

Regulation 1703

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1703

Index

1. *Form 400 and Proposed Regulation 1703*
2. *Statement of Explanation*
3. *SB 1028*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 05/23/13*
- B. *Draft Minutes, 06/11/13*
- C. *Reporters Transcript, 06/11/13*

**State of California
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1703

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT

California Code of Regulations, Title 1,
Section 100

OAL File No. 2013-0730-01 N

Existing section 1703 of title 18 of the California Code of Regulations, entitled "Interest and Penalties," lists the sections in the Sales and Use Tax Law (Revenue and Taxation Code, section 6001 et seq.) that apply to the calculation of, imposition of, or relief from interest and penalties, and incorporates, implements, and provides additional notice of important statutory provisions applicable to the calculation of, imposition of, and relief from interest and penalties. Effective January 1, 2011, section 6591.6 was added to the Revenue and Taxation Code (RTC) by Senate Bill No. 1028 (Stats. 2010, ch. 316). RTC section 6591.6 authorizes the Members of the Board, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. The State Board of Equalization (BOE) proposed by this filing to amend section 1703 of title 18 of the California Code of Regulations to add RTC section 6591.6 to the list and to add substantive provisions originating from RTC section 6591.6. BOE also proposed by this filing to make minor corrections to section 1703. This filing was submitted as a change without regulatory effect pursuant to section 100, title 1, California Code of Regulations.

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

Date: 8/28/2013



Craig S. Tarpenning
Assistant Chief Counsel

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

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



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 8/29/2013
RE: Return of Approved Rulemaking Materials
OAL File No. 2013-0730-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0730-01N regarding Interest and Penalties).

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

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

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

Please note this new requirement: 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.

DO NOT DISCARD OR DESTROY THIS FILE

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

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

Enclosures

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2013-0730-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED FILED
IN THE OFFICE OF

2013 AUG 28 PM 3:22

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

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

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

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Interest and Penalties		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)			
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)					
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT			
		AMEND 1703			
TITLE(S) 18		REPEAL			
3. TYPE OF FILING					
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)		
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1(b))	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only		
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)					
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)					
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____		
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY					
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify) _____					
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE July 29, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 28 2013

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

1703. Interest and Penalties.

(a) Statutory Provisions. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

<i>Subject</i>	<i>Sections</i>	
	<i>Interest</i>	<i>Penalties</i>
Failure to pay tax within required time (except determinations)	6480.4, 6480.8 6480.19, 6591	6476, 6477, 6478, 6479.3 6480.4, 6480.8, 6480.19, 6591, 7051.2
Failure to file a timely return		6591, 6479.3
Deficiency determinations	6482	6484 (negligence) 6485 (fraud), 7051.2
Determinations - Sales tax reimbursement or use tax collected but not timely remitted		6597
Determination - failure to make return	6513	6511, 7051.2 6514 (fraud)
Jeopardy determinations	6537	6537, 7051.2
Extensions of time	6459	
Determinations - Nonpayment of		6565, 7051.2
Offsets	6512	6512
Refunds and credits	6901, 6907 6908	6901
Suits for refund	6936	
Disposition of interest and penalties	7101	7101
Criminal Penalties		6073, 6094.5, 6422.1, 7152, 7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291-6294	6291-6294
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455
Improper use of resale certificates	6072	6094.5, 6072

Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
<u>Modified adjusted daily rate</u>	<u>6591.6</u>	
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permit holder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	
Tax Amnesty Program (Reporting Periods Beginning Before January 1, 2003)		7073, 7074

(b) Interest.

(1) Interest Rates.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) Overpayments. Except as provided below, “modified adjusted rate per annum” for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of Section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the nearest full percent (or to the next highest full percent if .50%).

(D) . . . (unchanged).

(E) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(F) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) Electronic Payments Made One Day Late.

(A) For the period of January 1, 2011, through January 1, 2016, if the Board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b)(1)(A) above, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

1. A payment or prepayment of tax was made one business day after the due date.
2. The person was granted relief from all penalties that applied to that payment of tax or prepayment.
3. The person filed a request for an oral hearing before the Board.

(B) For purposes of this paragraph:

1. "Modified adjusted daily rate" means the modified adjusted rate per annum, as defined in subdivision (b)(1)(B) above, determined on a daily basis by dividing the modified adjusted rate per annum by 365.
2. "Board" means the members of the State Board of Equalization meeting as a public body.
3. "Business day" means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(C) This paragraph only applies to electronic payments or prepayments of taxes and does not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination.

(56) Refunds and Credits.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(67) Improper Use of Resale Certificate. . . . (unchanged).

(78) Untimeliness Caused by Disaster. . . . (unchanged).

(c) Penalties.

(1) Late Payments Generally.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in §section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. . . . (unchanged).

3. . . . (unchanged).

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) Late Return Forms Generally.

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) Determinations.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged):

1. . . . (unchanged).

2. the person's failure to make a timely remittance of sales tax reimbursement or use tax is due to a reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

For purposes of this penalty, "reasonable cause or circumstances beyond the person's control" includes, but is not limited to, any of the following:

a. . . . (unchanged);

b. . . . (unchanged);

c. . . . (unchanged);

d. . . . (unchanged);

e. . . . (unchanged);

f. the person voluntarily corrected errors in remitting sales tax reimbursement or use tax collected that were made in previous reporting periods, and remitted payment of the liability owed as a result of those errors prior to being contacted by the Board regarding possible errors or discrepancies.

For purposes of this penalty, "sales tax reimbursement" is defined in section 1656.1 of the Civil Code, and also includes any sales tax that is advertised, held out, or stated to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer.

This penalty applies to determinations made by the Board pursuant to Article 2 (commencing with section 6481), Article 3 (commencing with section 6511), and Article 4 (commencing with section 6536) of Chapter 5, Part 1, Division 2 of the Revenue and Taxation Code.

(E) . . . (unchanged)..

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

(9) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6071, 6072, 6073, 6074, 6077, 6094.5, 6207, 6291-6294, 6422.1, 6452, 6455, 6459, 6476-6478, 6479.3, 6480.4, 6480.8, 6480.19, 6482, 6484, 6485, 6485.1, 6511-6514, 6514.1, 6537, 6565, 6591, 6591.5, 6591.6, 6592, 6593, 6593.5, 6596, 6597, 6901, 6907, 6908, 6936, 6964, 7051.2, 7073, 7074, 7076.5, 7101, 7152-7153, 7153.5 and 7155, Revenue and Taxation Code.

mental toxicity evaluation of inhaled methyl isobutyl ketone in Fischer 344 rats and CD-1 mice". Fundam Appl Toxicol 8(3): 310-27.

U.S. EPA (U.S. Environmental Protection Agency) (2003a). Methyl Isobutyl Ketone (MIBK) (CASRN 108-10-1). Integrated Risk Information System. Available online at: <http://www.epa.gov/iris/subst/0173.htm>.

U.S. EPA (U.S. Environmental Protection Agency) (2003b). Toxicological Review of Methyl Isobutyl Ketone; In Support of Summary Information on the Integrated Risk Information System (IRIS). EPA/635/R-03/002. U.S. EPA, Washington DC, March. Available online at: <http://www.epa.gov/iris/toxreviews/0173tr.pdf>.

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# 2013-0730-01
BOARD OF EQUALIZATION
 Interest and Penalties

Existing section 1703 of title 18 of the California Code of Regulations, entitled "Interest and Penalties," lists the sections in the Sales and Use Tax Law (Revenue and Taxation Code, section 6001 et seq.) that apply to the calculation of, imposition of, or relief from interest and penalties, and incorporates, implements, and provides additional notice of important statutory provisions applicable to the calculation of, imposition of, and relief from interest and penalties. Effective January 1, 2011, section 6591.6 was added to the Revenue and Taxation Code (RTC) by Senate Bill No. 1028 (Stats. 2010, ch. 316). RTC section 6591.6 authorizes the Members of the Board, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. The State Board of Equalization (BOE) amended section 1703 of title 18 of the California Code of Regulations to add RTC section 6591.6 to the list and to add substantive provisions originating from RTC section 6591.6. BOE also proposed

by this filing to make minor corrections to section 1703. This filing was submitted as a change without regulatory effect pursuant to section 100, title 1, California Code of Regulations.

Title 18
 California Code of Regulations
 AMEND: 1703
 Filed 08/28/2013
 Agency Contact:
 Richard E. Bennion (916) 445-2130

File# 2013-0718-05
CALIFORNIA ENERGY COMMISSION
 Renewables Portfolio Standard

This rulemaking action implements Senate Bill X1-2 (Chapter 1 of the Statutes of 2011) by adding regulations to Title 20 of the California Code of Regulations which will specify procedures for the enforcement of the Renewables Portfolio Standard (RPS) on local, publicly-owned utilities (POUs) so as to increase the amount of electricity generated from eligible renewable energy sources.

Title 20
 California Code of Regulations
 ADOPT: 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 1240
 Filed 08/28/2013
 Effective 10/01/2013
 Agency Contact: Angela Gould (916) 654-4881

File# 2013-0814-01
CALIFORNIA PRISON INDUSTRY AUTHORITY
 Conflict of Interest Code

This is an adoption to a Conflict of Interest Code that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Title 15
 California Code of Regulations
 ADOPT: 8125
 Filed 08/27/2013
 Effective 09/26/2013
 Agency Contact: Jeff Sly (916) 358-1711

File# 2013-0807-03
DEPARTMENT OF FISH AND WILDLIFE
 Falconry Fees and Forms

The Department of Fish and Wildlife amended section 703 of title 14 of the California Code of Regulations to establish fees and forms for falconry in California.

Regulation 1703

Section 100

Index

1. *Form 400 and Proposed Regulation 1703*
2. *Statement of Explanation*
3. **SB 1028**

NONSUBSTANTIVE

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2013-0730-01N	

For use by Office of Administrative Law (OAL) only

2013 JUL 30 AM 10:31

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

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

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

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Interest and Penalties	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
	1703
TITLE(S) 18	REPEAL

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

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

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

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

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

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE July 29, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

Text of Proposed Changes to

Title 18. Public Revenue

1703. Interest and Penalties.

(a) Statutory Provisions. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

<i>Subject</i>	<i>Sections</i>	
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Criminal Penalties		6073, 6094.5, 6422.1, 7152, 7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291-6294	6291-6294
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455
Improper use of resale certificates	6072	6094.5, 6072

Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
<u>Modified adjusted daily rate</u>	<u>6591.6</u>	
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permit holder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	
Tax Amnesty Program (Reporting Periods Beginning Before January 1, 2003)		7073, 7074

(b) Interest.

(1) Interest Rates.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) Overpayments. Except as provided below, “modified adjusted rate per annum” for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of §section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the nearest full percent (or to the next highest full percent if .50%).

(D) . . . (unchanged).

(E) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(F) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) Electronic Payments Made One Day Late.

(A) For the period of January 1, 2011, through January 1, 2016, if the Board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b)(1)(A) above, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

1. A payment or prepayment of tax was made one business day after the due date.

2. The person was granted relief from all penalties that applied to that payment of tax or prepayment.

3. The person filed a request for an oral hearing before the Board.

(B) For purposes of this paragraph:

1. "Modified adjusted daily rate" means the modified adjusted rate per annum, as defined in subdivision (b)(1)(B) above, determined on a daily basis by dividing the modified adjusted rate per annum by 365.

2. "Board" means the members of the State Board of Equalization meeting as a public body.

3. "Business day" means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(C) This paragraph only applies to electronic payments or prepayments of taxes and does not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination.

(56) Refunds and Credits.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(67) Improper Use of Resale Certificate. . . . (unchanged).

(78) Untimeliness Caused by Disaster. . . . (unchanged).

(c) Penalties.

(1) Late Payments Generally.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in §section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. . . . (unchanged).

3. . . . (unchanged).

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) Late Return Forms Generally.

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) Determinations.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged):

1. . . . (unchanged).

2. the person's failure to make a timely remittance of sales tax reimbursement or use tax is due to a reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

For purposes of this penalty, "reasonable cause or circumstances beyond the person's control" includes, but is not limited to, any of the following:

a. . . . (unchanged);

b. . . . (unchanged);

c. . . . (unchanged);

d. . . . (unchanged);

e. . . . (unchanged);

f. the person voluntarily corrected errors in remitting sales tax reimbursement or use tax collected that were made in previous reporting periods, and remitted payment of the liability owed as a result of those errors prior to being contacted by the Board regarding possible errors or discrepancies.

For purposes of this penalty, "sales tax reimbursement" is defined in section 1656.1 of the Civil Code, and also includes any sales tax that is advertised, held out, or stated to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer.

This penalty applies to determinations made by the Board pursuant to Article 2 (commencing with section 6481), Article 3 (commencing with section 6511), and Article 4 (commencing with section 6536) of Chapter 5, Part 1, Division 2 of the Revenue and Taxation Code.

(E) . . . (unchanged)..

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

(9) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6071, 6072, 6073, 6074, 6077, 6094.5, 6207, 6291-6294, 6422.1, 6452, 6455, 6459, 6476-6478, 6479.3, 6480.4, 6480.8, 6480.19, 6482, 6484, 6485, 6485.1, 6511-6514, 6514.1, 6537, 6565, 6591, 6591.5, 6591.6, 6592, 6593, 6593.5, 6596, 6597, 6901, 6907, 6908, 6936, 6964, 7051.2, 7073, 7074, 7076.5, 7101, 7152-7153, 7153.5 and 7155, Revenue and Taxation Code.

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

Statement of Explanation

Title 18. Public Revenues

Regulation 1703, *Interest and Penalties*

A. Factual Basis

Subdivision (a) of California Code of Regulations, title 18, section (Regulation) 1703, *Interest and Penalties*, lists the sections in the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) that apply to the calculation of, imposition of, or relief from interest and penalties. Subdivision (b) of Regulation 1703 incorporates, implements, and provides additional notice of important statutory provisions applicable to the calculation of, imposition of, and relief from interest. And, subdivision (c) of Regulation 1703 incorporates, implements, and provides additional notice of important statutory provisions applicable to the calculation of, imposition of, and relief from penalties.

Section 6591.6 was added to the Revenue and Taxation Code (RTC) by Senate Bill No. (SB) 1028 (Stats. 2010, ch. 316), effective January 1, 2011. RTC section 6591.6 authorizes the Members of the Board, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. Section 6591.6, subdivision (a) provides that the Board may compute interest at the modified adjusted daily rate only when “the payment of tax or the prepayment was made one business day after the date the tax or prepayment was due,” the person has been “granted relief from all penalties that applied to that payment of tax or prepayment,” and the person also “files a request for an oral hearing before the Board.” Section 6591.6 subdivisions (f) and (g) specify that section 6591.6 “shall only apply to electronic payments or prepayments of taxes” and “shall be operative only until January 1, 2016,” respectively. Therefore, the Board proposes to change Regulation 1703, subdivision (a), so that it lists the modified adjusted daily rate of interest provided in RTC section 6591.6 under California Code of Regulations, title 1, section (Rule) 100. The Board proposes to add a new paragraph (5) to Regulation 1703, subdivision (b), and renumber current paragraphs (5) through (7) as paragraphs (6) through (8), respectively, to incorporate and provide additional notice of the requirements for the Board to calculate interest at the modified adjusted daily rate prescribed by RTC section 6591.6. The Board also proposes to add a citation to RTC section 6591.6 to Regulation 1703’s reference note.

In addition, the Board proposes to:

- Insert a space between the letters “t” and “h” in the reference to “permitholder” in Regulation 1703, subdivision (a);
- Replace the upper case “S” with a lower case “s” in the word “Section” in Regulation 1703, subdivisions (b)(1)(C) and (c)(1)(A)1;
- Insert a period at the end of the second paragraph in Regulation 1703, subdivision (c)(1)(A)4;

- Change the semicolon to a colon in the second sentence of Regulation 1703, subdivision (c)(3)(D)(2); and
- Change the word “voluntary” to the word “voluntarily” to correct a typographical error in Regulation 1703, subdivision (c)(3)(D)2f.

The proposed changes to Regulation 1703 are appropriate for processing under Rule 100 because they make the regulation consistent with the addition of section 6591.6 to the RTC by SB 1028, make other minor grammatical edits, fix a typographical error, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

Rule 100 changes are proposed to Regulation 1703.

TEXT OF PROPOSED CHANGES

1703. Interest and Penalties.

(a) Statutory Provisions. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

<i>Subject</i>	<i>Sections</i> <i>Interest</i>	<i>Penalties</i>
Failure to pay tax within required time (except determinations)	6480.4, 6480.8 6480.19, 6591	6476, 6477, 6478, 6479.3 6480.4, 6480.8, 6480.19, 6591, 7051.2
Failure to file a timely return		6591, 6479.3
Deficiency determinations	6482	6484 (negligence) 6485 (fraud), 7051.2
Determinations - Sales tax reimbursement or use tax collected but not timely remitted		6597
Determination - failure to make return	6513	6511, 7051.2 6514 (fraud)
Jeopardy determinations	6537	6537, 7051.2
Extensions of time	6459	
Determinations - Nonpayment of Offsets	6512	6565, 7051.2 6512
Refunds and credits	6901, 6907 6908	6901
Suits for refund	6936	
Disposition of interest and penalties	7101	7101
Criminal Penalties		6073, 6094.5, 6422.1, 7152,

		7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291-6294	6291-6294
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455
Improper use of resale certificates	6072	6094.5, 6072
Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
<u>Modified adjusted daily rate</u>	<u>6591.6</u>	
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permit holder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	
Tax Amnesty Program (Reporting Periods Beginning Before January 1, 2003)		7073, 7074

(b) Interest.

(1) Interest Rates.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) Overpayments. Except as provided below, “modified adjusted rate per annum” for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of Section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the

nearest full percent (or to the next highest full percent if .50%).

(D) . . . (unchanged).

(E) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(F) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) Electronic Payments Made One Day Late.

(A) For the period of January 1, 2011, through January 1, 2016, if the Board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b)(1)(A) above, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

1. A payment or prepayment of tax was made one business day after the due date.

2. The person was granted relief from all penalties that applied to that payment of tax or prepayment.

3. The person filed a request for an oral hearing before the Board.

(B) For purposes of this paragraph:

1. "Modified adjusted daily rate" means the modified adjusted rate per annum, as defined in subdivision (b)(1)(B) above, determined on a daily basis by dividing the modified adjusted rate per annum by 365.

2. "Board" means the members of the State Board of Equalization meeting as a public body.

3. "Business day" means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(C) This paragraph only applies to electronic payments or prepayments of taxes and does not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination.

(56) Refunds and Credits.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(67) Improper Use of Resale Certificate. . . . (unchanged).

(78) Untimeliness Caused by Disaster. . . . (unchanged).

(c) Penalties.

(1) Late Payments Generally.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in Section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. . . . (unchanged).

3. . . . (unchanged).

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) Late Return Forms Generally.

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) Determinations.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged):

1. . . . (unchanged).

2. the person's failure to make a timely remittance of sales tax reimbursement or use tax is due to a reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

For purposes of this penalty, "reasonable cause or circumstances beyond the person's control" includes, but is not limited to, any of the following:;

a. . . . (unchanged);

b. . . . (unchanged);

c. . . . (unchanged);

d. . . . (unchanged);

e. . . . (unchanged);

f. the person voluntarily corrected errors in remitting sales tax reimbursement or use tax collected that were made in previous reporting periods, and remitted payment of the liability owed as a result of those errors prior to being contacted by the Board regarding possible errors or discrepancies.

For purposes of this penalty, "sales tax reimbursement" is defined in section 1656.1 of the Civil Code, and also includes any sales tax that is advertised, held out, or stated to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer.

This penalty applies to determinations made by the Board pursuant to Article 2

(commencing with section 6481), Article 3 (commencing with section 6511), and Article 4 (commencing with section 6536) of Chapter 5, Part 1, Division 2 of the Revenue and Taxation Code.

(E) . . . (unchanged)..

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

(9) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6071, 6072, 6073, 6074, 6077, 6094.5, 6207, 6291-6294, 6422.1, 6452, 6455, 6459, 6476-6478, 6479.3, 6480.4, 6480.8, 6480.19, 6482, 6484, 6485, 6485.1, 6511-6514, 6514.1, 6537, 6565, 6591, 6591.5, 6591.6, 6592, 6593, 6593.5, 6596, 6597, 6901, 6907, 6908, 6936, 6964, 7051.2, 7073, 7074, 7076.5, 7101, 7152-7153, 7153.5 and 7155, Revenue and Taxation Code.

Senate Bill No. 1028

CHAPTER 316

An act to add Sections 6591.6, 7655.5, 8876.5, 12631.5, 30281.5, 32252.5, 40101.5, 41095.5, 43155.5, 45153.5, 46154.5, 50112.1, 55042.5, and 60207.5 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 2010. Filed with Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1028, Correa. State Board of Equalization: administration: interest.

Existing law requires the payment of interest on late payments, or late prepayments, of tax, fee, or surcharge payments at the modified adjusted rate per month under the provisions of the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, Diesel Fuel Tax Law, and the law governing the taxation of insurance companies. Interest is charged on a per-month basis, with one month's interest charged for each month, or fraction of a month, that a payment or prepayment is unpaid.

This bill would allow, until January 1, 2016, the members of the State Board of Equalization, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. The bill would also specify that the above provisions shall only apply to electronic payments or prepayments of taxes, fees, and surcharges.

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

SECTION 1. It is the intent of the Legislature that California's penalty and interest provisions foster and maintain the current high level of compliance, provide appropriate costs and sanctions for noncompliance, and provide a reasonable and administrable degree of latitude for individual taxpayer circumstances and errors. It is the intent of the Legislature in enacting this act, that the State Board of Equalization strictly and narrowly apply its provisions on a case-by-case basis and only in special circumstances.

SEC. 2. Section 6591.6 is added to the Revenue and Taxation Code, to read:

6591.6. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

(1) The payment of tax or the prepayment was made one business day after the date the tax or prepayment was due.

(2) The person was granted relief from all penalties that applied to that payment of tax or prepayment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments or prepayments of taxes.

(g) This section shall be operative only until January 1, 2016.

SEC. 3. Section 7655.5 is added to the Revenue and Taxation Code, to read:

7655.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

(1) The payment of tax or the prepayment was made one business day after the date the tax or prepayment was due.

(2) The person was granted relief from all penalties that applied to that payment of tax or prepayment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments or prepayments of taxes.

(g) This section shall be operative only until January 1, 2016.

SEC. 4. Section 8876.5 is added to the Revenue and Taxation Code, to read:

8876.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax was due until the date of payment, if all of the following occur:

(1) The payment of tax was made one business day after the date the tax was due.

(2) The person was granted relief from all penalties that applied to that payment of tax.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments of taxes.

(g) This section shall be operative only until January 1, 2016.

SEC. 5. Section 12631.5 is added to the Revenue and Taxation Code, to read:

12631.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

(1) The payment of tax or prepayment was made one business day after the date the tax or prepayment was due.

(2) The person was granted relief from all penalties that applied to that payment of tax or prepayment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section

6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, or a determination where no return has been filed.

(f) This section shall only apply to electronic payments or prepayments of taxes.

(g) This section shall be operative only until January 1, 2016.

SEC. 6. Section 30281.5 is added to the Revenue and Taxation Code, to read:

30281.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax was due until the date of payment, if all of the following occur:

(1) The payment of tax was made one business day after the date the tax was due.

(2) The person was granted relief from all penalties that applied to that payment of tax.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no report or return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments of taxes.

(g) This section shall be operative only until January 1, 2016.

SEC. 7. Section 32252.5 is added to the Revenue and Taxation Code, to read:

32252.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax was due until the date of payment, if all of the following occur:

(1) The payment of tax was made one business day after the date the tax was due.

(2) The person was granted relief from all penalties that applied to that payment of tax.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments of taxes.

(g) This section shall be operative only until January 1, 2016.

SEC. 8. Section 40101.5 is added to the Revenue and Taxation Code, to read:

40101.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the surcharge was due until the date of payment, if all of the following occur:

(1) The payment of the surcharge was made one business day after the date the surcharge was due.

(2) The person was granted relief from all penalties that applied to that payment of the surcharge.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, or a determination where no return has been filed.

(f) This section shall only apply to electronic payments of surcharges.

(g) This section shall be operative only until January 1, 2016.

SEC. 9. Section 41095.5 is added to the Revenue and Taxation Code, to read:

41095.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily

rate from the date on which the surcharge was due until the date of payment, if all of the following occur:

(1) The payment of the surcharge was made one business day after the date the surcharge was due.

(2) The person was granted relief from all penalties that applied to that payment of the surcharge.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, or a determination where no return has been filed.

(f) This section shall only apply to electronic payments of surcharges.

(g) This section shall be operative only until January 1, 2016.

SEC. 10. Section 43155.5 is added to the Revenue and Taxation Code, to read:

43155.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

(1) The payment of tax or the prepayment was made one business day after the date the tax or prepayment was due.

(2) The person was granted relief from all penalties that applied to that payment of tax or prepayment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no report or return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments or prepayments of taxes.

(g) This section shall be operative only until January 1, 2016.

SEC. 11. Section 45153.5 is added to the Revenue and Taxation Code, to read:

45153.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the fee was due until the date of payment, if all of the following occur:

(1) The payment of the fee was made one business day after the date the fee was due.

(2) The person was granted relief from all penalties that applied to that fee payment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments of fees.

(g) This section shall be operative only until January 1, 2016.

SEC. 12. Section 46154.5 is added to the Revenue and Taxation Code, to read:

46154.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the fee was due until the date of payment, if all of the following occur:

(1) The payment of the fee was made one business day after the date the fee was due.

(2) The person was granted relief from all penalties that applied to that fee payment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments of fees.

(g) This section shall be operative only until January 1, 2016.

SEC. 13. Section 50112.1 is added to the Revenue and Taxation Code, to read:

50112.1. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the fee was due until the date of payment, if all of the following occur:

(1) The payment of the fee was made one business day after the date the fee was due.

(2) The person was granted relief from all penalties that applied to that fee payment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments of fees.

(g) This section shall be operative only until January 1, 2016.

SEC. 14. Section 55042.5 is added to the Revenue and Taxation Code, to read:

55042.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the fee was due until the date of payment, if all of the following occur:

(1) The payment of the fee was made one business day after the date the fee was due.

(2) The person was granted relief from all penalties that applied to that fee payment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section

6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments of fees.

(g) This section shall be operative only until January 1, 2016.

SEC. 15. Section 60207.5 is added to the Revenue and Taxation Code, to read:

60207.5. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax was due until the date of payment, if all of the following occur:

(1) The payment of tax was made one business day after the date the tax was due.

(2) The person was granted relief from all penalties that applied to that payment of tax.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, “modified adjusted daily rate” means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, “board” means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, “business day” means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed or a jeopardy determination issued by the board.

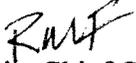
(f) This section shall only apply to electronic payments of taxes.

(g) This section shall be operative only until January 1, 2016.

Memorandum

To : Ms. Cynthia Bridges
Executive Director, MIC: 73

Date: May 23, 2013

From : 
Randy Ferris, Chief Counsel
Legal Department, MIC: 83

Subject : **Board Meeting, June 11, 2013**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1703, *Interest and Penalties*

We request your approval to place proposed changes to Sales and Use Tax Regulation 1703, *Interest and Penalties*, on the Chief Counsel's Rulemaking Calendar for the June 11, 2013, Board meeting. The proposed changes incorporate the addition of section 6591.6 to the Revenue and Taxation Code (RTC) by Senate Bill No. (SB) 1028 (Stats. 2010, ch. 316), effective January 1, 2011. The proposed changes also make minor grammatical edits to the regulation, including replacing the word "voluntary" with the word "voluntarily."

RTC section 6591.6 authorizes the Members of the Board, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. Section 6591.6 subdivision (a) provides that the Board may compute interest at the modified adjusted daily rate only when "the payment of tax or the prepayment was made one business day after the date the tax or prepayment was due," the person has been "granted relief from all penalties that applied to that payment of tax or prepayment," and the person also "files a request for an oral hearing before the Board." Section 6591.6 subdivisions (f) and (g) specify that section 6591.6 "shall only apply to electronic payments or prepayments of taxes" and "shall be operative only until January 1, 2016," respectively.

We will request the Board's authorization to make the changes to Sales and Use Tax Regulation 1703, to incorporate the provisions of RTC section 6591.6 and to make minor grammatical edits, under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with the addition of section 6591.6 to the RTC by SB 1028, make other minor grammatical edits, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of the regulation illustrating the proposed changes.

Memorandum

To : Ms. Cynthia Bridges
Executive Director, MIC: 73

Date: May 23, 2013

From : 
Randy Ferris, Chief Counsel
Legal Department, MIC: 83

Subject : **Board Meeting, June 11, 2013**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1703, *Interest and Penalties*

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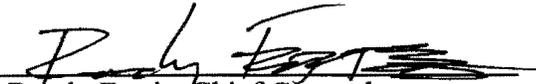
RTC section 6591.6 authorizes the Members of the Board, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. Section 6591.6 subdivision (a) provides that the Board may compute interest at the modified adjusted daily rate only when "the payment of tax or the prepayment was made one business day after the date the tax or prepayment was due," the person has been "granted relief from all penalties that applied to that payment of tax or prepayment," and the person also "files a request for an oral hearing before the Board." Section 6591.6 subdivisions (f) and (g) specify that section 6591.6 "shall only apply to electronic payments or prepayments of taxes" and "shall be operative only until January 1, 2016," respectively.

We will request the Board's authorization to make the changes to Sales and Use Tax Regulation 1703, to incorporate the provisions of RTC section 6591.6 and to make minor grammatical edits, under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with the addition of section 6591.6 to the RTC by SB 1028, make other minor grammatical edits, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of the regulation illustrating the proposed changes.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:


Randy Ferris, Chief Counsel

Approved:

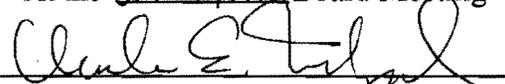

Cynthia Bridges, Executive Director

Approved:


Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the June 11, 2013 Board Meeting


for Joann Richmond, Chief
Board Proceedings Division

Attachments

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

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

Regulation 1703. INTEREST AND PENALTIES.

(a) STATUTORY PROVISIONS. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

Subject	Interest	SECTIONS Penalties
Failure to pay tax within required time (except determinations)	6480.4, 6480.8 6480.19, 6591	6476, 6477, 6478, 6479.3 6480.4, 6480.8, 6480.19, 6591, 7051.2
Failure to file a timely return Deficiency determinations	6482	6591, 6479.3 6484 (negligence) 6485 (fraud), 7051.2
Determinations—Sales tax reimbursement or use tax collected but not timely remitted		6597
Determination—failure to make return	6513	6511, 7051.2 6514 (fraud)
Jeopardy determinations	6537	6537, 7051.2
Extensions of time	6459	
Determinations - Nonpayment of Offsets	6512	6565, 7051.2 6512
Refunds and credits	6901, 6907 6908	6901
Suits for refund	6936	
Disposition of interest and penalties	7101	7101
Criminal Penalties		6073, 6094.5, 6422.1, 7152, 7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291-6294	6291-6294
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455
Improper use of resale certificates	6072	6094.5, 6072
Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
<u>Modified adjusted daily rate</u>	<u>6591.6</u>	
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permit holder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	
Tax Amnesty Program (Reporting Periods Beginning Before January 1, 2003)		7073, 7074

(b) INTEREST.

(1) INTEREST RATES.

Regulation 1703. (Continued)

(A) In General. Interest is computed at the modified adjusted rate per month, or fraction thereof. "Modified adjusted rate per month, or fraction thereof" means the modified adjusted rate per annum divided by 12.

(B) Underpayments. "Modified adjusted rate per annum" for underpayments of tax is the rate for underpayments determined in accordance with the provisions of section 6621 of the Internal Revenue Code plus three percentage points. Such rate is subject to semiannual modification pursuant to the provisions of subparagraph (c) of section 6591.5 of the Revenue and Taxation Code.

(C) Overpayments. Except as provided below, "modified adjusted rate per annum" for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of Section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the nearest full percent (or to the next highest full percent if 0.50%).

(D) Managed Audit Program. Upon completion of the managed audit and verification by the Board, interest shall be computed at one-half the rate that would otherwise be imposed for liabilities covered by the audit period.

(E) Error or Delay by Employee of Board or Department of Motor Vehicles. For tax liabilities that arise during taxable periods commencing on or after July 1, 1999, this subdivision is limited to interest imposed by sections 6480.4, 6480.8, 6513, 6591, and 6592.5 of the Revenue and Taxation Code. Effective January 1, 2002, this subdivision applies to interest imposed by any provision of the Sales and Use Tax Law. All or any part of such interest imposed may be relieved by the Board, in its discretion, under either of the following circumstances:

1. Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the Board acting in his or her official capacity.

2. Where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by the Department of Motor Vehicles in calculating the use tax.

For the purposes of this subdivision, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

Any person seeking relief under this subdivision shall file with the Board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the Board may require.

(F) Erroneous Refund. Operative for any action for recovery under Revenue and Taxation Code section 6961 on or after July 1, 1999, no interest shall be imposed on the amount of an erroneous refund by the Board until 30 days after the date on which the Board mails a notice of determination for repayment of the erroneous refund if the Board finds that neither the person liable for payment of tax nor any party related to that person had in any way caused an erroneous refund for which an action for recovery is provided under section 6961 of the Revenue and Taxation Code. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(2) LATE PAYMENTS GENERALLY. Interest applies to the amount of all taxes, except prepayments of amounts of tax due and payable pursuant to section 6471 of the Revenue and Taxation Code, not paid within the time required by law from the date on which the amount of tax became due and payable until the date of payment.

Interest applies to amounts due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment of tax required pursuant to sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

Operative January 1, 1992, interest applies to amounts due but not paid by any producer, importer, or jobber of fuel as defined in section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment of tax required pursuant to sections 6480.16 and 6480.18 of the Revenue and Taxation Code.

(3) DETERMINATIONS. Except as otherwise provided in subdivisions (b)(1)(E) and (b)(1)(F) above, interest applies to all determinations from the date on which the amount of tax becomes due and payable until the date of payment.

Regulation 1703. (Continued)

(4) **EXTENSIONS OF TIME.** In cases in which an extension of time for the filing of a return and the payment of tax has been granted, interest applies from the date on which the tax would have been due and payable had the extension not been granted until the date of payment. In cases in which an extension of time has been granted for making a prepayment of tax pursuant to section 6471 of the Revenue and Taxation Code, interest applies to the unpaid amount of the required prepayment at the same rate.

(5) ELECTRONIC PAYMENTS MADE ONE DAY LATE.

(A) For the period of January 1, 2011, through January 1, 2016, if the Board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b)(1)(A) above, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

1. A payment or prepayment of tax was made one business day after the due date.
2. The person was granted relief from all penalties that applied to that payment of tax or prepayment.
3. The person filed a request for an oral hearing before the Board.

(B) For purposes of this paragraph:

1. "Modified adjusted daily rate" means the modified adjusted rate per annum, as defined in subdivision (b)(1)(B) above, determined on a daily basis by dividing the modified adjusted rate per annum by 365.
2. "Board" means the members of the State Board of Equalization meeting as a public body.
3. "Business day" means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(C) This paragraph only applies to electronic payments or prepayments of taxes and does not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination.

(6) REFUNDS AND CREDITS.

(A) In General. If an overpayment is credited on amounts due from any person or is refunded, interest will be computed on the overpayment from the first day of the calendar month following the month during which the overpayment was made. A refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited. Interest will be paid in the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the Board that a claim may be filed or the date upon which the refund is approved by the board, whichever date is the earlier; and in the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(B) Intentional or Careless Overpayments. Credit interest will be allowed on all overpayments, except when statutorily prohibited or in cases of intentional overpayment, fraud, negligence, or carelessness. Carelessness occurs if a taxpayer makes an overpayment which: 1) is the result of a computational error on the return or on its supporting schedules or the result of a clerical error such as including receipts for periods other than that for which the return is intended, failing to take allowable deductions, or using an incorrect tax rate; and 2) is made after the taxpayer has been notified in writing by the Board of the same or similar errors on one or more previous returns.

(C) Waiver of Interest as Condition of Deferring Action on Claim. If any person who has filed a claim for refund requests the Board to defer action on the claim, the Board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the Board to defer action.

(7) IMPROPER USE OF RESALE CERTIFICATE. Interest applies to the taxes imposed upon any person who knowingly issues a resale certificate for personal gain or to evade the payment of taxes while not actively engaged in business as a seller. The interest is computed from the last day of the month following the quarterly period for which a return should have been filed and the amount of tax or any portion thereof should have been paid.

(8) UNTIMELINESS CAUSED BY DISASTER. A person may be relieved of the interest imposed by sections 6459, 6480.4, 6480.8, 6513, and 6591 of the Revenue and Taxation Code if the board finds that the person's failure

Regulation 1703. (Continued)

to make a timely return or payment was occasioned by a disaster and was neither negligent nor willful. Such person shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

For purposes of this section "disaster" means fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes.

(c) PENALTIES.

(1) LATE PAYMENTS GENERALLY.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in Section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. If the failure to make a prepayment as described in (c)(1)(A)1. above is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, the penalty shall be 10 percent instead of 6 percent.

3. Any person required to make a prepayment who fails to make a timely prepayment, but who makes such prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due, shall pay a penalty of 6 percent of the amount of the prepayment.

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. A penalty of 25% shall apply to the amount of prepayment due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment as required pursuant to sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

6. Operative January 1, 1992, a penalty of 10 percent shall apply to the amount of prepayment due but not paid by any producer, importer, or jobber of fuel as defined in section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment as required pursuant to sections 6480.16 and 6480.18 of the Revenue and Taxation Code. This penalty shall be 25 percent if the producer, importer, or jobber knowingly or intentionally fails to make a timely remittance.

(B) Other Late Payments. A penalty of 10 percent of the amount of all unpaid tax shall be added to any tax not paid in whole or in part within the time required by law.

(C) Vehicles, Vessels and Aircraft. A purchaser of a vehicle, vessel or aircraft who registers it outside this state for the purpose of evading the payment of sales or use taxes shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vehicle, vessel or aircraft.

(2) LATE RETURN FORMS GENERALLY.

(A) Any person who fails to file a return in accordance with the due date set forth in section 6451 of the Revenue and Taxation Code or the due date established by the Board in accordance with section 6455 of the Revenue and Taxation Code, shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(B) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the Board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

Regulation 1703. (Continued)

(3) DETERMINATIONS.

(A) Negligence or Intentional Disregard. A penalty of 10 percent of the amount of the tax specified in the determination shall be added to deficiency determinations if any part of the deficiency for which the determination is imposed is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations.

(B) Failure to Make Return. A penalty of 10 percent of the amount of tax specified in the determination shall be added to all determinations made on account of the failure of any person to make a return as required by law.

(C) Fraud or Intent to Evade. A penalty of 25 percent of the amount of the tax specified in a deficiency determination shall be added thereto if any part of the deficiency for which the determination is made is due to fraud or intent to evade the Sales and Use Tax Law or authorized regulations. In the case of a determination for failure to file a return, if such failure is due to fraud or an intent to evade the Sales and Use Tax Law or authorized regulations, a penalty of 25 percent of the amount required to be paid, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty for failure to file a return. Fraud or intent to evade shall be established by clear and convincing evidence.

A penalty of 50 percent applies to the taxes imposed upon any person who, for the purpose of evading the payment of taxes, knowingly fails to obtain a valid permit prior to the date in which the first tax return is due. The 50 percent penalty applies to the taxes determined to be due for the period during which the person engaged in business in this state as a seller without a valid permit and may be added in addition to the 10 percent penalty for failure to file a return. However, the 50 percent penalty shall not apply if the measure of tax liability over the period during which the person was engaged in business without a valid permit averaged \$1000 or less per month. Also, the 50 percent penalty shall not apply to the amount of taxes due on the sale or use of a vehicle, vessel, or aircraft, if the amount is subject to the penalty imposed by section 6485.1 or 6514.1 of the Revenue and Taxation Code.

(D) Failure to timely remit collected sales tax reimbursement or use tax. With respect to Board-assessed determinations, except as provided below, for periods beginning on or after January 1, 2007, a person who knowingly collects sales tax reimbursement or use tax, and who fails to timely remit that sales tax reimbursement or use tax to the Board, shall be liable for a penalty of 40 percent of the amount not timely remitted. The penalty shall not apply if:

1. the person's liability for the unremitted sales tax reimbursement or use tax averages one thousand dollars (\$1,000) or less per month, or does not exceed 5 percent of the total amount of tax liability for which the tax reimbursement was collected for the period in which tax was due, whichever is greater; or

2. the person's failure to make a timely remittance of sales tax reimbursement or use tax is due to a reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

For purposes of this penalty, "reasonable cause or circumstances beyond the person's control" includes, but is not limited to, any of the following:

a. the occurrence of a death or serious illness of the person or the person's next of kin that caused the person's failure to make a timely remittance;

b. the occurrence of an emergency, as defined in section 8558 of the Government Code, that caused the person's failure to make a timely remittance;

c. a natural disaster or other catastrophe directly affecting the business operations of the person that caused the person's failure to make a timely remittance;

d. the Board's failure to send returns or other information to the correct address of record that caused the person's failure to make a timely remittance;

e. the person's failure to make a timely remittance occurred only once over a three-year period, or once during the period in which the person was engaged in business, whichever time period is shorter; or

Regulation 1703. (Continued)

f. the person voluntarily corrected errors in remitting sales tax reimbursement or use tax collected that were made in previous reporting periods, and remitted payment of the liability owed as a result of those errors prior to being contacted by the Board regarding possible errors or discrepancies.

For purposes of this penalty, "sales tax reimbursement" is defined in section 1656.1 of the Civil Code, and also includes any sales tax that is advertised, held out, or stated to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer.

This penalty applies to determinations made by the Board pursuant to Article 2 (commencing with section 6481), Article 3 (commencing with section 6511), and Article 4 (commencing with section 6536) of Chapter 5, Part 1, Division 2 of the Revenue and Taxation Code.

(E) Nonpayment of Determinations. A penalty of 10 percent of the amount of the tax specified in the determination shall be added to any determination not paid within the time required by law.

(4) **IMPROPER USE OF RESALE CERTIFICATE.** A penalty of 10 percent applies to the taxes imposed upon any person who knowingly issues a resale certificate for personal gain or to evade the payment of taxes while not actively engaged in business as a seller.

The penalty is 10 percent of the amount of tax or \$500, whichever is greater, if the purchase is made for personal gain or to evade payment of taxes.

(5) **DIRECT PAYMENT PERMITS.** Every holder of a direct payment permit who gives an exemption certificate to a retailer for the purpose of paying that retailer's tax liability directly to the Board must make a proper allocation of that retailer's local sales and use tax liability and also its district transactions and use tax liability if applicable. Such allocation must be made to the cities, counties, city and county, redevelopment agencies, and district to which the taxes would have been allocated if they had been reported by that retailer. Allocations must be submitted to the Board in conjunction with the direct payment permit holder's tax return on which the taxes are reported. If the local and district taxes are misallocated due to negligence or intentional disregard of the law, a penalty of 10 percent of the amount misallocated shall be imposed.

(6) **FAILURE TO OBTAIN EVIDENCE THAT OPERATOR OF CATERING TRUCK HOLDS VALID SELLER'S PERMIT.** Any person making sales to an operator of a catering truck who has been required by the Board pursuant to section 6074 of the Revenue and Taxation Code to obtain evidence that the operator is the holder of a valid seller's permit issued pursuant to section 6067 of the Revenue and Taxation Code and who fails to comply with that requirement shall be liable for a penalty of five hundred dollars for each such failure to comply.

(7) **FAILURE OF RETAIL FLORIST TO OBTAIN PERMIT.** Any retail florist (including a mobile retail florist) who fails to obtain a seller's permit before engaging in or conducting business as a seller shall, in addition to any other applicable penalty, pay a penalty of five hundred dollars (\$500). For purposes of this regulation, "mobile retail florist" means any retail florist who does not sell from a structure or retail shop, including, but not limited to, a florist who sells from a vehicle, pushcart, wagon, or other portable method, or who sells at a swap meet, flea market, or similar transient location. "Retail florist" does not include any flower or ornamental plant grower who sells his or her own products.

(8) **RELIEF FROM PENALTY FOR REASONABLE CAUSE.** If the Board finds that a person's failure to make a timely return, payment, or prepayment, or failure to comply with the provisions of section 6074 of the Revenue and Taxation Code is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by sections 6074, 6476, 6477, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2 of the Revenue and Taxation Code for such failure.

Any person seeking to be relieved of the penalty shall file with the Board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based. Section 6592 of the Revenue and Taxation Code, providing for the relief of certain penalties does not apply to the 10 percent penalty imposed for failure to make a timely prepayment under section 6478 of the Revenue and Taxation Code.

(9) **TAX AMNESTY PROGRAM (Reporting Periods Beginning Before January 1, 2003).**

Regulation 1703. (Continued)

(A) If on or after April 1, 2005, the Board issues a deficiency determination upon a return filed under the amnesty program or upon any other nonreporting or underreporting of tax liability by a person who could have otherwise been eligible for amnesty as specified in sections 7071, 7072 and 7073 of the Revenue and Taxation Code, the Board shall impose penalties at a rate that is double the rate of penalties normally applicable.

(B) Any taxpayer who could have applied for amnesty as specified in sections 7071, 7072 and 7073 of the Revenue Taxation Code but fails to do so, will be subject to a penalty of 50 percent of the interest computed under section 6591 of the Revenue and Taxation Code for the period beginning on the date the tax was due and ending on March 31, 2005.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6071, 6072, 6073, 6074, 6077, 6094.5, 6207, 6291-6294, 6422.1, 6452, 6455, 6459, 6476-6478, 6479.3, 6480.4, 6480.8, 6480.19, 6482, 6484, 6485, 6485.1, 6511-6514, 6514.1, 6537, 6565, 6591, 6591.5, 6591.6, 6592, 6593, 6593.5, 6596, 6597, 6901, 6907, 6908, 6936, 6964, 7051.2, 7073, 7074, 7076.5, 7101, 7152-7153, 7153.5 and 7155, Revenue and Taxation Code.

2013 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, June 11, 2013****CHIEF COUNSEL MATTERS****RULEMAKING****J1 Proposed Amendments to the Board of Equalization *Rules for Tax Appeals* (RTAs)**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to publish proposed amendments to incorporate, implement, and clarify Revenue and Taxation Code section 40, and address clean-up and housekeeping issues (Exhibit 6.5).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board authorized publication of the proposed amendments to the RTAs as recommended by staff, and directed staff to make the grammatical changes Ms. Mandel deems necessary to the proposed text of Regulation 5453 before starting the rulemaking process.

Section 100 Changes**J2 Regulation 1703, *Interest and Penalties***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to amend Sales and Use Tax Regulation 1703 to incorporate the addition of Revenue and Taxation Code section 6591.6, and to make minor grammatical edits (Exhibit 6.6).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved authorization to make Rule 100 changes to Regulation 1703 as recommended by staff.

ADMINISTRATIVE SESSION**[N] ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JUNE 11, 2013

ITEM J RULEMAKING

SECTION 100 CHANGES

J2 REGULATION 1703, INTEREST AND PENALTIES

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Michelle Steel
Vice-Chairwoman

Betty T. Yee
Member

George Runner
Member

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

Joann Richmond
Chief, Board Proceedings
Division

For Board of
Equalization Staff:

Bradley Heller
Legal Department

---oOo---

1 450 N STREET

2 SACRAMENTO, CALIFORNIA

3 JUNE 11, 2013

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5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next item is a Section
7 100 change; J2 Regulation 1703, Interest and
8 Penalties.

9 MR. HORTON: Welcome again, Mr. Heller.

10 MR. HELLER: Thank you, Chairman Horton.

11 I'm here to request the Board's
12 authorization to complete Rule 100 changes to Sales
13 and Use Tax Regulation 1703, interest and penalties.

14 And based on Ms. Steel's recommendation,
15 the Board sponsored Senate Bill 1028, authored by
16 Senator Lou Correa, and that added Section 6591.6 to
17 the Rev. -- Revenue and Taxation Code to authorize
18 the Board Members, meeting as a public body, to
19 find, under specified circumstances, that is -- that
20 it is inequitable to compute interest on a monthly
21 basis and instead to compute interest on a daily
22 basis.

23 And the proposed changes just make the
24 regulation consistent with the new Rev. and Tax Code
25 section.

26 MR. HORTON: Thank you.

27 Moved by Member Steel to grant staff's
28 request to amend Regulation 1703 as recommended.

1 Second by Member Yee.

2 Without objection, Members, such will be
3 the order.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on June 11, 2013 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: June 17, 2013

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter

