statutes require.

### Simplified Referencing

Staff also recommends revising Regulation 4901 subdivision (a)(1) to clarify the "applicable tax laws" to which the regulation applies. There are currently five programs<sup>1</sup> listed individually in the regulation that are enacted and administered under the Fee Collection Procedures Law (FCPL), RTC 55001 through 55381. In addition to these five, the following fees have been enacted to be administered under the FCPL: Fire Prevention Fee, Lumber Products Assessment, and Prepaid Mobile Telephony Surcharge and Local Charges. Staff proposes to remove the individual fees by name and insert the FCPL as one of the "applicable tax laws" to which the regulation applies. This proposed amendment will cover all fees currently enacted and administered under the FCPL as well as eliminate the need for further revision to Regulation 4901 when new fees are enacted and administered under the FCPL. The proposed amendments to subdivision (a)(1) have been arranged so that the list is in alphabetical order.

### Other Amendments

Staff proposes to update the term "machine-sensible records" to "electronic records" throughout the regulations. Staff believes that "machine-sensible records" is an outdated term and that "electronic records" is a readily understood term.

Staff also proposes to change the formatting of the regulations in subdivision (c)(2)(A) where it provides examples of what retained records should contain when a taxpayer uses electronic data interchange. The proposed amendments format the examples to a numbered list for easier reading and consistent formatting with other subdivisions in the regulation.

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<sup>1</sup> Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee.

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

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

Staff recommends that the Board approve and authorize publication of the proposed amendments to Regulations 1698 and 4901, as provided in Exhibits 2 and 3, respectively, to include and define electronic cash register, computerized point of sale systems, and electronic records.

### **B. Pros of Alternative 1**

The proposed amendments:

- Provide clarity in the types of acceptable records for sales and use tax and special taxes and fees programs and the record retention requirements.
- Simplify referencing of programs administered under the FCPL.
- Make the regulations consistent with each other.

### **C. Cons of Alternative 1**

None.

### **D. Statutory or Regulatory Change for Alternative 1**

No statutory change is required; however, staff's recommendation does require regulatory change.

### **E. Operational Impact of Alternative 1**

Staff will publish the proposed amendments to Regulations 1698 and 4901 and begin the formal rulemaking process.

### **F. Administrative Impact of Alternative 1**

#### **1. Cost Impact**

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

#### **2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

### **G. Taxpayer/Customer Impact of Alternative 1**

Amendments to Regulations 1698 and 4901 provide clarity to taxpayers regarding the types of records they should be keeping and the record retention requirements.

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

None.

## **VII. Other Alternatives**

### **A. Description of Alternative 2**

Do not amend Regulations 1698 and 4901.

### **B. Pros of Alternative 2**

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

**FORMAL ISSUE PAPER 15-011**

**C. Cons of Alternative 2**

Taxpayers may have some confusion as to what constitutes valid records and the period of time for which they are required to keep their records for possible review.

**D. Statutory or Regulatory Change for Alternative 2**

None.

**E. Operational Impact of Alternative 2**

None.

**F. Administrative Impact of Alternative 2**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 2**

None.

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

None.

**Preparer/Reviewer Information**

Prepared by: Tax Policy Division, Sales and Use Tax Department  
Current as of: October 2, 2015

**REVENUE ESTIMATE**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



**Proposed Amendments to Regulation 1698, *Records*, and Regulation 4901, *Records***

**I. Issue**

Whether the Board should amend Sales and Use Tax Regulation 1698, *Records*, and Special Taxes Regulation 4901, *Records*, to include and define electronic cash register, computerized point of sale systems, and electronic records.

**II. Alternative 1 - Staff Recommendation**

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1698 and Regulation 4901. Staff's proposed amendments include and define electronic cash register, computerized point of sale systems, and electronic records.

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

Do not approve the proposed amendments to Regulation 1698 and Regulation 4901.

**Background, Methodology, and Assumptions**

**Alternative 1 – Staff Recommendation**

There is nothing in the staff recommendation that would impact revenue. The proposal provides clarity to taxpayers regarding the types of records (sales and use and special tax programs) they should be keeping and the record retention requirements. It also makes the regulations consistent with each other.

**Other Alternatives Considered**

There is nothing in Alternative 2 that would impact revenue.

**Revenue Summary**

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

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

## **Preparation**

Mr. Ronil Dwarka, 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. Dwarka at (916) 445-0840.

Current as of September 17, 2015.

## REGULATION 1698. RECORDS.

*Reference:* Sections 6455, 7053, and 7054, Revenue and Taxation Code.

### (a) DEFINITIONS.

(1) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic cash register"— a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

(~~2~~3) "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) ~~"Hardcopy"—any document, record, report or other data maintained in a paper format.~~

(4) ~~"Machine-sensible~~Electronic records"—a collection of related information in an electronic, machine-sensible format. ~~Machine-sensible~~Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

(5) "Hardcopy"—any document, record, report or other data maintained in a paper format.

(~~5~~6) "Taxpayer"—every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

### (b) GENERAL.

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code sections 7053 and 7054.

**(c) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

**(1) GENERAL.**

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

**(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.**

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1.    vendor name,
2.    invoice date,
3.    product description,
4.    quantity purchased,
5.    price,
6.    amount of tax,

7.    indication of tax status (e.g., for resale), and
8.    shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

**(B)** The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

**(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS.**  
The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

**(4) BUSINESS PROCESS INFORMATION.**

**(A)** Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

**(B)** The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

**(C)** The following specific documentation is required for ~~machine-sensible~~electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

**(d) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS MAINTENANCE REQUIREMENTS.**

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~electronic~~machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

**(e) ~~ACCESS TO MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

(1) The manner in which the Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

**(A)** The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

**(B)** The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

**(C)** The taxpayer may convert the ~~machine-sensible~~electronic records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

**(D)** The taxpayer and the Board may agree on other means of providing access to the ~~machine-sensible~~electronic records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, ~~or microfiche~~, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, and microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

**(i) RECORD RETENTION—TIME PERIOD.** All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For reporting periods beginning before January 1, 2003 that are subject to the extended ten-year statute of limitations contained in Revenue and Taxation Code section 7073(d), records required to be retained under this regulation must be preserved for a period of not less than ten years.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

**(j) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~electronic~~machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the Board, which may include, but is not limited to, any one or more of the following issues:
  - a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and
2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and
3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 7054 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.**

Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

**REGULATION 4901. RECORDS.**

*Reference:* Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) "Applicable Tax Laws" means any of the following:

- (A) Aircraft Jet Fuel Tax, Revenue and Taxation Code ~~Sections~~ Sections 7385–7398, and 7486–8406;
- (B) Alcoholic Beverage Tax, Revenue and Taxation Code ~~Sections~~ Sections 32001–32557;
- ~~(C) Marine Invasive Species Fee, Public Resources Code Sections 71200–71271; Revenue and Taxation Code Sections 44000–44008, 55001–55381;~~
- ~~(D) California Tire Fee, Public Resources Code Sections 42860–42895; Revenue and Taxation Code Sections 55001–55381;~~
- (~~E~~C) Childhood Lead Poisoning Prevention Fee, Health and Safety Code ~~Section~~ Section 105310; Revenue and Taxation Code ~~Sections~~ Sections 43001–43651;
- (~~F~~D) Cigarette and Tobacco Products Tax, Revenue and Taxation Code ~~Sections~~ Sections 30001–30481;
- (~~G~~E) Diesel Fuel Tax, Revenue and Taxation Code ~~Sections~~ Sections 60001–60709;
- (~~H~~F) Emergency Telephone Users Surcharge, Revenue and Taxation Code ~~Sections~~ Sections 41001–41176;
- (~~I~~G) Energy Resources Surcharge, Revenue and Taxation Code ~~Sections~~ Sections 40001–40216;
- (~~H~~) Fee Collection Procedures Law, Revenue and Taxation Code sections 55001-55381.
- (~~J~~I) Hazardous Substances Tax, Health and Safety Code ~~Sections~~ Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code ~~Sections~~ Sections 43001–43651;
- (~~K~~J) Integrated Waste Management Fee, Public Resources Code ~~Sections~~ Sections 40000–48008; Revenue and Taxation Code ~~Sections~~ Sections 45001–45984;
- (~~K~~) Motor Vehicle Fuel Tax, Revenue and Taxation Code ~~Sections~~ Sections 7301–8526;
- ~~(M) Natural Gas Surcharge, Public Utilities Code Sections 890–900; Revenue and Taxation Code Sections 55001–55381;~~

~~(NL)~~ Occupational Lead Poisoning Prevention Fee, Health and Safety Code Sections 105190; Revenue and Taxation Code Sections 43001–43651;

~~(OM)~~ Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001–46751;

~~(PN)~~ Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Sections 50101–50162; and

~~(QO)~~ Use Fuel Tax, Revenue and Taxation Code Sections 8601–9355;

~~(R)~~ Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9–25214.10.2; Public Resources Code Sections 42460–42486; Revenue and Taxation Code Sections 55001–55381;

~~(S)~~ Water Rights Fee, Water Code Sections 1525–1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001–55381.

(2) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(3) "Electronic cash register"— a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

~~(34)~~ "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.

~~(4)~~ "Hardcopy"—any document, record, report or other data maintained in a paper format.

~~(5)~~ "Machine-sensible Electronic record"—a collection of related information in an electronic format. Machine-sensible Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

~~(6)~~ "Hardcopy"—any document, record, report or other data maintained in a paper format.

~~(67)~~ "Taxpayer" includes "fee payer" and means any person liable for the payment of a tax or a fee specified under any of the applicable tax laws.

~~(78)~~ "Tax" includes "fee" and means any amount of tax or fee specified under any of the applicable tax laws.

**(b) GENERAL.**

(1) A taxpayer shall maintain and make available for examination on request by the ~~b~~Board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code ~~Sections~~ 8301–8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172–40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, and 60604–60606. ~~Revenue and Taxation Code.~~

**(c) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

**(1) GENERAL.**

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the ~~b~~Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the ~~b~~Board has the technological capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1. vendor name,
2. invoice date,
3. product description,
4. quantity purchased,
5. price,
6. amount of tax,
7. indication of tax status (e.g., exempt), and
8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) BUSINESS PROCESS INFORMATION.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~ electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

(d) ~~MACHINE-SENSIBLE~~ ELECTRONIC RECORDS MAINTENANCE  
**REQUIREMENTS.**

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~ electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

**(e) ACCESS TO MACHINE-SENSIBLE ELECTRONIC RECORDS.**

(1) The manner in which the bBoard is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the bBoard with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

(C) The taxpayer may convert the ~~machine-sensible~~electronic records to a standard record format specified by the bBoard, including copies of files, on a magnetic medium that is agreed to by the bBoard.

(D) The taxpayer and the bBoard may agree on other means of providing access to the ~~machine-sensible~~electronic records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the bBoard. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the bBoard, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of

all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) **RECORD RETENTION—TIME PERIOD.** All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

**(j) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~machine-sensible~~ electronic records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the Board, which may include, but is not limited to, any one or more of the following issues:
  - a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and
2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and
3. authorize variances, if any, from the normal provisions of this regulation.

(B) The ~~b~~Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The ~~b~~Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the ~~b~~Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The ~~b~~Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under the applicable tax law.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the ~~b~~Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation

(3) In addition to the record retention evaluation under subdivision (j)(2), the ~~b~~Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

**From:** [Bob Jones](#)  
**To:** [McCrite, Tracy](#)  
**Cc:** [Flamer, David](#)  
**Subject:** electronic records  
**Date:** Wednesday, July 01, 2015 2:08:05 PM

---

Tracy

Assuming that the regulations are in a searchable format I would suggest the following:  
Replace each occurrence of "microfilm or microfiche", with  
"microfilm, microfiche or pdf"

I see the following places where this change should be made (I may have missed some):

- (a)(4)
- (h)(1)
- (h)(2)

Let me know if you have any questions or comments.

Robert H. Jones, CPA, CGMA  
Collins, Mason & Company, LLP  
(510) 891-9000, Ext. 105  
(510) 891-9002 (fax)  
180 Grand Avenue, Suite 1365  
Oakland, CA 94612

Visit our new website at [www.cmcaccountants.com](http://www.cmcaccountants.com)

See my LinkedIn profile at [www.linkedin.com/in/rhjonescpa/](http://www.linkedin.com/in/rhjonescpa/)

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BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

OCTOBER 27, 2015

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

P R E S E N T

For the Board  
of Equalization:

Diane L. Harkey  
Chair

Jerome E. Horton  
Member

Sen. George Runner (Ret.)  
Member

Fiona Ma, CPA  
Member

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

Joann Richmond  
Chief  
Board Proceedings  
Division

For the Department:

Susanne Buehler  
Chief  
Tax Policy Division  
Sales and Use Tax  
Department

Pamela Mash  
Tax Counsel  
Legal Department

----oOo----

1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 OCTOBER 27, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond, what is our next  
6 item?

7 MS. RICHMOND: Good morning, Mr. Chairman  
8 and Members. Our first item on this morning's  
9 agenda is the Business Taxes Committee. Ms. Harkey  
10 is the Chair of that committee.

11 Ms. Harkey.

12 MS. HARKEY: Woops. Thank you.

13 Our first item -- I believe we have two.  
14 Excuse me.

15 Okay. Our first item is Proposed  
16 Amendments to Sales and Use Tax Regulation 1668,  
17 Sales for Resale.

18 I think this is long past due and it was --  
19 it's -- it's with regard to convicted sellers or  
20 purchasers of counterfeit goods.

21 Thank you. Would you like to start, Ms.  
22 Buehler?

23 MS. BUEHLER: Certainly. Good morning. I  
24 am Susanne Buehler with the Sales and Use Tax  
25 Department.

26 We have two agenda items for your  
27 consideration today. With me is Miss Pam Mash from  
28 our Legal Department. We will take each agenda

1 items and their respective action item separately  
2 before moving to the next.

3 For agenda item one, staff requests your  
4 approval and authorization to publish proposed  
5 amendments to Sales and Use Tax Regulation 1668,  
6 Sales for Resale.

7 You received a revised copy of the proposed  
8 regulation yesterday that corrected minor  
9 grammatical errors.

10 The proposed amendments are the result of  
11 the passage of Board-sponsored Assembly Bill 2681  
12 and state that sales or purchases of counterfeit  
13 goods by a convicted seller or purchaser are subject  
14 to tax, regardless of whether it was their intention  
15 to resell them.

16 We'd be happy to answer any questions you  
17 may have.

18 MS. HARKEY: Any questions, Members?

19 MR. RUNNER: Move adoption.

20 MS. STOWERS: Second.

21 MR. HORTON: Second.

22 MS. HARKEY: I have a motion and a second.

23 MR. HORTON: Quick comment, Madam Chair, if  
24 I may.

25 Just wanted to commend staff and Madam  
26 Chair for bringing this forward. I think it's  
27 fundamentally important for the Board to be in  
28 position to be able to participate in retrieving

1 sales tax and potential funds when there's a  
2 criminal investigation that results in prosecution  
3 and so forth.

4 Without this measure, the items could be  
5 very well treated as an exempt sale and, therefore,  
6 the Board of Equalization would not be able to  
7 protect the interest of the State of California.

8 To that end, thank you, Madam Chair and  
9 staff, for your efforts in that regard.

10 MS. BUEHLER: Thank you.

11 MS. HARKEY: I'd just like to add, not  
12 only the State of California, but all those  
13 legitimately out trying to earn a living in  
14 California. So thank you very much for this.

15 The next item is proposed amendments to  
16 Sales and Use Tax Regulation 1698 and proposed  
17 amendments to Special Taxes Regulation 4901.

18 Ms. Buehler.

19 MS. BUEHLER: Before I start that, did we  
20 have a vote on the first item?

21 MS. HARKEY: Oh, excuse me. We had a  
22 motion from Senator Runner and a second from Ms. Ma.

23 Any objection?

24 Okay.

25 MS. BUEHLER: Thank you.

26 MS. HARKEY: Thank you.

27 MS. BUEHLER: For agenda item two, staff  
28 requests your approval and authorization to publish

1 proposed amendments to Sales and Use Tax Regulation  
2 1698, Records, and Special Taxes and Fees Regulation  
3 4901, Records.

4 The proposed amendments include and define  
5 electronic cash registers, computerized point of  
6 sale systems and electronic records.

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

9 MS. HARKEY: Any questions from the Board?

10 MR. HORTON: Move approval and authorize  
11 staff to propose -- publish both proposed amendments  
12 to clarify.

13 MS. HARKEY: Thank you. I have a motion to  
14 approve.

15 I have a second?

16 MS. STOWERS: Second.

17 MS. HARKEY: Second by Ms. Stowers.

18 Any objection?

19 So be it. Thank you.

20 MS. BUEHLER: Thank you.

21 MS. HARKEY: This ends the Business Taxes  
22 Committee.

23 ---oOo---

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REPORTER'S CERTIFICATE

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State of California )  
 ) ss  
County of Sacramento )

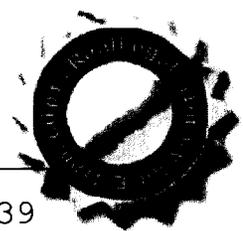
I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on October 27, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 6 constitute a complete and accurate transcription of the shorthand writing.

Dated: October 30, 2015

*Kathleen Skidgel*

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter



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

**Proposed Amendment of Sales and Use Tax Regulation 1698, *Records,*  
and Special Taxes and Fees Regulation 4901, *Records***

**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 1-20-16  
Richard Bennion, Regulations Coordinator

Approved by  Date 1/21/16  
Randy Ferris, Chief Counsel

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

Approved by \_\_\_\_\_ Date \_\_\_\_\_  
Chief, Financial Management Division

Approved by \_\_\_\_\_ Date \_\_\_\_\_  
Chief, Board Proceedings Division

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

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

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 698, Records, and Section 4901, Records			NOTICE FILE NUMBER Z

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

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

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

Please see the attached .

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

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

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

3. Enter the total number of businesses impacted: \_\_\_\_\_

Describe the types of businesses (Include nonprofits): \_\_\_\_\_

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

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

Explain: \_\_\_\_\_

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

6. Enter the number of jobs created: \_\_\_\_\_ and eliminated: \_\_\_\_\_

Describe the types of jobs or occupations impacted: \_\_\_\_\_

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

If YES, explain briefly: \_\_\_\_\_

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

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)**

**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: \_\_\_\_\_

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

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)**

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

Regulation: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

Alternative 1: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

Alternative 2: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

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

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

Explain: \_\_\_\_\_

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

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

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

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

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

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

*(Attach additional pages for other alternatives)*

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

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

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

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

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

YES  NO

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

5. Briefly describe the following:

The increase or decrease of investment in the State: \_\_\_\_\_

The incentive for innovation in products, materials or processes: \_\_\_\_\_

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

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

STD 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT**

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

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

\$ \_\_\_\_\_

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

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

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

\$ \_\_\_\_\_

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

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

Case of: \_\_\_\_\_ vs. \_\_\_\_\_

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

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

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

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

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

- 3. Annual Savings. (approximate)

\$ \_\_\_\_\_

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

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

- 6. Other. Explain \_\_\_\_\_

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

STD. 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT (CONTINUED)**

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

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

\$ \_\_\_\_\_

*It is anticipated that State agencies will:*

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

b. Increase the currently authorized budget level for the \_\_\_\_\_ Fiscal Year

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

\$ \_\_\_\_\_

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

4. Other. Explain \_\_\_\_\_

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

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

\$ \_\_\_\_\_

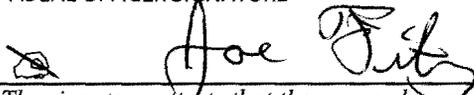
2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

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

4. Other. Explain \_\_\_\_\_

FISCAL OFFICER SIGNATURE

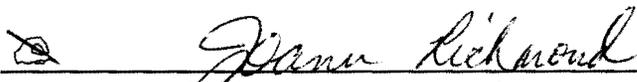


DATE

January 19, 2016

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

AGENCY SECRETARY



DATE

January 19, 2016

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

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

Exempt under SAM section 6615

DATE

**Attachment to Economic and Fiscal Impact**  
**Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to**  
**California Code of Regulations, Title 18, Section 1698,**  
***Records, and Section 4901, Records***

As explained in more detail in the initial statement of reasons, California Code of Regulations, title 18, section (Regulation) 1698, *Records*, currently specifies the types of records that must be maintained and made available for examination on request by the State Board of Equalization (Board) under the Sales and Use Tax Law (Rev. & Tax. Code (RTC) § 6001 et seq.). Regulation 4901, *Records*, currently specifies the types of records that must be maintained and made available for examination on request by the Board under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Law (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (FCPL) (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws). Also, the Covered Electronic Waste Recycling Fee, the California Tire Fee, the Lumber Products Assessment, the Marine Invasive Species Fee, the Natural Gas Surcharge, the Prepaid Mobile Telephony Services Surcharge and Local Charges (as defined in RTC section 42101) that are required to be collected by sellers other than direct sellers, and the Water Rights Fee are administered under the FCPL.

In addition, Regulations 1698 currently defines the terms “database management system,” “electronic data interchange” or “EDI Technology,” “hardcopy,” and “machine-sensible record.” Regulation 1698 also explains that machine-sensible records do not include hardcopy records “stored in or by a storage-only imaging system such as microfilm or microfiche.” It also provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as microfilm and microfiche.” Regulation 4901 generally mirrors the provisions of Regulation 1698, except that it provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as *microfilm, microfiche or other media used in electronic imaging.*” (Italics added.)

Furthermore, the Legislature added RTC section 7153.6 to the Sales and Use Tax Law and RTC section 55363.5 to the FCPL, effective January 1, 2014. (Stats. 2013, ch. 532.) As relevant here, both statutes define the term “electronic cash register” to mean “a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner” and both statutes indicate that electronic cash registers include point of sale (POS) systems.

The proposed amendments to Regulations 1698 and 4901:

- Define the term “electronic cash register” and provide that the term includes integrated POS systems.

- Add examples explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified record retention period.
- Update the term "machine-sensible records" to "electronic records."
- Clarify that storage-only imaging media includes "PDF files."

The proposed amendments to Regulation 1698 also clarify that storage-only imaging media includes "other media used in electronic imaging" to be consistent with the current provisions of Regulation 4901. And, the proposed amendments replace the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee with a reference to the FCPL in Regulation 4901, subdivision (a)(1), to cover all the taxes and fees currently enacted and administered under the FCPL.

The proposed amendments do not mandate that individuals or businesses maintain or make available any records that they are not currently required to maintain or make available or do anything that is not already required by the Sales and Use Tax Law, the special tax and fee laws, or Regulations 1698 and 4901, 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 to Regulations 1698 and 4901 will not have a measurable economic impact on individuals and businesses. The Board has determined that the proposed amendments are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, the Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

Therefore, based upon the foregoing information and all of the information in the rulemaking file, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action, and the Board has determined that the proposed amendments to Regulations 1698 and 4901:

- 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, Regulations 1698 and 4901 do 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 Regulations 1698 and 4901 will not affect the benefits of Regulations 1698 and 4901 to the health and welfare of California residents, worker safety, or the state's environment.

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-2016-0119-02</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

JAN 19 '16    JAN 29 '16

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE Records		TITLE(S) 18	FIRST SECTION AFFECTED 1698	2. REQUESTED PUBLICATION DATE January 29, 2016
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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

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

<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

## 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 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 type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

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

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

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
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TYPED NAME AND TITLE OF SIGNATORY

## **TITLE 18. BOARD OF EQUALIZATION**

### **Notice of Proposed Regulatory Action**

#### **The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1698, *Records*, and Section 4901, *Records***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1698, *Records*, and Regulation 4901, *Records*. The proposed amendments to both regulations define the term electronic cash register and provide that the term includes integrated point of sale (POS) systems. The proposed amendments add an example to both regulations explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified record retention period. The proposed amendments update the term "machine-sensible records" to "electronic records" throughout both of the regulations. The proposed amendments to both regulations clarify that storage-only imaging media includes "PDF files" and the amendments to Regulation 1698 clarify that storage-only imaging media includes "other media used in electronic imaging" to be consistent with the current provisions of Regulation 4901. The proposed amendments also replace the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee with a reference to the Fee Collection Procedures Law (FCPL) (RTC § 55001 et seq.) in Regulation 4901, subdivision (a)(1), to cover all the taxes and fees currently enacted and administered under the FCPL.

#### **PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 29-30, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on March 29-30, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1698 and 4901.

#### **AUTHORITY**

Regulation 1698: RTC section 7051

Regulation 4901: RTC sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601

## REFERENCE

Regulation 1698: RTC sections 6455, 7053, 7054, and 7153.6

Regulation 4901: RTC sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605, and 60606

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### Current Law

#### *Sales and Use Tax*

The Board administers California's sales and use taxes. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs, including performing audits to ensure that sales and use taxes are reported properly.

There are two statutes related to the retention and examination of records for sales and use tax purposes. RTC section 7053 provides that "[e]very seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the [B]oard may require."

RTC section 7054 specifies that the Board, or any person authorized in writing by it, "may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax." It further specifies that the Board "may investigate the character of the business of the person in order to verify the accuracy of any return made" or "if no return is made by the person, to ascertain and determine the amount required to be paid."

The Board adopted Regulation 1698 to implement, interpret, and make specific RTC sections 7053 and 7054 by specifying the types of records that must be maintained and made available for examination on request by the Board for sales and use tax purposes. The regulation currently allows records to be maintained and made available in hardcopy or electronic format. The regulation also generally requires all records to be preserved for a period of not less than four years, except for records for reporting periods beginning before January 1, 2003, that are subject to the extended ten year statute of limitations contained in RTC section 7073(d), which the regulation requires to be preserved for a period of not less than ten years. The Board made amendments that substantially updated

Regulation 1698 in 1997, and added the provisions regarding records for reporting periods beginning before January 1, 2003, in 2005. However, Regulation 1698 has not been substantially updated since 1997.

As relevant here, Regulation 1698 currently defines the terms “database management system,” “electronic data interchange” or “EDI Technology,” “hardcopy,” and “machine-sensible record.” It explains that machine-sensible records do not include hardcopy records “stored in or by a storage-only imaging system such as microfilm or microfiche.” It also provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as microfilm and microfiche.”

### *Special Taxes and Fees*

The Board also administers a number of special taxes and fees, in addition to the sales and use taxes. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Law (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the FCPL, and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

As relevant here, the Covered Electronic Waste Recycling Fee imposed by Public Resources Code (PRC) section 42464 is administered under the FCPL pursuant to PRC section 42464.2. The California Tire Fee imposed by PRC section 42885 is administered under the FPCL pursuant to PRC section 42882. The Lumber Products Assessment imposed by PRC section 4629.5 is administered under the FCPL pursuant to PRC section 4629.5. The Marine Invasive Species Fee imposed by PRC section 42885 is administered under the FCPL pursuant to RTC sections 44002 and 44003. The Natural Gas Surcharge imposed by Public Utilities Code (PUC) section 890 is administered under the FCPL pursuant to PUC section 893. The Prepaid Mobile Telephony Services Surcharge imposed by RTC section 42010 and Local Charges as defined in RTC section 42101 that are required to be collected by sellers other than direct sellers are administered under the FCPL pursuant to RTC sections 42020 and 42103. And, the Water Rights Fee imposed by Water Code sections 1525 and 13160.1 is administered under the FCPL pursuant to Water Code section 1552.

The Board’s Special Taxes and Fee Department is responsible for administering the Board’s special taxes and fees programs under the special tax and fee laws.

The Board adopted Regulation 4901 in 2003 to implement, interpret, and make specific the statutes related to the retention and examination of records under the special tax and fee laws, which are similar to RTC sections 7053 and 7054 (discussed above). (RTC §§

8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606.) As relevant here, Regulation 4901 contains a list of “Applicable Tax Laws” and prescribes the types of records that must be maintained and made available for examination on request by the Board to determine taxpayers’ and feepayers’ correct liabilities under the applicable tax laws. Regulation 4901 generally mirrors the provisions of Regulation 1698, except that it provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as *microfilm, microfiche or other media used in electronic imaging.*” (Italics added.)

Regulation 4901 was amended in 2010 to clarify that it applies to the Water Rights Fee (enacted in 2003) and Cover Electronic Waste Recycling Fee (enacted in 2004). However, Regulation 4901 has not been substantially updated since it was adopted in 2003 and does not currently refer to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge, which were enacted, or Local Charges, which the Board was first required to administer under the FCPL, after the regulation was last amended.

### *Electronic Cash Registers*

Cash registers have existed for many years. They offer business owners an organized place to ring up sales and store money from their sales transactions. Electronic cash registers have also been in use for some time and now include a wide range of devices, such as integrated POS systems.

POS systems are sophisticated computer systems that use commercially available operating systems to record each sale when it happens. In recent years, POS systems have become more popular than traditional cash registers with business owners because of their user-friendly interface, data tracking capabilities, and increased affordability. These systems are also popular because they can be integrated with third-party accounting software, online ordering, and credit and debit card processors.

The Legislature added RTC section 7153.6 to the Sales and Use Tax Law (RTC § 6001 et seq.) and RTC section 55363.5 to the FCPL, effective January 1, 2014. (Stats. 2013, ch. 532.) As relevant here, both statutes define the term “electronic cash register” to mean “a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner” and both statutes indicate that electronic cash registers include POS systems.

### Effect, Objectives, and Benefits of the Proposed Amendments

#### *Need to Update Regulation 1698*

As new technologies and business practices emerge, the Board must adapt to the new technologies and keep taxpayers informed with relevant guidance using the current

terminology in the industry. Board staff determined that there was an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) because Regulation 1698 currently defines the outdated term “machines-sensible record” and generally uses the term to refer to information in an “electronic format,” which is now simply referred to as “electronic records.” Staff determined that there was an issue (or problem) with Regulation 1698 because it does not define the commonly used term electronic cash register or refer to POS systems. Staff also determined that there was an issue with Regulation 1698 because it did not provide guidance to business owners with POS systems that overwrite data after a period of time about how to maintain their data before it is overwritten.

### *Interested Parties Process*

As a result, the Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1698 and address the issues described above, and a discussion paper explaining the draft amendments. Both were provided to interested parties.

Staff’s draft amendments to Regulations 1698:

- Defined the term “electronic cash register” and explained that the term includes integrated POS systems.
- Replaced the term “machine-sensible record” with “electronic record” and explained that electronic records included records recorded and maintained by electronic cash registers.
- Changed the format of the example provided in subdivision (c)(2)(A).
- Added an example to subdivision (i) to further explain how business owners should maintain their data if they have POS systems that overwrite data after a period of time.

On June 17, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. Following the meeting, staff received a submission, dated July 1, 2015, from Mr. Robert Jones of Collins, Mason & Company LLP. Mr. Jones proposed that each occurrence of “microfilm or microfiche” in the regulation be replaced with “microfilm, microfiche, or pdf.”

PDF or “portable document format” is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agreed with Mr. Jones that PDF is an acceptable record storage format, and as such agreed to add PDF to the regulation where it refers to microfilm and microfiche.

When preparing the second discussion paper and revising the draft amendments to Regulation 1698, BTC staff determined that Regulation 4901 generally mirrors Regulation 1698 (as discussed above). BTC staff also noticed that Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that refers to “microfilm, microfiche or other media used in electronic imaging” (as discussed above). As such, staff revised its draft amendments to Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of “microfilm or microfiche” with “microfilm, microfiche, PDF files, or other media used in electronic imaging.”

In addition, BTC staff prepared drafted amendments to update Regulation 4901 that mirrored the amendments to Regulation 1698, discussed above, including adding “PDF files” to subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901 to ensure consistency between Regulations 1698 and 4901. Also, to further update Regulation 4901, staff drafted amendments to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from subdivision (a)(1)’s list of applicable tax laws and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

On August 11, 2015, BTC staff conducted a second interested parties meeting to discuss the draft amendments to Regulations 1698 and 4901. At the meeting, there was overall support for the proposed amendments. Also at the meeting, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested that Excel worksheets and Access databases be included as acceptable forms of records in the regulations. Although staff did not receive a written submission for this request, staff did consider the suggestion. Staff determined that worksheets and database files are not necessarily source data and that they are often summaries or analyses of source data. Staff determined that worksheets and databases are already required to be maintained and made available to the Board under the provisions in subdivision (b)(1)(C) of both regulations, which refer to “schedules or working papers used in connection with the preparation of tax returns.” Additionally, staff determined that it would be unnecessarily restrictive to revise the regulation to refer to specific proprietary software products, such as Excel and Access. For these reasons, BTC staff did not agree to incorporate Mr. Brandeis’s suggestion into staff’s draft amendments.

#### *October 27, 2015, BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-011 and distributed it to the Board Members for consideration at the Board’s October 27, 2015, BTC meeting. Formal Issue Paper 15-011 recommended that the Board propose to add a definition for “electronic cash register” to subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901 to address the second issue (or problem) referred to above. The definitions in the regulations are in alphabetical order, therefore the issue paper recommended that the definition for “electronic cash register” be inserted alphabetically, and the remaining definitions be renumbered.

Subdivision (i) of both regulations explains that records must be kept for a period of not less than four years. The formal issue paper recommended that the Board propose to add an example to this subdivision to address the third issue (or problem) referred to above by explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified period.

The formal issue paper recommended that the Board propose to update the term "machine-sensible records" to "electronic records" throughout the regulations to address the first issue (or problem) referred to above. "Machine-sensible records" is an outdated term, and "electronic records" is a current and readily understood term. Board staff also recommended that the Board propose to change the formatting of the regulations in subdivision (c)(2)(A) where they provide examples of what retained records should contain when a taxpayer uses electronic data interchange processes and technology. The recommended amendments reformatted the examples as numbered lists for easier reading and consistent formatting with other subdivisions in the regulations.

Additionally, the formal issue paper recommended that the Board revise Regulation 4901 to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from the list of applicable tax laws under subdivision (a)(1) and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL. The recommended amendments to subdivision (a)(1) were also arranged in alphabetical order.

Furthermore, the formal issue paper recommended that the Board propose to amend Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging" and propose to amend Regulation 4901 to add "PDF files" to subdivisions (a)(5), (h)(1), and (h)(2), to address Mr. Jones's submission, which was included as Exhibit 4 to the formal issue paper.

At the conclusion of the Board's discussion of Formal Issue Paper 15-011 during the October 27, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulations 1698 and 4901 recommended in the formal issue paper. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of clarifying and updating the regulations to address the issues (or problems) referred to above and respond to Mr. Jones's submission.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by

eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1698 and 4901 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulations 1698 and 4901 are the only regulations that specify the types of records that must be maintained and made available for examination on request by the Board under the Sales and Use Tax Law and special tax and fee laws, and the Board is making consistent amendments to both regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 may affect small business.

#### **NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 will not affect the benefits of Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at [Pamela.Mash@boe.ca.gov](mailto:Pamela.Mash@boe.ca.gov), or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Ms. Mash.

#### WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on March 29, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1698 and 4901 during the March 29-30, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1698 and 4901. 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 underscored and strikeout versions of the text of Regulations 1698 and 4901 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 Regulations 1698 and 4901, 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](http://www.boe.ca.gov).

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

The Board may adopt the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

## **Bennion, Richard**

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**From:** BOE-Board Meeting Material  
**Sent:** Friday, January 29, 2016 7:27 AM  
**To:** Alonzo, Mary Ann (Legal); Anderson, Ebony; 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; Buck, Alfred; 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; Huxsoll, Cary; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); Lopez, Claudia; Lowery, Russell; Manuel, Charlene; 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; Wiggins, Brian; Williams, Lee; Wilson, David; Zivkovich, Robert; Zumaeta, Jaclyn  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 1698 and 4901

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1698, *Records*, and Special Taxes Regulation 4901, *Records*, to define the term electronic cash register, update the terminology used to refer to electronic records, and clarify taxpayers' record retention requirements. 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 March 29-30, 2016.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:  
[http://www.boe.ca.gov/regs/reg\\_1698\\_4901\\_2016.htm](http://www.boe.ca.gov/regs/reg_1698_4901_2016.htm).

Questions regarding the substance of the proposed amendments should be directed to Ms. Pamela Mash, Tax Counsel III, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email [Pamela.Mash@boe.ca.gov](mailto:Pamela.Mash@boe.ca.gov), telephone (916) 323-3248, or FAX (916) 323-3387.

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

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

## **Bennion, Richard**

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**From:** State Board of Equalization - Announcement of Regulatory Change  
<Legal.Regulations@BOE.CA.GOV>  
**Sent:** Friday, January 29, 2016 9:05 AM  
**To:** BOE\_REGULATIONS@LISTSERV.STATE.CA.GOV  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 1698 and 4901

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1698, *Records*, and Special Taxes Regulation 4901, *Records*, to define the term electronic cash register, update the terminology used to refer to electronic records, and clarify taxpayers' record retention requirements. 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 March 29-30, 2016.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:  
[http://www.boe.ca.gov/regs/reg\\_1698\\_4901\\_2016.htm](http://www.boe.ca.gov/regs/reg_1698_4901_2016.htm).

Questions regarding the substance of the proposed amendments should be directed to Ms. Pamela Mash, Tax Counsel III, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email [Pamela.Mash@boe.ca.gov](mailto:Pamela.Mash@boe.ca.gov), telephone (916) 323-3248, or FAX (916) 323-3387.

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

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to

**Richard Bennion | Regulations Coordinator**  
**Board Proceedings Division | Board of Equalization**  
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persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF REASONS  
AND INFORMATION**

The CBA has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the CBA at 2000 Evergreen St, Ste. 250, Sacramento, California, 95815.

**AVAILABILITY AND LOCATION OF THE FINAL  
STATEMENT OF REASONS AND  
RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

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

**CONTACT PERSON**

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Pat Billingsley  
Address: 2000 Evergreen St., Ste. 250  
Sacramento, CA 95815  
Telephone No.: 916-561-1782  
Fax No.: 916-263-3678  
E-Mail  
Address: pat.billingsley@cba.ca.gov

The backup contact person is:

Name: Nooshin Movassaghi  
Address: 2000 Evergreen St., Ste. 250  
Sacramento, CA 95815  
Telephone No.: 916-561-1742  
Fax No.: 916-263-3678  
E-Mail  
Address: nooshin.movassaghi@cba.ca.gov

Website Access: Materials regarding this proposal can be found at [http://www.dca.ca.gov/cba/laws\\_and\\_rules/pubpart.shtml](http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml).

**TITLE 18. BOARD OF EQUALIZATION**

**The State Board of Equalization Proposes to  
Adopt Amendments to  
California Code of Regulations, Title 18,  
Section 1698, Records, and Section 4901, Records**

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1698, *Records*, and Regulation 4901, *Records*. The proposed amendments to both regulations define the term electronic cash register and provide that the term includes integrated point of sale (POS) systems. The proposed amendments add an example to both regulations explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified record retention period. The proposed amendments update the term "machine-sensible records" to "electronic records" throughout both of the regulations. The proposed amendments to both regulations clarify that storage-only imaging media includes "PDF files" and the amendments to Regulation 1698 clarify that storage-only imaging media includes "other media used in electronic imaging" to be consistent with the current provisions of Regulation 4901. The proposed amendments also replace the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee with a reference to the Fee Collection Procedures Law (FCPL) (RTC § 55001 et seq.) in Regulation 4901, subdivision (a)(1), to cover all the taxes and fees currently enacted and administered under the FCPL.

**PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 29-30,

2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on March 29–30, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1698 and 4901.

#### AUTHORITY

Regulation 1698: RTC section 7051.

Regulation 4901: RTC sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601.

#### REFERENCE

Regulation 1698: RTC sections 6455, 7053, 7054, and 7153.6.

Regulation 4901: RTC sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605, and 60606.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### Current Law

##### *Sales and Use Tax*

The Board administers California's sales and use taxes. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs, including performing audits to ensure that sales and use taxes are reported properly.

There are two statutes related to the retention and examination of records for sales and use tax purposes. RTC section 7053 provides that "[e]very seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the [B]oard may require."

RTC section 7054 specifies that the Board, or any person authorized in writing by it, "may examine the books, papers, records, and equipment of any person

selling tangible personal property and any person liable for the use tax." It further specifies that the Board "may investigate the character of the business of the person in order to verify the accuracy of any return made" or "if no return is made by the person, to ascertain and determine the amount required to be paid."

The Board adopted Regulation 1698 to implement, interpret, and make specific RTC sections 7053 and 7054 by specifying the types of records that must be maintained and made available for examination on request by the Board for sales and use tax purposes. The regulation currently allows records to be maintained and made available in hardcopy or electronic format. The regulation also generally requires all records to be preserved for a period of not less than four years, except for records for reporting periods beginning before January 1, 2003, that are subject to the extended ten-year statute of limitations contained in RTC section 7073(d), which the regulation requires to be preserved for a period of not less than ten years. The Board made amendments that substantially updated Regulation 1698 in 1997, and added the provisions regarding records for reporting periods beginning before January 1, 2003, in 2005. However, Regulation 1698 has not been substantially updated since 1997.

As relevant here, Regulation 1698 currently defines the terms "database management system," "electronic data interchange" or "EDI Technology," "hardcopy," and "machine-sensible record." It explains that machine-sensible records do not include hardcopy records "stored in or by a storage-only imaging system such as microfilm or microfiche." It also provides the requirements for hardcopy records to be converted to "storage-only imaging media, such as microfilm and microfiche."

##### *Special Taxes and Fees*

The Board also administers a number of special taxes and fees, in addition to the sales and use taxes. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Law (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the FCPL, and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

As relevant here, the Covered Electronic Waste Recycling Fee imposed by Public Resources Code (PRC) section 42464 is administered under the FCPL pursuant to PRC section 42464.2. The California Tire Fee imposed by PRC section 42885 is administered under the FPCL pursuant to PRC section 42882. The Lumber Products Assessment imposed by PRC section 4629.5 is administered under the FCPL pursuant to PRC section 4629.5. The Marine Invasive Species Fee imposed by PRC section 42885 is administered under the FCPL pursuant to RTC sections 44002 and 44003. The Natural Gas Surcharge imposed by Public Utilities Code (PUC) section 890 is administered under the FCPL pursuant to PUC section 893. The Prepaid Mobile Telephony Services Surcharge imposed by RTC section 42010 and Local Charges as defined in RTC section 42101 that are required to be collected by sellers other than direct sellers are administered under the FCPL pursuant to RTC sections 42020 and 42103. And, the Water Rights Fee imposed by Water Code sections 1525 and 13160.1 is administered under the FCPL pursuant to Water Code section 1552.

The Board's Special Taxes and Fee Department is responsible for administering the Board's special taxes and fees programs under the special tax and fee laws.

The Board adopted Regulation 4901 in 2003 to implement, interpret, and make specific the statutes related to the retention and examination of records under the special tax and fee laws, which are similar to RTC sections 7053 and 7054 (discussed above). (RTC §§ 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606.) As relevant here, Regulation 4901 contains a list of "Applicable Tax Laws" and prescribes the types of records that must be maintained and made available for examination on request by the Board to determine taxpayers' and fee payers' correct liabilities under the applicable tax laws. Regulation 4901 generally mirrors the provisions of Regulation 1698, except that it provides the requirements for hardcopy records to be converted to "storage-only imaging media, such as *microfilm, microfiche or other media used in electronic imaging.*" (Italics added.)

Regulation 4901 was amended in 2010 to clarify that it applies to the Water Rights Fee (enacted in 2003) and Cover Electronic Waste Recycling Fee (enacted in 2004). However, Regulation 4901 has not been substantially updated since it was adopted in 2003 and does not currently refer to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge, which were enacted, or Local Charges, which the Board was first required to administer under the FCPL, after the regulation was last amended.

### *Electronic Cash Registers*

Cash registers have existed for many years. They offer business owners an organized place to ring up sales and store money from their sales transactions. Electronic cash registers have also been in use for some time and now include a wide range of devices, such as integrated POS systems.

POS systems are sophisticated computer systems that use commercially available operating systems to record each sale when it happens. In recent years, POS systems have become more popular than traditional cash registers with business owners because of their user-friendly interface, data tracking capabilities, and increased affordability. These systems are also popular because they can be integrated with third-party accounting software, online ordering, and credit and debit card processors.

The Legislature added RTC section 7153.6 to the Sales and Use Tax Law (RTC § 6001 et seq.) and RTC section 55363.5 to the FCPL, effective January 1, 2014. (Stats. 2013, ch. 532.) As relevant here, both statutes define the term "electronic cash register" to mean "a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner" and both statutes indicate that electronic cash registers include POS systems.

### Effect, Objectives, and Benefits of the Proposed Amendments

#### *Need to Update Regulation 1698*

As new technologies and business practices emerge, the Board must adapt to the new technologies and keep taxpayers informed with relevant guidance using the current terminology in the industry. Board staff determined that there was an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) because Regulation 1698 currently defines the outdated term "machines-sensible record" and generally uses the term to refer to information in an "electronic format," which is now simply referred to as "electronic records." Staff determined that there was an issue (or problem) with Regulation 1698 because it does not define the commonly used term electronic cash register or refer to POS systems. Staff also determined that there was an issue with Regulation 1698 because it did not provide guidance to business owners with POS systems that overwrite data after a period of time about how to maintain their data before it is overwritten.

#### *Interested Parties Process*

As a result, the Board's Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1698 and address the issues described above,

and a discussion paper explaining the draft amendments. Both were provided to interested parties.

Staff's draft amendments to Regulations 1698:

- Defined the term "electronic cash register" and explained that the term includes integrated POS systems.
- Replaced the term "machine-sensible record" with "electronic record" and explained that electronic records included records recorded and maintained by electronic cash registers.
- Changed the format of the example provided in subdivision (c)(2)(A).
- Added an example to subdivision (i) to further explain how business owners should maintain their data if they have POS systems that overwrite data after a period of time.

On June 17, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. Following the meeting, staff received a submission, dated July 1, 2015, from Mr. Robert Jones of Collins, Mason & Company LLP. Mr. Jones proposed that each occurrence of "microfilm or microfiche" in the regulation be replaced with "microfilm, microfiche, or pdf."

PDF or "portable document format" is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agreed with Mr. Jones that PDF is an acceptable record storage format, and as such agreed to add PDF to the regulation where it refers to microfilm and microfiche.

When preparing the second discussion paper and revising the draft amendments to Regulation 1698, BTC staff determined that Regulation 4901 generally mirrors Regulation 1698 (as discussed above). BTC staff also noticed that Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that refers to "microfilm, microfiche or other media used in electronic imaging" (as discussed above). As such, staff revised its draft amendments to Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging."

In addition, BTC staff drafted amendments to update Regulation 4901 that mirrored the amendments to Regulation 1698, discussed above, including adding "PDF files" to subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901 to ensure consistency between Regulations 1698 and 4901. Also, to further update Regulation

4901, staff drafted amendments to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from subdivision (a)(1)'s list of applicable tax laws and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

On August 11, 2015, BTC staff conducted a second interested parties meeting to discuss the draft amendments to Regulations 1698 and 4901. At the meeting, there was overall support for the proposed amendments. Also at the meeting, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested that Excel worksheets and Access databases be included as acceptable forms of records in the regulations. Although staff did not receive a written submission for this request, staff did consider the suggestion. Staff determined that worksheets and database files are not necessarily source data and that they are often summaries or analyses of source data. Staff determined that worksheets and databases are already required to be maintained and made available to the Board under the provisions in subdivision (b)(1)(C) of both regulations, which refer to "schedules or working papers used in connection with the preparation of tax returns." Additionally, staff determined that it would be unnecessarily restrictive to revise the regulation to refer to specific proprietary software products, such as Excel and Access. For these reasons, BTC staff did not agree to incorporate Mr. Brandeis's suggestion into staff's draft amendments.

*October 27, 2015, BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-011 and distributed it to the Board Members for consideration at the Board's October 27, 2015, BTC meeting. Formal Issue Paper 15-011 recommended that the Board propose to add a definition for "electronic cash register" to subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901 to address the second issue (or problem) referred to above. The definitions in the regulations are in alphabetical order, therefore the issue paper recommended that the definition for "electronic cash register" be inserted alphabetically, and the remaining definitions be renumbered.

Subdivision (i) of both regulations explains that records must be kept for a period of not less than four years. The formal issue paper recommended that the Board propose to add an example to this subdivision to address the third issue (or problem) referred to above by explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer

and maintain a copy of all the data that would be over-written or otherwise removed for the specified period.

The formal issue paper recommended that the Board propose to update the term “machine-sensible records” to “electronic records” throughout the regulations to address the first issue (or problem) referred to above. “Machine-sensible records” is an outdated term, and “electronic records” is a current and readily understood term. Board staff also recommended that the Board propose to change the formatting of the regulations in subdivision (c)(2)(A) where they provide examples of what retained records should contain when a taxpayer uses electronic data interchange processes and technology. The recommended amendments reformatted the examples as numbered lists for easier reading and consistent formatting with other subdivisions in the regulations.

Additionally, the formal issue paper recommended that the Board revise Regulation 4901 to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from the list of applicable tax laws under subdivision (a)(1) and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL. The recommended amendments to subdivision (a)(1) were also arranged in alphabetical order.

Furthermore, the formal issue paper recommended that the Board propose to amend Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of “microfilm or microfiche” with “microfilm, microfiche, PDF files, or other media used in electronic imaging” and propose to amend Regulation 4901 to add “PDF files” to subdivisions (a)(5), (h)(1), and (h)(2), to address Mr. Jones’s submission, which was included as Exhibit 4 to the formal issue paper.

At the conclusion of the Board’s discussion of Formal Issue Paper 15-011 during the October 27, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulations 1698 and 4901 recommended in the formal issue paper. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of clarifying and updating the regulations to address the issues (or problems) referred to above and respond to Mr. Jones’s submission.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments

to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1698 and 4901 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulations 1698 and 4901 are the only regulations that specify the types of records that must be maintained and made available for examination on request by the Board under the Sales and Use Tax Law and special tax and fee laws, and the Board is making consistent amendments to both regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 will not have a significant, statewide adverse economic impact directly affecting business, in-

cluding the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1698 and 4901 may affect small business.

**NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 will not affect the benefits of Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 per-

sons 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 Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at [Pamela.Mash@boe.ca.gov](mailto:Pamela.Mash@boe.ca.gov), or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

**WRITTEN COMMENT PERIOD**

The written comment period ends at 10:00 a.m. on March 29, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1698 and 4901 during the March 29-30, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1698 and 4901. 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 underscored and strikethrough versions of the text of Regulations 1698 and 4901 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 Regulations 1698 and 4901, 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](http://www.boe.ca.gov).

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

The Board may adopt the proposed amendments to Regulations 1698 and 4901 with changes that are non-substantial 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 Regulations 1698 and 4901, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

**TITLE 23. CALIFORNIA  
WATER COMMISSION**

The California Water Commission (Commission) will conduct a public hearing at the time and place noted below to consider the adoption of regulations regarding the Water Storage Investment Program. The proposed regulations would allow the State of California to invest funds in public benefits associated with water storage, pursuant to Water Code section 79750 *et seq.*

**OPPORTUNITY FOR PUBLIC COMMENT**

- **Public Hearings.** The hearing will be held in accordance with the requirements set forth in Government Code section 11346.8. The hearing details are as followings:

Date: March 16, 2016

Time: 9:30 a.m.

This item may be considered at any time during the regularly scheduled meeting of the Commission. Please consult the agenda, which will be available at least ten (10) days before March 16, 2016, to confirm the time at which this item will be considered. The agenda will be posted at <http://cwc.ca.gov>.

Location: California Resources Building  
1416 Ninth Street, First Floor  
Auditorium  
Sacramento, CA 95814

**Sections Affected:** Proposed adoption of California Code of Regulations, title 23, new article 1, which contains new sections 6000, 6001, 6002, 6003, 6004, 6005, 6006 and 6007.

**WRITTEN COMMENT PERIOD AND  
SUBMITTAL OF COMMENTS**

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on January 29, 2016. To be considered by the Commission, written comments not physically submitted at the hearing, must be submitted on or after January 29, 2016 and received **no later than 5:00 p.m. on March 14, 2016** and must be addressed to the following:

Jennifer Marr  
California Water Commission  
901 P Street, Room 314  
P.O. Box 924836  
Sacramento, CA 94236  
916-651-0156  
[Jennifer.Marr@water.ca.gov](mailto:Jennifer.Marr@water.ca.gov)

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

The Commission requests, but does not require, that written and email statements on this item be filed at least 10 days prior to the hearing so that Commission staff and Commissioners have additional time to consider each comment. The Commission encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

1000 N STREET, SACRAMENTO, CALIFORNIA  
P O BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
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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

**January 29, 2016**

**To Interested Parties:**

**Notice of Proposed Regulatory Action**

**The State Board of Equalization Proposes to Adopt  
Amendments to California Code of Regulations,  
Title 18,  
Section 1698, *Records*, and Section 4901, *Records***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1698, *Records*, and Regulation 4901, *Records*. The proposed amendments to both regulations define the term electronic cash register and provide that the term includes integrated point of sale (POS) systems. The proposed amendments add an example to both regulations explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified record retention period. The proposed amendments update the term "machine-sensible records" to "electronic records" throughout both of the regulations. The proposed amendments to both regulations clarify that storage-only imaging media includes "PDF files" and the amendments to Regulation 1698 clarify that storage-only imaging media includes "other media used in electronic imaging" to be consistent with the current provisions of Regulation 4901. The proposed amendments also replace the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee with a reference to the Fee Collection Procedures Law (FCPL) (RTC § 55001 et seq.) in Regulation 4901, subdivision (a)(1), to cover all the taxes and fees currently enacted and administered under the FCPL.

## **PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 29-30, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on March 29-30, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1698 and 4901.

## **AUTHORITY**

Regulation 1698: RTC section 7051

Regulation 4901: RTC sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601

## **REFERENCE**

Regulation 1698: RTC sections 6455, 7053, 7054, and 7153.6

Regulation 4901: RTC sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605, and 60606

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### Current Law

#### *Sales and Use Tax*

The Board administers California's sales and use taxes. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs, including performing audits to ensure that sales and use taxes are reported properly.

There are two statutes related to the retention and examination of records for sales and use tax purposes. RTC section 7053 provides that "[e]very seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the [B]oard may require."

RTC section 7054 specifies that the Board, or any person authorized in writing by it, “may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax.” It further specifies that the Board “may investigate the character of the business of the person in order to verify the accuracy of any return made” or “if no return is made by the person, to ascertain and determine the amount required to be paid.”

The Board adopted Regulation 1698 to implement, interpret, and make specific RTC sections 7053 and 7054 by specifying the types of records that must be maintained and made available for examination on request by the Board for sales and use tax purposes. The regulation currently allows records to be maintained and made available in hardcopy or electronic format. The regulation also generally requires all records to be preserved for a period of not less than four years, except for records for reporting periods beginning before January 1, 2003, that are subject to the extended ten year statute of limitations contained in RTC section 7073(d), which the regulation requires to be preserved for a period of not less than ten years. The Board made amendments that substantially updated Regulation 1698 in 1997, and added the provisions regarding records for reporting periods beginning before January 1, 2003, in 2005. However, Regulation 1698 has not been substantially updated since 1997.

As relevant here, Regulation 1698 currently defines the terms “database management system,” “electronic data interchange” or “EDI Technology,” “hardcopy,” and “machine-sensible record.” It explains that machine-sensible records do not include hardcopy records “stored in or by a storage-only imaging system such as microfilm or microfiche.” It also provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as microfilm and microfiche.”

### *Special Taxes and Fees*

The Board also administers a number of special taxes and fees, in addition to the sales and use taxes. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Law (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the FCPL, and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

As relevant here, the Covered Electronic Waste Recycling Fee imposed by Public Resources Code (PRC) section 42464 is administered under the FCPL pursuant to PRC section 42464.2. The California Tire Fee imposed by PRC section 42885 is administered under the FPCL pursuant to PRC section 42882. The Lumber Products Assessment imposed by PRC section 4629.5 is

administered under the FCPL pursuant to PRC section 4629.5. The Marine Invasive Species Fee imposed by PRC section 42885 is administered under the FCPL pursuant to RTC sections 44002 and 44003. The Natural Gas Surcharge imposed by Public Utilities Code (PUC) section 890 is administered under the FCPL pursuant to PUC section 893. The Prepaid Mobile Telephony Services Surcharge imposed by RTC section 42010 and Local Charges as defined in RTC section 42101 that are required to be collected by sellers other than direct sellers are administered under the FCPL pursuant to RTC sections 42020 and 42103. And, the Water Rights Fee imposed by Water Code sections 1525 and 13160.1 is administered under the FCPL pursuant to Water Code section 1552.

The Board's Special Taxes and Fee Department is responsible for administering the Board's special taxes and fees programs under the special tax and fee laws.

The Board adopted Regulation 4901 in 2003 to implement, interpret, and make specific the statutes related to the retention and examination of records under the special tax and fee laws, which are similar to RTC sections 7053 and 7054 (discussed above). (RTC §§ 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606.) As relevant here, Regulation 4901 contains a list of "Applicable Tax Laws" and prescribes the types of records that must be maintained and made available for examination on request by the Board to determine taxpayers' and fee payers' correct liabilities under the applicable tax laws. Regulation 4901 generally mirrors the provisions of Regulation 1698, except that it provides the requirements for hardcopy records to be converted to "storage-only imaging media, such as *microfilm, microfiche or other media used in electronic imaging.*" (Italics added.)

Regulation 4901 was amended in 2010 to clarify that it applies to the Water Rights Fee (enacted in 2003) and Cover Electronic Waste Recycling Fee (enacted in 2004). However, Regulation 4901 has not been substantially updated since it was adopted in 2003 and does not currently refer to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge, which were enacted, or Local Charges, which the Board was first required to administer under the FCPL, after the regulation was last amended.

### *Electronic Cash Registers*

Cash registers have existed for many years. They offer business owners an organized place to ring up sales and store money from their sales transactions. Electronic cash registers have also been in use for some time and now include a wide range of devices, such as integrated POS systems.

POS systems are sophisticated computer systems that use commercially available operating systems to record each sale when it happens. In recent years, POS systems have become more popular than traditional cash registers with business owners because of their user-friendly interface, data tracking capabilities, and increased affordability. These systems are also popular

because they can be integrated with third-party accounting software, online ordering, and credit and debit card processors.

The Legislature added RTC section 7153.6 to the Sales and Use Tax Law (RTC § 6001 et seq.) and RTC section 55363.5 to the FCPL, effective January 1, 2014. (Stats. 2013, ch. 532.) As relevant here, both status define the term “electronic cash register” to mean “a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner” and both statutes indicate that electronic cash registers include POS systems.

### Effect, Objectives, and Benefits of the Proposed Amendments

#### *Need to Update Regulation 1698*

As new technologies and business practices emerge, the Board must adapt to the new technologies and keep taxpayers informed with relevant guidance using the current terminology in the industry. Board staff determined that there was an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) because Regulation 1698 currently defines the outdated term “machines-sensible record” and generally uses the term to refer to information in an “electronic format,” which is now simply referred to as “electronic records.” Staff determined that there was an issue (or problem) with Regulation 1698 because it does not define the commonly used term electronic cash register or refer to POS systems. Staff also determined that there was an issue with Regulation 1698 because it did not provide guidance to business owners with POS systems that overwrite data after a period of time about how to maintain their data before it is overwritten.

#### *Interested Parties Process*

As a result, the Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1698 and address the issues described above, and a discussion paper explaining the draft amendments. Both were provided to interested parties.

Staff’s draft amendments to Regulations 1698:

- Defined the term “electronic cash register” and explained that the term includes integrated POS systems.
- Replaced the term “machine-sensible record” with “electronic record” and explained that electronic records included records recorded and maintained by electronic cash registers.
- Changed the format of the example provided in subdivision (c)(2)(A).
- Added an example to subdivision (i) to further explain how business owners should maintain their data if they have POS systems that overwrite data after a period of time.

On June 17, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. Following the meeting, staff received a submission, dated July 1, 2015, from Mr. Robert Jones of Collins, Mason & Company LLP. Mr. Jones proposed that each occurrence of “microfilm or microfiche” in the regulation be replaced with “microfilm, microfiche, or pdf.”

PDF or “portable document format” is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agreed with Mr. Jones that PDF is an acceptable record storage format, and as such agreed to add PDF to the regulation where it refers to microfilm and microfiche.

When preparing the second discussion paper and revising the draft amendments to Regulation 1698, BTC staff determined that Regulation 4901 generally mirrors Regulation 1698 (as discussed above). BTC staff also noticed that Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that refers to “microfilm, microfiche or other media used in electronic imaging” (as discussed above). As such, staff revised its draft amendments to Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of “microfilm or microfiche” with “microfilm, microfiche, PDF files, or other media used in electronic imaging.”

In addition, BTC staff prepared drafted amendments to update Regulation 4901 that mirrored the amendments to Regulation 1698, discussed above, including adding “PDF files” to subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901 to ensure consistency between Regulations 1698 and 4901. Also, to further update Regulation 4901, staff drafted amendments to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from subdivision (a)(1)’s list of applicable tax laws and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

On August 11, 2015, BTC staff conducted a second interested parties meeting to discuss the draft amendments to Regulations 1698 and 4901. At the meeting, there was overall support for the proposed amendments. Also at the meeting, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested that Excel worksheets and Access databases be included as acceptable forms of records in the regulations. Although staff did not receive a written submission for this request, staff did consider the suggestion. Staff determined that worksheets and database files are not necessarily source data and that they are often summaries or analyses of source data. Staff determined that worksheets and databases are already required to be maintained and made available to the Board under the provisions in subdivision (b)(1)(C) of both regulations, which refer to “schedules or working papers used in connection with the preparation of tax returns.” Additionally, staff determined that it would be unnecessarily restrictive to revise the regulation to

refer to specific proprietary software products, such as Excel and Access. For these reasons, BTC staff did not agree to incorporate Mr. Brandeis's suggestion into staff's draft amendments.

*October 27, 2015, BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-011 and distributed it to the Board Members for consideration at the Board's October 27, 2015, BTC meeting. Formal Issue Paper 15-011 recommended that the Board propose to add a definition for "electronic cash register" to subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901 to address the second issue (or problem) referred to above. The definitions in the regulations are in alphabetical order, therefore the issue paper recommended that the definition for "electronic cash register" be inserted alphabetically, and the remaining definitions be renumbered.

Subdivision (i) of both regulations explains that records must be kept for a period of not less than four years. The formal issue paper recommended that the Board propose to add an example to this subdivision to address the third issue (or problem) referred to above by explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified period.

The formal issue paper recommended that the Board propose to update the term "machine-sensible records" to "electronic records" throughout the regulations to address the first issue (or problem) referred to above. "Machine-sensible records" is an outdated term, and "electronic records" is a current and readily understood term. Board staff also recommended that the Board propose to change the formatting of the regulations in subdivision (c)(2)(A) where they provide examples of what retained records should contain when a taxpayer uses electronic data interchange processes and technology. The recommended amendments reformatted the examples as numbered lists for easier reading and consistent formatting with other subdivisions in the regulations.

Additionally, the formal issue paper recommended that the Board revise Regulation 4901 to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from the list of applicable tax laws under subdivision (a)(1) and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL. The recommended amendments to subdivision (a)(1) were also arranged in alphabetical order.

Furthermore, the formal issue paper recommended that the Board propose to amend Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging" and propose to amend Regulation 4901 to add "PDF files" to subdivisions (a)(5), (h)(1), and

(h)(2), to address Mr. Jones's submission, which was included as Exhibit 4 to the formal issue paper.

At the conclusion of the Board's discussion of Formal Issue Paper 15-011 during the October 27, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulations 1698 and 4901 recommended in the formal issue paper. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of clarifying and updating the regulations to address the issues (or problems) referred to above and respond to Mr. Jones's submission.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1698 and 4901 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulations 1698 and 4901 are the only regulations that specify the types of records that must be maintained and made available for examination on request by the Board under the Sales and Use Tax Law and special tax and fee laws, and the Board is making consistent amendments to both regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 may affect small business.

**NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 will not affect the benefits of Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at [Pamela.Mash@boe.ca.gov](mailto:Pamela.Mash@boe.ca.gov), or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

## **WRITTEN COMMENT PERIOD**

The written comment period ends at 10:00 a.m. on March 29, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1698 and 4901 during the March 29-30, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1698 and 4901. The Board will only consider written comments received by that time.

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The Board has prepared underscored and strikeout versions of the text of Regulations 1698 and 4901 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 Regulations 1698 and 4901, 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](http://www.boe.ca.gov).

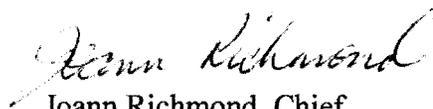
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE  
SECTION 11346.8**

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**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulations 1698 and 4901, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,

  
Joann Richmond, Chief  
Board Proceedings Division

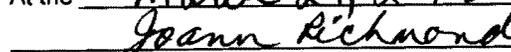
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**STATE BOARD OF EQUALIZATION**

BOARD APPROVED



At the March 29, 2016 Board Meeting

  
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Joann Richmond, Chief  
Board Proceedings Division

**Initial Statement of Reasons for  
Proposed Amendments to California Code of Regulations,  
Title 18, Section 1698, *Records*, and Section 4901, *Records***

**SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS**

Current Law

*Sales and Use Tax*

The State Board of Equalization (Board) administers California's sales and use taxes. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs, including performing audits to ensure that sales and use taxes are reported properly.

There are two statutes related to the retention and examination of records for sales and use tax purposes. Revenue and Taxation Code (RTC) section 7053 provides that "[e]very seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the [B]oard may require."

RTC section 7054 specifies that the Board, or any person authorized in writing by it, "may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax." It further specifies that the Board "may investigate the character of the business of the person in order to verify the accuracy of any return made" or "if no return is made by the person, to ascertain and determine the amount required to be paid."

The Board adopted California Code of Regulations, title 18, section (Regulation) 1698, *Records*, to implement, interpret, and make specific RTC sections 7053 and 7054 by specifying the types of records that must be maintained and made available for examination on request by the Board for sales and use tax purposes. The regulation currently allows records to be maintained and made available in hardcopy or electronic format. The regulation also generally requires all records to be preserved for a period of not less than four years, except for records for reporting periods beginning before January 1, 2003, that are subject to the extended ten year statute of limitations contained in RTC section 7073(d), which the regulation requires to be preserved for a period of not less than ten years. The Board made amendments that substantially updated Regulation 1698 in 1997, and added the provisions regarding records for reporting periods beginning before January 1, 2003, in 2005. However, Regulation 1698 has not been substantially updated since 1997.

As relevant here, Regulation 1698 currently defines the terms “database management system,” “electronic data interchange” or “EDI Technology,” “hardcopy,” and “machine-sensible record.” It explains that machine-sensible records do not include hardcopy records “stored in or by a storage-only imaging system such as microfilm or microfiche.” It also provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as microfilm and microfiche.”

### *Special Taxes and Fees*

The Board also administers a number of special taxes and fees, in addition to the sales and use taxes. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Law (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (FCPL) (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

As relevant here, the Covered Electronic Waste Recycling Fee imposed by Public Resources Code (PRC) section 42464 is administered under the FCPL pursuant to PRC section 42464.2. The California Tire Fee imposed by PRC section 42885 is administered under the FCPL pursuant to PRC section 42882. The Lumber Products Assessment imposed by PRC section 4629.5 is administered under the FCPL pursuant to PRC section 4629.5. The Marine Invasive Species Fee imposed by PRC section 42885 is administered under the FCPL pursuant to RTC sections 44002 and 44003. The Natural Gas Surcharge imposed by Public Utilities Code (PUC) section 890 is administered under the FCPL pursuant to PUC section 893. The Prepaid Mobile Telephony Services Surcharge imposed by RTC section 42010 and Local Charges as defined in RTC section 42101 that are required to be collected by sellers other than direct sellers are administered under the FCPL pursuant to RTC sections 42020 and 42103. And, the Water Rights Fee imposed by Water Code sections 1525 and 13160.1 is administered under the FCPL pursuant to Water Code section 1552.

The Board’s Special Taxes and Fee Department is responsible for administering the Board’s special taxes and fees programs under the special tax and fee laws.

The Board adopted Regulation 4901, *Records*, in 2003 to implement, interpret, and make specific the statutes related to the retention and examination of records under the special tax and fee laws, which are similar to RTC sections 7053 and 7054 (discussed above). (RTC §§ 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606.) As relevant here, Regulation 4901 contains a list of “Applicable Tax Laws” and prescribes the types of records that must be maintained and made available for examination on request by the Board to determine taxpayers’ and fee payers’ correct liabilities under the

applicable tax laws. Regulation 4901 generally mirrors the provisions of Regulation 1698, except that it provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as *microfilm, microfiche or other media used in electronic imaging.*” (Italics added.)

Regulation 4901 was amended in 2010 to clarify that it applies to the Water Rights Fee (enacted in 2003) and Cover Electronic Waste Recycling Fee (enacted in 2004). However, Regulation 4901 has not been substantially updated since it was adopted in 2003 and does not currently refer to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge, which were enacted, or Local Charges, which the Board was first required to administer under the FCPL, after the regulation was last amended.

### *Electronic Cash Registers*

Cash registers have existed for many years. They offer business owners an organized place to ring up sales and store money from their sales transactions. Electronic cash registers have also been in use for some time and now include a wide range of devices, such as integrated point-of-sale (POS) systems.

POS systems are sophisticated computer systems that use commercially available operating systems to record each sale when it happens. In recent years, POS systems have become more popular than traditional cash registers with business owners because of their user-friendly interface, data tracking capabilities, and increased affordability. These systems are also popular because they can be integrated with third-party accounting software, online ordering, and credit and debit card processors.

The Legislature added RTC section 7153.6 to the Sales and Use Tax Law (RTC § 6001 et seq.) and RTC section 55363.5 to the FCPL, effective January 1, 2014. (Stats. 2013, ch. 532.) As relevant here, both statutes define the term “electronic cash register” to mean “a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner” and both statutes indicate that electronic cash registers include POS systems.

### Proposed Amendments

#### *Need to Update Regulation 1698*

As new technologies and business practices emerge, the Board must adapt to the new technologies and keep taxpayers informed with relevant guidance using the current terminology in the industry. Board staff determined that there was an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) because Regulation 1698 currently defines the outdated term “machines-sensible record” and generally uses the term to refer to information in an “electronic format,” which is now simply referred to as “electronic records.” Staff determined that there was an issue (or problem) with Regulation 1698 because it does not define the commonly used term electronic cash register or refer to POS systems. Staff also determined that

there was an issue with Regulation 1698 because it did not provide guidance to business owners with POS systems that overwrite data after a period of time about how to maintain their data before it is overwritten.

### *Interested Parties Process*

As a result, the Board's Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1698 and address the issues described above, and a discussion paper explaining the draft amendments. Both were provided to interested parties.

Staff's draft amendments to Regulations 1698:

- Defined the term "electronic cash register" and explained that the term includes integrated POS systems.
- Replaced the term "machine-sensible record" with "electronic record" and explained that electronic records included records recorded and maintained by electronic cash registers.
- Changed the format of the example provided in subdivision (c)(2)(A).
- Added an example to subdivision (i) to further explain how business owners should maintain their data if they have POS systems that overwrite data after a period of time.

On June 17, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. Following the meeting, staff received a submission, dated July 1, 2015, from Mr. Robert Jones of Collins, Mason & Company LLP. Mr. Jones proposed that each occurrence of "microfilm or microfiche" in the regulation be replaced with "microfilm, microfiche, or pdf."

PDF or "portable document format" is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agreed with Mr. Jones that PDF is an acceptable record storage format, and as such agreed to add PDF to the regulation where it refers to microfilm and microfiche.

When preparing the second discussion paper and revising the draft amendments to Regulation 1698, BTC staff determined that Regulation 4901 generally mirrors Regulation 1698 (as discussed above). BTC staff also noticed that Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that refers to "microfilm, microfiche or other media used in electronic imaging" (as discussed above). As such, staff revised its draft amendments to Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging."

In addition, BTC staff prepared drafted amendments to update Regulation 4901 that mirrored the amendments to Regulation 1698, discussed above, including adding "PDF files" to subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901 to ensure consistency between Regulations 1698 and 4901. Also, to further update Regulation 4901, staff drafted amendments to remove the

references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from subdivision (a)(1)'s list of applicable tax laws and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

On August 11, 2015, BTC staff conducted a second interested parties meeting to discuss the draft amendments to Regulations 1698 and 4901. At the meeting, there was overall support for the proposed amendments. Also at the meeting, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested that Excel worksheets and Access databases be included as acceptable forms of records in the regulations. Although staff did not receive a written submission for this request, staff did consider the suggestion. Staff determined that worksheets and database files are not necessarily source data and that they are often summaries or analyses of source data. Staff determined that worksheets and databases are already required to be maintained and made available to the Board under the provisions in subdivision (b)(1)(C) of both regulations, which refer to "schedules or working papers used in connection with the preparation of tax returns." Additionally, staff determined that it would be unnecessarily restrictive to revise the regulation to refer to specific proprietary software products, such as Excel and Access. For these reasons, BTC staff did not agree to incorporate Mr. Brandeis's suggestion into staff's draft amendments.

#### *October 27, 2015, BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-011 and distributed it to the Board Members for consideration at the Board's October 27, 2015, BTC meeting. Formal Issue Paper 15-011 recommended that the Board propose to add a definition for "electronic cash register" to subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901 to address the second issue (or problem) referred to above. The definitions in the regulations are in alphabetical order, therefore the issue paper recommended that the definition for "electronic cash register" be inserted alphabetically, and the remaining definitions be renumbered.

Subdivision (i) of both regulations explains that records must be kept for a period of not less than four years. The formal issue paper recommended that the Board propose to add an example to this subdivision to address the third issue (or problem) referred to above by explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified period.

The formal issue paper recommended that the Board propose to update the term "machine-sensible records" to "electronic records" throughout the regulations to address the first issue (or problem) referred to above. "Machine-sensible records" is an outdated term, and "electronic records" is a current and readily understood term. Board staff also recommended that the Board propose to change the formatting of the regulations in subdivision (c)(2)(A) where they provide examples of what retained records should contain when a taxpayer uses electronic data interchange processes and technology. The recommended amendments reformatted the examples as numbered lists for easier reading and consistent formatting with other subdivisions in the regulations.

Additionally, the formal issue paper recommended that the Board revise Regulation 4901 to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from the list of applicable tax laws under subdivision (a)(1) and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL. The recommended amendments to subdivision (a)(1) were also arranged in alphabetical order.

Furthermore, the formal issue paper recommended that the Board propose to amend Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of “microfilm or microfiche” with “microfilm, microfiche, PDF files, or other media used in electronic imaging” and propose to amend Regulation 4901 to add “PDF files” to subdivisions (a)(5), (h)(1), and (h)(2), to address Mr. Jones’s submission, which was included as Exhibit 4 to the formal issue paper.

At the conclusion of the Board’s discussion of Formal Issue Paper 15-011 during the October 27, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulations 1698 and 4901 recommended in the formal issue paper. The Board determined that the proposed amendments are reasonably necessary for the specific purposes of clarifying and updating the regulations to address the issues (or problems) referred to above and respond to Mr. Jones’s submission.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

The proposed amendments to Regulations 1698 and 4901 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-011, the exhibits to the issue paper, and the comments made during the Board’s discussion of the issue paper during its October 27, 2015, BTC meeting in deciding to propose the amendments to Regulations 1698 and 4901 described above.

#### ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

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

The proposed amendments to Regulation 1698 and 4901 update and clarify the terms currently used in the regulations, incorporate the statutory definition of electronic cash register, update the guidance currently provided in the regulations regarding storage-only imaging media so that it is clear that such media includes "PDF files" and other media used in electronic imaging, and provide a current example explaining how business owners should maintain their data if they have POS systems that overwrite data after a period of time. The proposed amendments to Regulation 4901 also change the way the regulation refers to taxes and fees administered under the FCPL. The proposed amendments do not mandate that individuals or businesses maintain or make available any records that they are not currently required to maintain or make available or do anything that is not already required by the Sales and Use Tax Law, the special tax and fee laws, or Regulations 1698 and 4901, 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 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, Regulations 1698 and 4901 do 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 Regulations 1698 and 4901 will not affect the benefits of Regulations 1698 and 4901 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 Regulations 1698 and 4901 will not have a significant adverse economic impact on business.

The proposed amendments to Regulations 1698 and 4901 may affect small businesses.

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1698**

**1698. Records.**

(a) Definitions.

(1) "Database Management System" - a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic cash register" - a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

(23) "Electronic data interchange" or "EDI technology" - the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) ~~"Hardcopy" - any document, record, report or other data maintained in a paper format.~~

(4) ~~"Machine-sensible Electronic record" - a collection of related information in an electronic, machine-sensible format. Machine-sensible Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.~~

(5) "Hardcopy" - any document, record, report or other data maintained in a paper format.

(56) "Taxpayer" - every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

(b) General.

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code sections 7053 and 7054.

(c) ~~Machine-Sensible~~Electronic Records.

(1) General.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format, e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) Electronic Data Interchange Requirements.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1. vendor name,
2. invoice date,
3. product description,
4. quantity purchased,
5. price,
6. amount of tax,
7. indication of tax status (e.g., for resale), and
8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine sensible~~ electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

(d) ~~Machine-Sensible~~Electronic Records Maintenance Requirements.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) Access to ~~Machine-Sensible~~Electronic Records.

(1) The manner in which the Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

(C) The taxpayer may convert the ~~machine-sensible~~electronic records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

(D) The taxpayer and the Board may agree on other means of providing access to the ~~machine-sensible~~electronic records.

(f) Taxpayer Responsibility and Discretionary Authority.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) Hardcopy Records.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) Alternative Storage Media.

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, ~~or~~ microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, ~~and~~ microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) Record Retention - Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For reporting periods beginning before January 1, 2003 that are subject to the extended ten year statute of limitations contained in Revenue and Taxation Code section 7073(d), records required to be retained under this regulation must be preserved for a period of not less than ten years.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

(j) Record Retention Limitation Agreements.

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~machine-sensible~~ electronic records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the Board, which may include, but is not limited to, any one or more of the following issues:

- a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and
2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and
  3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 7054 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~ electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~ electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6455, 7053, ~~and 7054~~ and 7153.6, Revenue and Taxation Code.

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 4901**

**4901. Records.**

(a) Definitions.

(1) "Applicable Tax Laws" means any of the following:

(A) Aircraft Jet Fuel Tax, Revenue and Taxation Code ~~Sections 7385-7398, and 7486-8406;~~

(B) Alcoholic Beverage Tax, Revenue and Taxation Code ~~Sections 32001-32557;~~

~~(C) Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;~~

~~(D) California Tire Fee, Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381;~~

~~(E) Childhood Lead Poisoning Prevention Fee, Health and Safety Code Section 105310; Revenue and Taxation Code Sections 43001-43651;~~

~~(F) Cigarette and Tobacco Products Tax, Revenue and Taxation Code Sections 30001-30481;~~

~~(G) Diesel Fuel Tax, Revenue and Taxation Code Sections 60001-60709;~~

~~(H) Emergency Telephone Users Surcharge, Revenue and Taxation Code Sections 41001-41176;~~

~~(I) Energy Resources Surcharge, Revenue and Taxation Code Sections 40001-40216;~~

~~(J) Fee Collection Procedures Law, Revenue and Taxation Code sections 55001-55381;~~

~~(K) Hazardous Substances Tax, Health and Safety Code Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code Sections 43001-43651;~~

~~(L) Integrated Waste Management Fee, Public Resources Code Sections 40000-48008; Revenue and Taxation Code Sections 45001-45984;~~

~~(M) Motor Vehicle Fuel Tax, Revenue and Taxation Code Sections 7301-8526;~~

~~(N) Natural Gas Surcharge, Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381;~~

~~(O) Occupational Lead Poisoning Prevention Fee, Health and Safety Code Section 105190; Revenue and Taxation Code Sections 43001-43651;~~

~~(OM)~~ Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001-46751;

~~(PN)~~ Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Section 50101-50162; and

~~(QO)~~ Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;

~~(R)~~ Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;

~~(S)~~ Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.

(2) “Database Management System” - a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(3) “Electronic cash register” - a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

~~(34)~~ “Electronic data interchange” or “EDI technology” - the computer to computer exchange of business transactions in a standardized structured electronic format.

~~(4) “Hardcopy” - any document, record, report or other data maintained in a paper format.~~

(5) “Machine-sensible Electronic record” - a collection of related information in an electronic, machine-sensible format. Machine-sensible Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

(6) “Hardcopy” - any document, record, report or other data maintained in a paper format.

~~(67)~~ “Taxpayer” includes “fee payer” and means any person liable for the payment of a tax or a fee specified under any of the applicable tax laws.

~~(78)~~ “Tax” includes “fee” and means any amount of tax or fee specified under any of the applicable tax laws.

(b) General.

(1) A taxpayer shall maintain and make available for examination on request by the ~~h~~Board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code ~~Sections~~ 8301-8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172-40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, and 60604-60606, ~~Revenue and Taxation Code.~~

(c-) ~~Machine-Sensible~~Electronic Records.

(1) General.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the ~~h~~Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the ~~h~~Board has the technological capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) Electronic Data Interchange Requirements.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions,

must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1. vendor name,
2. invoice date,
3. product description,
4. quantity purchased,
5. price,
6. amount of tax,
7. indication of tax status (e.g., exempt), and
8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

(d) ~~Machine-Sensible~~Electronic Records Maintenance Requirements

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The ~~b~~Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) Access to ~~Machine-Sensible~~Electronic Records.

(1) The manner in which the ~~b~~Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the ~~b~~Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

(C) The taxpayer may convert the ~~machine-sensible~~ electronic records to a standard record format specified by the ~~b~~Board, including copies of files, on a magnetic medium that is agreed to by the ~~b~~Board.

(D) The taxpayer and the ~~b~~Board may agree on other means of providing access to the ~~machine-sensible~~ electronic records.

(f) Taxpayer Responsibility and Discretionary Authority.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the ~~b~~Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) Hardcopy Records.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) Alternative Storage Media.

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these

media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the ~~h~~Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) Record Retention - Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

(j) Record Retention Limitation Agreements.

(1) The ~~h~~Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~machine-sensible~~electronic records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the ~~h~~Board, which may include, but is not limited to, any one or more of the following issues:

a. the conversion of files created on an obsolete computer system;

b. restoration of lost or damaged files and the actions to be taken;

c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the ~~h~~Board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The ~~h~~Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The ~~h~~Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the ~~h~~Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The ~~h~~Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under the applicable tax law.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~ electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the ~~h~~BBoard.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~ electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the ~~h~~BBoard may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~ electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605 and 60606, Revenue and Taxation Code.

## Regulation History

**Type of Regulation:** Sales and Use Tax and Special Taxes and Fees

Regulation: 1698, 4901

Title: 1698 *Records*

*4901 Records*

**Preparation:** Pamela Mash

**Legal Contact:** Pamela Mash

The State Board of Equalization proposes to adopt amendments to define the term electronic cash register, update the terminology used to refer to electronic records, and clarify taxpayers' record retention requirements.

### History of Proposed Regulation:

March 29-30, 2016	Public Hearing
January 29, 2016	OAL publication date; 45-day public comment period begins; Interested Parties mailing
January 19, 2016	Notice to OAL
October 27, 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 1698, *Records*, and Special Taxes and Fees Regulations, *Records*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on January 29, 2016, 60 days prior to the public hearing.

April 6, 2016

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

Richard Bennion  
Regulations Coordinator  
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MARCH 29, 2016

ITEM F

PUBLIC HEARING

F1

PROPOSED AMENDMENTS TO SALES AND USE TAX  
REGULATION 1698, RECORDS, AND SPECIAL TAXES

REGULATION 4901, RECORDS

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board  
of Equalization:

Fiona Ma, CPA  
Chairwoman  
  
Diane L. Harkey  
Vice Chair  
  
Jerome E. Horton  
Member  
  
Sen. George Runner (Ret.)  
Member  
  
Yvette Stowers  
Appearing for Betty T.  
Yee, State Controller  
(per Government Code  
Section 7.9)  
  
Joann Richmond  
Chief  
Board Proceedings  
Division

For Board of  
Equalization Staff:

Pamela Mash  
Tax Counsel  
Legal Department  
  
Bradley Heller  
Tax Counsel IV  
Legal Department

---oOo---

1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 MARCH 29, 2016

4 ----oOo----

5 MS. MA: And I think we have one more item  
6 today on the agenda. Ms. Richmond.

7 MS. RICHMOND: Our last item is Item F  
8 Public Hearing. Item F1 Proposed Amendments to  
9 Sales and Use Tax Regulation 1698, Records, and  
10 Special Taxes Regulation 4901, Records.

11 MS. MA: Okay. To the Department, please  
12 introduce yourself and also commence your  
13 presentation.

14 MS. MASH: Thank you, Chairwoman Ma,  
15 Members of the Board. I'm Pamela Mash from the  
16 Board's Legal Department, along with Bradley Heller,  
17 also from the Legal Department.

18 I'm here to request that the Board vote to  
19 adopt the proposed amendments to Sales and Use Tax  
20 Regulation 1698, Records, and Special Taxes  
21 Regulation 4901, Records. The proposed amendments  
22 define the term "electronic cash register," update  
23 the terminology used to refer to electronic records,  
24 and clarify taxpayer's record retention  
25 requirements.

26 Thank you.

27 MS. MA: Okay. Seeing no public  
28 speakers --

1 MR. RUNNER: Move to approve.

2 MS. RICHMOND: No.

3 MS. MA: Okay.

4 MS. HARKEY: Second.

5 MS. MA: Motion to approve. Seconded by  
6 Ms. Harkey.

7 Without objection, motion carries.

8 MS. MASH: Thank you.

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State of California )  
 ) ss  
County of Sacramento )

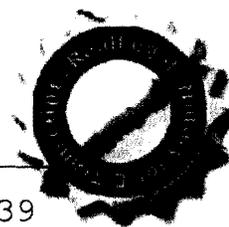
I, Kathleen Skidgel, Hearing Reporter for the California State Board of Equalization certify that on March 29, 2016 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: April 6, 2016

*Kathleen Skidgel*

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter



Tuesday, March 29, 2016

**PUBLIC HEARINGS**

**Proposed Amendments to Sales and Use Tax Regulation 1698, *Records*, and Special Taxes Regulation 4901, *Records***

Pamela Mash, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to define the term electronic cash register, update the terminology used to refer to electronic records, and clarify taxpayers' record retention requirements (Exhibit 3.1).

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

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board adopted the amendments to Regulations 1698 and 4901 as published.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 2:40 p.m.

*The foregoing minutes are adopted by the Board on April 26, 2016.*

Note: The following matters were removed from the calendar prior to the meeting: *Charles B. Hunt and Christy C. Hunt, 71668*, and, *Tobacco Republic Incorporated, 72780*.



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
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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

**January 29, 2016**

**To Interested Parties:**

**Notice of Proposed Regulatory Action**

**The State Board of Equalization Proposes to Adopt  
Amendments to California Code of Regulations,  
Title 18,  
Section 1698, *Records*, and Section 4901, *Records***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1698, *Records*, and Regulation 4901, *Records*. The proposed amendments to both regulations define the term electronic cash register and provide that the term includes integrated point of sale (POS) systems. The proposed amendments add an example to both regulations explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified record retention period. The proposed amendments update the term "machine-sensible records" to "electronic records" throughout both of the regulations. The proposed amendments to both regulations clarify that storage-only imaging media includes "PDF files" and the amendments to Regulation 1698 clarify that storage-only imaging media includes "other media used in electronic imaging" to be consistent with the current provisions of Regulation 4901. The proposed amendments also replace the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee with a reference to the Fee Collection Procedures Law (FCPL) (RTC § 55001 et seq.) in Regulation 4901, subdivision (a)(1), to cover all the taxes and fees currently enacted and administered under the FCPL.

## **PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 29-30, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on March 29-30, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1698 and 4901.

## **AUTHORITY**

Regulation 1698: RTC section 7051

Regulation 4901: RTC sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601

## **REFERENCE**

Regulation 1698: RTC sections 6455, 7053, 7054, and 7153.6

Regulation 4901: RTC sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605, and 60606

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### Current Law

#### *Sales and Use Tax*

The Board administers California's sales and use taxes. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs, including performing audits to ensure that sales and use taxes are reported properly.

There are two statutes related to the retention and examination of records for sales and use tax purposes. RTC section 7053 provides that "[e]very seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the [B]oard may require."

RTC section 7054 specifies that the Board, or any person authorized in writing by it, “may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax.” It further specifies that the Board “may investigate the character of the business of the person in order to verify the accuracy of any return made” or “if no return is made by the person, to ascertain and determine the amount required to be paid.”

The Board adopted Regulation 1698 to implement, interpret, and make specific RTC sections 7053 and 7054 by specifying the types of records that must be maintained and made available for examination on request by the Board for sales and use tax purposes. The regulation currently allows records to be maintained and made available in hardcopy or electronic format. The regulation also generally requires all records to be preserved for a period of not less than four years, except for records for reporting periods beginning before January 1, 2003, that are subject to the extended ten year statute of limitations contained in RTC section 7073(d), which the regulation requires to be preserved for a period of not less than ten years. The Board made amendments that substantially updated Regulation 1698 in 1997, and added the provisions regarding records for reporting periods beginning before January 1, 2003, in 2005. However, Regulation 1698 has not been substantially updated since 1997.

As relevant here, Regulation 1698 currently defines the terms “database management system,” “electronic data interchange” or “EDI Technology,” “hardcopy,” and “machine-sensible record.” It explains that machine-sensible records do not include hardcopy records “stored in or by a storage-only imaging system such as microfilm or microfiche.” It also provides the requirements for hardcopy records to be converted to “storage-only imaging media, such as microfilm and microfiche.”

### *Special Taxes and Fees*

The Board also administers a number of special taxes and fees, in addition to the sales and use taxes. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Law (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the FCPL, and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

As relevant here, the Covered Electronic Waste Recycling Fee imposed by Public Resources Code (PRC) section 42464 is administered under the FCPL pursuant to PRC section 42464.2. The California Tire Fee imposed by PRC section 42885 is administered under the FPCL pursuant to PRC section 42882. The Lumber Products Assessment imposed by PRC section 4629.5 is

administered under the FCPL pursuant to PRC section 4629.5. The Marine Invasive Species Fee imposed by PRC section 42885 is administered under the FCPL pursuant to RTC sections 44002 and 44003. The Natural Gas Surcharge imposed by Public Utilities Code (PUC) section 890 is administered under the FCPL pursuant to PUC section 893. The Prepaid Mobile Telephony Services Surcharge imposed by RTC section 42010 and Local Charges as defined in RTC section 42101 that are required to be collected by sellers other than direct sellers are administered under the FCPL pursuant to RTC sections 42020 and 42103. And, the Water Rights Fee imposed by Water Code sections 1525 and 13160.1 is administered under the FCPL pursuant to Water Code section 1552.

The Board's Special Taxes and Fee Department is responsible for administering the Board's special taxes and fees programs under the special tax and fee laws.

The Board adopted Regulation 4901 in 2003 to implement, interpret, and make specific the statutes related to the retention and examination of records under the special tax and fee laws, which are similar to RTC sections 7053 and 7054 (discussed above). (RTC §§ 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606.) As relevant here, Regulation 4901 contains a list of "Applicable Tax Laws" and prescribes the types of records that must be maintained and made available for examination on request by the Board to determine taxpayers' and fee payers' correct liabilities under the applicable tax laws. Regulation 4901 generally mirrors the provisions of Regulation 1698, except that it provides the requirements for hardcopy records to be converted to "storage-only imaging media, such as *microfilm, microfiche or other media used in electronic imaging.*" (Italics added.)

Regulation 4901 was amended in 2010 to clarify that it applies to the Water Rights Fee (enacted in 2003) and Cover Electronic Waste Recycling Fee (enacted in 2004). However, Regulation 4901 has not been substantially updated since it was adopted in 2003 and does not currently refer to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge, which were enacted, or Local Charges, which the Board was first required to administer under the FCPL, after the regulation was last amended.

### *Electronic Cash Registers*

Cash registers have existed for many years. They offer business owners an organized place to ring up sales and store money from their sales transactions. Electronic cash registers have also been in use for some time and now include a wide range of devices, such as integrated POS systems.

POS systems are sophisticated computer systems that use commercially available operating systems to record each sale when it happens. In recent years, POS systems have become more popular than traditional cash registers with business owners because of their user-friendly interface, data tracking capabilities, and increased affordability. These systems are also popular

because they can be integrated with third-party accounting software, online ordering, and credit and debit card processors.

The Legislature added RTC section 7153.6 to the Sales and Use Tax Law (RTC § 6001 et seq.) and RTC section 55363.5 to the FCPL, effective January 1, 2014. (Stats. 2013, ch. 532.) As relevant here, both statutes define the term “electronic cash register” to mean “a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner” and both statutes indicate that electronic cash registers include POS systems.

### Effect, Objectives, and Benefits of the Proposed Amendments

#### *Need to Update Regulation 1698*

As new technologies and business practices emerge, the Board must adapt to the new technologies and keep taxpayers informed with relevant guidance using the current terminology in the industry. Board staff determined that there was an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) because Regulation 1698 currently defines the outdated term “machines-sensible record” and generally uses the term to refer to information in an “electronic format,” which is now simply referred to as “electronic records.” Staff determined that there was an issue (or problem) with Regulation 1698 because it does not define the commonly used term electronic cash register or refer to POS systems. Staff also determined that there was an issue with Regulation 1698 because it did not provide guidance to business owners with POS systems that overwrite data after a period of time about how to maintain their data before it is overwritten.

#### *Interested Parties Process*

As a result, the Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1698 and address the issues described above, and a discussion paper explaining the draft amendments. Both were provided to interested parties.

Staff’s draft amendments to Regulations 1698:

- Defined the term “electronic cash register” and explained that the term includes integrated POS systems.
- Replaced the term “machine-sensible record” with “electronic record” and explained that electronic records included records recorded and maintained by electronic cash registers.
- Changed the format of the example provided in subdivision (c)(2)(A).
- Added an example to subdivision (i) to further explain how business owners should maintain their data if they have POS systems that overwrite data after a period of time.

On June 17, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. Following the meeting, staff received a submission, dated July 1, 2015, from Mr. Robert Jones of Collins, Mason & Company LLP. Mr. Jones proposed that each occurrence of “microfilm or microfiche” in the regulation be replaced with “microfilm, microfiche, or pdf.”

PDF or “portable document format” is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agreed with Mr. Jones that PDF is an acceptable record storage format, and as such agreed to add PDF to the regulation where it refers to microfilm and microfiche.

When preparing the second discussion paper and revising the draft amendments to Regulation 1698, BTC staff determined that Regulation 4901 generally mirrors Regulation 1698 (as discussed above). BTC staff also noticed that Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that refers to “microfilm, microfiche or other media used in electronic imaging” (as discussed above). As such, staff revised its draft amendments to Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of “microfilm or microfiche” with “microfilm, microfiche, PDF files, or other media used in electronic imaging.”

In addition, BTC staff prepared drafted amendments to update Regulation 4901 that mirrored the amendments to Regulation 1698, discussed above, including adding “PDF files” to subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901 to ensure consistency between Regulations 1698 and 4901. Also, to further update Regulation 4901, staff drafted amendments to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from subdivision (a)(1)’s list of applicable tax laws and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

On August 11, 2015, BTC staff conducted a second interested parties meeting to discuss the draft amendments to Regulations 1698 and 4901. At the meeting, there was overall support for the proposed amendments. Also at the meeting, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested that Excel worksheets and Access databases be included as acceptable forms of records in the regulations. Although staff did not receive a written submission for this request, staff did consider the suggestion. Staff determined that worksheets and database files are not necessarily source data and that they are often summaries or analyses of source data. Staff determined that worksheets and databases are already required to be maintained and made available to the Board under the provisions in subdivision (b)(1)(C) of both regulations, which refer to “schedules or working papers used in connection with the preparation of tax returns.” Additionally, staff determined that it would be unnecessarily restrictive to revise the regulation to

refer to specific proprietary software products, such as Excel and Access. For these reasons, BTC staff did not agree to incorporate Mr. Brandeis's suggestion into staff's draft amendments.

*October 27, 2015, BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-011 and distributed it to the Board Members for consideration at the Board's October 27, 2015, BTC meeting. Formal Issue Paper 15-011 recommended that the Board propose to add a definition for "electronic cash register" to subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901 to address the second issue (or problem) referred to above. The definitions in the regulations are in alphabetical order, therefore the issue paper recommended that the definition for "electronic cash register" be inserted alphabetically, and the remaining definitions be renumbered.

Subdivision (i) of both regulations explains that records must be kept for a period of not less than four years. The formal issue paper recommended that the Board propose to add an example to this subdivision to address the third issue (or problem) referred to above by explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified period.

The formal issue paper recommended that the Board propose to update the term "machine-sensible records" to "electronic records" throughout the regulations to address the first issue (or problem) referred to above. "Machine-sensible records" is an outdated term, and "electronic records" is a current and readily understood term. Board staff also recommended that the Board propose to change the formatting of the regulations in subdivision (c)(2)(A) where they provide examples of what retained records should contain when a taxpayer uses electronic data interchange processes and technology. The recommended amendments reformatted the examples as numbered lists for easier reading and consistent formatting with other subdivisions in the regulations.

Additionally, the formal issue paper recommended that the Board revise Regulation 4901 to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from the list of applicable tax laws under subdivision (a)(1) and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL. The recommended amendments to subdivision (a)(1) were also arranged in alphabetical order.

Furthermore, the formal issue paper recommended that the Board propose to amend Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging" and propose to amend Regulation 4901 to add "PDF files" to subdivisions (a)(5), (h)(1), and

(h)(2), to address Mr. Jones's submission, which was included as Exhibit 4 to the formal issue paper.

At the conclusion of the Board's discussion of Formal Issue Paper 15-011 during the October 27, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulations 1698 and 4901 recommended in the formal issue paper. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of clarifying and updating the regulations to address the issues (or problems) referred to above and respond to Mr. Jones's submission.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1698 and 4901 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulations 1698 and 4901 are the only regulations that specify the types of records that must be maintained and made available for examination on request by the Board under the Sales and Use Tax Law and special tax and fee laws, and the Board is making consistent amendments to both regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 may affect small business.

**NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

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

The Board has determined that the adoption of the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 will not affect the benefits of Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at [Pamela.Mash@boe.ca.gov](mailto:Pamela.Mash@boe.ca.gov), or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

## **WRITTEN COMMENT PERIOD**

The written comment period ends at 10:00 a.m. on March 29, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1698 and 4901 during the March 29-30, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1698 and 4901. 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 underscored and strikeout versions of the text of Regulations 1698 and 4901 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 Regulations 1698 and 4901, 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](http://www.boe.ca.gov).

January 29, 2016

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

The Board may adopt the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,

  
Joann Richmond, Chief  
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for  
Proposed Amendments to California Code of Regulations,  
Title 18, Section 1698, *Records*, and Section 4901, *Records***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

*Sales and Use Tax*

The State Board of Equalization (Board) administers California's sales and use taxes. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs, including performing audits to ensure that sales and use taxes are reported properly.

There are two statutes related to the retention and examination of records for sales and use tax purposes. Revenue and Taxation Code (RTC) section 7053 provides that "[e]very seller, every retailer as defined in subdivision (b) of section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the [B]oard may require."

RTC section 7054 specifies that the Board, or any person authorized in writing by it, "may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax." It further specifies that the Board "may investigate the character of the business of the person in order to verify the accuracy of any return made" or "if no return is made by the person, to ascertain and determine the amount required to be paid."

The Board adopted California Code of Regulations, title 18, section (Regulation) 1698, *Records*, to implement, interpret, and make specific RTC sections 7053 and 7054 by specifying the types of records that must be maintained and made available for examination on request by the Board for sales and use tax purposes. The regulation currently allows records to be maintained and made available in hardcopy or electronic format. The regulation also generally requires all records to be preserved for a period of not less than four years, except for records for reporting periods beginning before January 1, 2003, that are subject to the extended ten year statute of limitations contained in RTC section 7073(d), which the regulation requires to be preserved for a period of not less than ten years. The Board made amendments that substantially updated Regulation 1698 in 1997, and added the provisions regarding records for reporting periods beginning before January 1, 2003, in 2005. However, Regulation 1698 has not been substantially updated since 1997.

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PDF or "portable document format" is a type of storage-only imaging format that is independent of software, hardware, or operating systems. Invented and developed by Adobe, PDF has become the most popular imaging format since 1994 when Adobe announced that it would provide its Adobe Reader software free online as an open file format. With increased availability and ease of use, PDF files have become the standard for document exchange, almost replacing microfilm or microfiche. Staff agreed with Mr. Jones that PDF is an acceptable record storage format, and as such agreed to add PDF to the regulation where it refers to microfilm and microfiche.

When preparing the second discussion paper and revising the draft amendments to Regulation 1698, BTC staff determined that Regulation 4901 generally mirrors Regulation 1698 (as discussed above). BTC staff also noticed that Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that refers to "microfilm, microfiche or other media used in electronic imaging" (as discussed above). As such, staff revised its draft amendments to Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging."

In addition, BTC staff prepared drafted amendments to update Regulation 4901 that mirrored the amendments to Regulation 1698, discussed above, including adding "PDF files" to subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901 to ensure consistency between Regulations 1698 and 4901. Also, to further update Regulation 4901, staff drafted amendments to remove the

references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from subdivision (a)(1)'s list of applicable tax laws and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

On August 11, 2015, BTC staff conducted a second interested parties meeting to discuss the draft amendments to Regulations 1698 and 4901. At the meeting, there was overall support for the proposed amendments. Also at the meeting, Mr. Marc Brandeis of Brandeis & Associates, LLC, requested that Excel worksheets and Access databases be included as acceptable forms of records in the regulations. Although staff did not receive a written submission for this request, staff did consider the suggestion. Staff determined that worksheets and database files are not necessarily source data and that they are often summaries or analyses of source data. Staff determined that worksheets and databases are already required to be maintained and made available to the Board under the provisions in subdivision (b)(1)(C) of both regulations, which refer to "schedules or working papers used in connection with the preparation of tax returns." Additionally, staff determined that it would be unnecessarily restrictive to revise the regulation to refer to specific proprietary software products, such as Excel and Access. For these reasons, BTC staff did not agree to incorporate Mr. Brandeis's suggestion into staff's draft amendments.

*October 27, 2015, BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-011 and distributed it to the Board Members for consideration at the Board's October 27, 2015, BTC meeting. Formal Issue Paper 15-011 recommended that the Board propose to add a definition for "electronic cash register" to subdivision (a)(2) of Regulation 1698 and subdivision (a)(3) of Regulation 4901 to address the second issue (or problem) referred to above. The definitions in the regulations are in alphabetical order, therefore the issue paper recommended that the definition for "electronic cash register" be inserted alphabetically, and the remaining definitions be renumbered.

Subdivision (i) of both regulations explains that records must be kept for a period of not less than four years. The formal issue paper recommended that the Board propose to add an example to this subdivision to address the third issue (or problem) referred to above by explaining that if the taxpayer's POS system periodically overwrites stored data, the taxpayer should transfer and maintain a copy of all the data that would be overwritten or otherwise removed for the specified period.

The formal issue paper recommended that the Board propose to update the term "machine-sensible records" to "electronic records" throughout the regulations to address the first issue (or problem) referred to above. "Machine-sensible records" is an outdated term, and "electronic records" is a current and readily understood term. Board staff also recommended that the Board propose to change the formatting of the regulations in subdivision (c)(2)(A) where they provide examples of what retained records should contain when a taxpayer uses electronic data interchange processes and technology. The recommended amendments reformatted the examples as numbered lists for easier reading and consistent formatting with other subdivisions in the regulations.

Additionally, the formal issue paper recommended that the Board revise Regulation 4901 to remove the references to the Marine Invasive Species Fee, California Tire Fee, Natural Gas Surcharge, Covered Electronic Waste Recycling Fee, and Water Rights Fee from the list of applicable tax laws under subdivision (a)(1) and insert a reference to the FCPL to cover all the taxes and fees currently enacted and administered under the FCPL, as well as eliminate the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL. The recommended amendments to subdivision (a)(1) were also arranged in alphabetical order.

Furthermore, the formal issue paper recommended that the Board propose to amend Regulation 1698, subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of “microfilm or microfiche” with “microfilm, microfiche, PDF files, or other media used in electronic imaging” and propose to amend Regulation 4901 to add “PDF files” to subdivisions (a)(5), (h)(1), and (h)(2), to address Mr. Jones’s submission, which was included as Exhibit 4 to the formal issue paper.

At the conclusion of the Board’s discussion of Formal Issue Paper 15-011 during the October 27, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulations 1698 and 4901 recommended in the formal issue paper. The Board determined that the proposed amendments are reasonably necessary for the specific purposes of clarifying and updating the regulations to address the issues (or problems) referred to above and respond to Mr. Jones’s submission.

The Board anticipates that the proposed amendments to Regulations 1698 and 4901 will benefit business owners that use electronic cash registers, including POS systems, and maintain records in electronic format by providing updated guidance about the electronic records they must maintain and make available to the Board. The Board also anticipates that the amendments to Regulation 4901, subdivision (a)(1), will benefit the Board by eliminating the need for further revisions to Regulation 4901 when new taxes and fees are enacted that are administered under the FCPL.

The proposed amendments to Regulations 1698 and 4901 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1698 and 4901 or the proposed amendments to Regulations 1698 and 4901.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-011, the exhibits to the issue paper, and the comments made during the Board’s discussion of the issue paper during its October 27, 2015, BTC meeting in deciding to propose the amendments to Regulations 1698 and 4901 described above.

#### ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulations 1698 and 4901 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

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

The proposed amendments to Regulation 1698 and 4901 update and clarify the terms currently used in the regulations, incorporate the statutory definition of electronic cash register, update the guidance currently provided in the regulations regarding storage-only imaging media so that it is clear that such media includes "PDF files" and other media used in electronic imaging, and provide a current example explaining how business owners should maintain their data if they have POS systems that overwrite data after a period of time. The proposed amendments to Regulation 4901 also change the way the regulation refers to taxes and fees administered under the FCPL. The proposed amendments do not mandate that individuals or businesses maintain or make available any records that they are not currently required to maintain or make available or do anything that is not already required by the Sales and Use Tax Law, the special tax and fee laws, or Regulations 1698 and 4901, 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 Regulations 1698 and 4901 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 Regulations 1698 and 4901 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, Regulations 1698 and 4901 do 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 Regulations 1698 and 4901 will not affect the benefits of Regulations 1698 and 4901 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 Regulations 1698 and 4901 will not have a significant adverse economic impact on business.

The proposed amendments to Regulations 1698 and 4901 may affect small businesses.

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1698**

**1698. Records.**

(a) Definitions.

(1) "Database Management System" - a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic cash register" - a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

~~(23)~~ "Electronic data interchange" or "EDI technology" - the computer to computer exchange of business transactions in a standardized structured electronic format.

~~(3) "Hardcopy" - any document, record, report or other data maintained in a paper format.~~

(4) ~~"Machine-sensible~~Electronic record" - a collection of related information in an electronic, machine-sensible format. ~~Machine-sensible~~Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

~~(5) "Hardcopy" - any document, record, report or other data maintained in a paper format.~~

~~(56)~~ "Taxpayer" - every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

(b) General.

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code sections 7053 and 7054.

(c) ~~Machine-Sensible~~Electronic Records.

(1) General.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format, e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) Electronic Data Interchange Requirements.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1. vendor name,
2. invoice date,
3. product description,
4. quantity purchased,
5. price,
6. amount of tax,
7. indication of tax status (e.g., for resale), and
8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~ electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

(d) ~~Machine-Sensible~~Electronic Records Maintenance Requirements.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) Access to ~~Machine-Sensible~~Electronic Records.

(1) The manner in which the Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

(C) The taxpayer may convert the ~~machine-sensible~~electronic records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

(D) The taxpayer and the Board may agree on other means of providing access to the ~~machine-sensible~~electronic records.

(f) Taxpayer Responsibility and Discretionary Authority.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) Hardcopy Records.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) Alternative Storage Media.

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, ~~or~~ microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, ~~and~~ microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) Record Retention - Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For reporting periods beginning before January 1, 2003 that are subject to the extended ten year statute of limitations contained in Revenue and Taxation Code section 7073(d), records required to be retained under this regulation must be preserved for a period of not less than ten years.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

(j) Record Retention Limitation Agreements.

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~machine-sensible~~ electronic records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the Board, which may include, but is not limited to, any one or more of the following issues:

- a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and
2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and
  3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 7054 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~ electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~ electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6455, 7053, ~~and 7054~~ and 7153.6, Revenue and Taxation Code.

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 4901**

**4901. Records.**

(a) Definitions.

(1) "Applicable Tax Laws" means any of the following:

(A) Aircraft Jet Fuel Tax, Revenue and Taxation Code ~~Sections 7385-7398, and~~ 7486-8406;

(B) Alcoholic Beverage Tax, Revenue and Taxation Code ~~Sections 32001-32557~~;

~~(C) Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;~~

~~(D) California Tire Fee, Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381;~~

~~(E)~~ (C) Childhood Lead Poisoning Prevention Fee, Health and Safety Code ~~Section 105310~~; Revenue and Taxation Code ~~Sections 43001-43651~~;

~~(F)~~ (D) Cigarette and Tobacco Products Tax, Revenue and Taxation Code ~~Sections 30001-30481~~;

~~(G)~~ (E) Diesel Fuel Tax, Revenue and Taxation Code ~~Sections 60001-60709~~;

~~(H)~~ (F) Emergency Telephone Users Surcharge, Revenue and Taxation Code ~~Sections 41001-41176~~;

~~(I)~~ (G) Energy Resources Surcharge, Revenue and Taxation Code ~~Sections 40001-40216~~;

~~(J)~~ (H) Fee Collection Procedures Law, Revenue and Taxation Code sections 55001-55381;

~~(K)~~ (I) Hazardous Substances Tax, Health and Safety Code ~~Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7~~; Revenue and Taxation Code ~~Sections 43001-43651~~;

~~(L)~~ (J) Integrated Waste Management Fee, Public Resources Code ~~Sections 40000-48008~~; Revenue and Taxation Code ~~Sections 45001-45984~~;

~~(M)~~ (K) Motor Vehicle Fuel Tax, Revenue and Taxation Code ~~Sections 7301-8526~~;

~~(N)~~ (L) Natural Gas Surcharge, Public Utilities Code ~~Sections 890-900~~; Revenue and Taxation Code ~~Sections 55001-55381~~;

~~(O)~~ (M) Occupational Lead Poisoning Prevention Fee, Health and Safety Code ~~Section 105190~~; Revenue and Taxation Code ~~Sections 43001-43651~~;

~~(OM)~~ Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001-46751;

~~(PN)~~ Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Section 50101-50162; and

~~(QO)~~ Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;

~~(R)~~ Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;

~~(S)~~ Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.

(2) "Database Management System" - a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(3) "Electronic cash register" - a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

~~(34)~~ "Electronic data interchange" or "EDI technology" - the computer to computer exchange of business transactions in a standardized structured electronic format.

~~(4)~~ "Hardcopy" - any document, record, report or other data maintained in a paper format.

(5) "Machine-sensibleElectronic record" - a collection of related information in an electronic, machine-sensible format. Machine-sensibleElectronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, or microfiche, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

(6) "Hardcopy" - any document, record, report or other data maintained in a paper format.

~~(67)~~ "Taxpayer" includes "fee payer" and means any person liable for the payment of a tax or a fee specified under any of the applicable tax laws.

~~(78)~~ "Tax" includes "fee" and means any amount of tax or fee specified under any of the applicable tax laws.

(b) General.

(1) A taxpayer shall maintain and make available for examination on request by the ~~b~~Board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code Sections 8301-8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172-40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, and 60604-60606, ~~Revenue and Taxation Code~~.

(c-) ~~Machine-Sensible~~Electronic Records.

(1) General.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the ~~b~~Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the ~~b~~Board has the technological capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) Electronic Data Interchange Requirements.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions,

must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1. vendor name,
2. invoice date,
3. product description,
4. quantity purchased,
5. price,
6. amount of tax,
7. indication of tax status (e.g., exempt), and
8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the bBoard to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the bBoard. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the bBoard, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

(d) ~~Machine-Sensible~~Electronic Records Maintenance Requirements

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The ~~b~~Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) Access to ~~Machine-Sensible~~Electronic Records.

(1) The manner in which the ~~b~~Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the ~~b~~Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

(C) The taxpayer may convert the ~~machine-sensible~~ electronic records to a standard record format specified by the ~~b~~Board, including copies of files, on a magnetic medium that is agreed to by the ~~b~~Board.

(D) The taxpayer and the ~~b~~Board may agree on other means of providing access to the ~~machine-sensible~~ electronic records.

(f) Taxpayer Responsibility and Discretionary Authority.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the ~~b~~Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) Hardcopy Records.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) Alternative Storage Media.

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these

media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche, PDF files, or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) Record Retention - Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

(j) Record Retention Limitation Agreements.

(1) The bBoard has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~machine-sensible~~electronic records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the bBoard, which may include, but is not limited to, any one or more of the following issues:

- a. the conversion of files created on an obsolete computer system;
- b. restoration of lost or damaged files and the actions to be taken;
- c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the bBoard determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The bBoard shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The bBoard's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the bBoard when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The bBoard shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under the applicable tax law.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the ~~b~~BBoard.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the ~~b~~BBoard may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605 and 60606, Revenue and Taxation Code.

## Regulation History

**Type of Regulation:** Sales and Use Tax and Special Taxes and Fees

Regulation: 1698, 4901

Title: 1698 *Records*

4901 *Records*

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The State Board of Equalization proposes to adopt amendments to define the term electronic cash register, update the terminology used to refer to electronic records, and clarify taxpayers' record retention requirements.

### History of Proposed Regulation:

March 29-30, 2016	Public Hearing
January 29, 2016	OAL publication date; 45-day public comment period begins; Interested Parties mailing
January 19, 2016	Notice to OAL
October 27, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA