

Rulemaking File
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Sales and Use Tax

Regulation 4902, *Relief From Liability*

OAL Approval

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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: 6/19/2014
RE: Return of Approved Rulemaking Materials
OAL File No. 2014-0509-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2014-0509-01S regarding Relief from Liability).

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

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

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

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

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

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

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

DO NOT DISCARD OR DESTROY THIS FILE

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

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

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-14-0224-01	REGULATORY ACTION NUMBER 2014-0509-015	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization			AGENCY FILE NUMBER (if any)

2014 MAY -9 AM 11:11
OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED
IN THE OFFICE OF
2014 JUN 18 PM 1:57
Diana Bowen
DIA BOWEN
SECRETARY OF STATE

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

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2014,102	PUBLICATION DATE 3/7/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Relief from Liability		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	4902	
TITLE(S) 18		REPEAL		
3. TYPE OF FILING				
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)				
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)				
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY				
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal		
<input type="checkbox"/> Other (Specify) _____				
7. CONTACT PERSON Rick 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 May 6, 2014
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 18 2014

Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 4902**

4902. Relief from Liability.

(a) General. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

- (1) Written advice given by the board under the conditions set forth in subdivision (b) below;
or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the board in a prior audit ~~of that person~~ under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those persons~~that person~~.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) Advice Provided in a Written Communication. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) Written Advice Provided in a Prior Audit. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

(1) Is engaged in the same line of business as the audited person,

(2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and

(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

(d) Annotations and Legal Rulings of Counsel. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above.

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) Trade or Industry Associations. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, Revenue and Taxation Code. Reference: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210, Revenue and Taxation Code.

reviewing suspension, revocation, or denial of a geologist or geophysicist license. Section 3061 is also amended to add criteria for the Board to consider when reviewing petitions for reinstatement of a geologist or geophysicist license. Section 3064 is amended to include the disciplinary orders that may be issued against Board licensed geologists and geophysicists. This action also updates outdated terminology and amends the authority and reference citations for the above-referenced sections.

Title 16
 California Code of Regulations
 AMEND: 419, 3061, 3064
 Filed 06/16/2014
 Effective 10/01/2014
 Agency Contact: Erin LaPerle (916)263-1848

File# 2014-0509-01
 BOARD OF EQUALIZATION
 Relief from Liability

This rulemaking action amends section 4902 of Title 18 of the California Code of Regulations to enable a person to obtain relief from liability for certain taxes or fees and any resulting penalties and interest if the person relied on written Board of Equalization advice given to another person regarding a particular activity or transition if the two persons meet specified criteria regarding common ownership and shared accounting departments.

Title 18
 California Code of Regulations
 AMEND: 4902
 Filed 06/18/2014
 Effective 10/01/2014
 Agency Contact:
 Richard E. Bennion (916)445-2130

File# 2014-0509-02
 BOARD OF EQUALIZATION
 Returns, Defects and Replacements

This rulemaking action by the State Board of Equalization (Board) amends Section 1655, Title 18, of the California Code of Regulations. These amendments align section 1655 with Civil Code sections 1793.2 and 1793.25, as amended by Statutes 2011, Chapter 727 (AB 242), relating to reimbursement of sales and use taxes previously paid to the Board by a motor vehicle manufacturer when the manufacturer subsequently pays restitution to a consumer pursuant to Civil Code section 1793.2.

Title 18
 California Code of Regulations
 AMEND: 1655
 Filed 06/11/2014
 Effective 10/01/2014
 Agency Contact:
 Richard E. Bennion (916)445-2130

File# 2014-0429-02
 BOARD OF FORESTRY AND FIRE PROTECTION
 Road Rules, 2013

This regulatory action by the Board of Forestry and Fire Protection (Board) represents a comprehensive overhaul of the Board's "Road Rules," located within title 14 of the California Code of Regulations. The purpose of this action is to ensure that all road-related Forest Practice Rules adequately prevent individual and cumulative adverse impacts to beneficial uses of water. In addition to making substantive revisions, the Board reorganized all rules related to logging roads, landings, and watercourse crossings into a clear, concise, and logical order.

Title 14
 California Code of Regulations
 ADOPT: 923, 923.1, 923.2, 923.3, 923.4, 923.5, 923.6, 923.7, 923.8, 923.9, 923.9.1, 943, 943.1, 943.2, 943.3, 943.4, 943.5, 943.6, 943.7, 943.8, 943.9, 943.9.1, 963, 963.1, 963.2, 963.3, 963.4, 963.5, 963.6, 963.7, 963.8, 963.9, 963.9.1 AMEND: 895.1, 914.7, 914.8, 915.1, 916.3, 916.4, 916.9, 934.7, 934.8, 935.1, 936.3, 936.4, 936.9, 954.7, 954.8, 955.1, 956.3, 956.4, 956.9, 1034, 1051.1, 1090.5, 1090.7, 1092.09, 1093.2, 1104.1 REPEAL: 918.3, 923, 923.1, 923.2, 923.3, 923.4, 923.5, 923.6, 923.7, 923.8, 923.9, 923.9.1, 938.3, 943, 943.1, 943.2, 943.3, 943.4, 943.5, 943.6, 943.7, 943.8, 943.9, 943.9.1, 958.3, 963, 963.1, 963.2, 963.3, 963.4, 963.5, 963.6, 963.7, 963.8, 963.9
 Filed 06/11/2014
 Effective 01/01/2015
 Agency Contact: George Gentry (916)653-8031

File# 2014-0513-01
 CALIFORNIA GAMBLING CONTROL
 COMMISSION
 Remote Caller Bingo; Authorization of Eligible Organizations

In this regulatory action, the Commission amends section 12505 of the California Code of Regulations to change authorization requirements for organizations conducting remote caller bingo games. With this regulation, organizations would only be required to obtain Commission authorizations for the initial application to conduct remote caller bingo games. Subsequent annual

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax

Regulation 4902, *Relief From Liability*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Business Tax Committee Minutes, December 17, 2013](#)
 - Minutes
 - Deputy Director memo dated December 6, 2013
 - BTC Agenda
 - Formail Issue Paper Number 13-011
 - Exhibit 1 Revenue Estimate
 - Exhibit 2 Text Regulation 4902
 - Exhibit 3 List of Relief From Liability Based on Reliance Upon Written Advice
4. [Reporter's Transcript Business Taxes Committee, December 17, 2013](#)
5. [Estimate of Cost or Savings, April 11, 2014](#)
6. [Economic and Fiscal Impact Statements, February 25, 2014](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date March 7, 2014
 - Email sent to Interested Parties, March 7, 2014
 - CA Regulatory Notice Register 2014, Volume No. 10-Z
8. [Notice to Interested Parties, March 7, 2014](#)

The following items are exhibited:

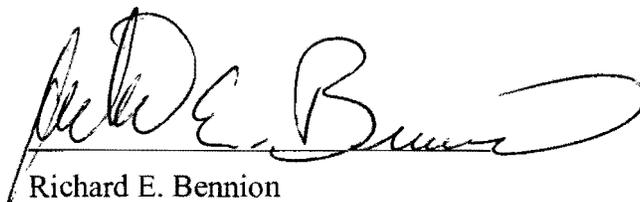
 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulation 4902
 - Regulation History
9. [Statement of Compliance](#)
10. [Reporter's Transcript, Item F3, April 22, 2014](#)
11. [Draft Minutes, April 22, 2014, and Exhibits](#)

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on May 6, 2014 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

May 6, 2014

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

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for the Adoption of the
Proposed Amendments to California Code of Regulations,
Title 18, Section 4902, *Relief from Liability***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, on April 22, 2014. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 4902 without making any changes. The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on April 22, 2014, to comment on the proposed regulatory action.

The factual basis, specific purpose, and necessity for, the problem to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulation 4902 are the same as provided in the initial statement of reasons. The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that “section 6596 relief,” under Revenue and Taxation Code sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The adoption of the proposed amendments to Regulation 4902 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 4902 or the proposed amendments to Regulation 4902.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulation 4902 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board’s initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Board’s determination that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, and the Board’s economic impact assessment, which determined that the Board’s proposed regulatory action:

- Will neither create nor eliminate jobs in the State of California;
- Nor result in the elimination of existing businesses;
- Nor create or expand business in the State of California; and

- Will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulation 4902 may affect small business.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulation 4902 does not impose a mandate on local agencies or school districts.

Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on April 22, 2014, to comment on the proposed regulatory action.

Determinations Regarding Alternatives

By its motion on April 22, 2014, the Board determined that no alternative to the proposed amendments to Regulation 4902 would be more effective in carrying out the purposes for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulation 4902 that would lessen any adverse impact the proposed amendments may have on small business.

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

**Updated Informative Digest for the State Board of Equalization’s
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 4902, *Relief from Liability***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, on April 22, 2014. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 4902 without making any changes.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on April 22, 2014, to comment on the proposed regulatory action. There have not been any changes to the applicable laws or the effect of, the objective of, and anticipated benefits from the adoption of the proposed amendments to Regulation 4902 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Current Law

The Board administers special taxes and fees under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws). Each of the special tax and fee laws contains a statute, which defines “person” or incorporates a definition of “person.” (See RTC §§ 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf. Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.) The special tax and fee laws also contain RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, which authorize the Board to grant a person relief under certain circumstances (hereafter, collectively referred to as the authorizing statutes).

Currently, under subdivision (a) of the authorizing statutes, if the Board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of special taxes and fees and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

Also, currently, subdivision (d) of the authorizing statutes generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

Regulation 4902 implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (b)(1), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for relief;
- Regulation 4902, subdivision (c) currently applies to audits, states that the "[p]resentation of [a] person's books and records for examination by an auditor shall be deemed to be a written request for the audit report," and prescribes the circumstances under which an audit report may be relied upon for relief; and
- Regulation 4902, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person."

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. Subdivision (e) currently provides that:

A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

As a result, a person cannot generally obtain relief by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief by relying on written advice the Board gave to the person's representative or trade or industry association under specified circumstances.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 4902

Need for Clarification

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Prior to the Board's adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with relief guidelines for all the special tax and fee programs administered by the Board's PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the relief provisions in Regulation 1705, *Relief From Liability*, because Regulation 1705 implements, interprets, and make specific RTC section 6596, which is substantially similar to the authorizing statutes. And, Regulation 4902 incorporates all of Regulation 1705's previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending relief to trade or industry association members when an association requests written advice on their behalf.

On February 5, 2003, the Board also adopted amendments to Regulations 1124, 1248, 1335, 1422, 2250, 2432, and 2570, which refer to the relief guidelines described in Regulation 4902. And, the Board adopted Regulations 2303, 3021, 3302, 3502, and 4105, which are all called “Relief from Liability” or “Relief From Liability,” to provide specific regulations under the authorizing statutes in the Energy Resources Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Fee Collection Procedures Law, and the Cigarette and Tobacco Products Tax Law, respectively, that also refer to the relief guidelines in Regulation 4902.

During its October 23-25, 2012, Board meeting, the Board conducted a hearing regarding a sales and use tax appeal filed by a business entity (hereafter referred to as ABC). During the hearing, ABC indicated that it followed written advice provided during the Board’s prior audit of another business entity (hereafter referred to as XYZ). ABC stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Also, records indicated that XYZ and ABC were related entities because XYZ owned more than 50 percent of ABC. Therefore, during the hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for relief under RTC section 6596. In response to ABC’s arguments, the Board referred the issue of whether relief from sales and use tax liabilities, under RTC section 6596, should only be available to the person who actually received the written advice from the Board or that person’s legal or statutory successor under certain circumstances, such as those presented in ABC’s appeal, to the Board’s Business Tax Committee (BTC) for further development.

At its August 13, 2013, BTC Meeting, the Board voted to propose amendments to Regulation 1705 to extend relief, under RTC section 6596, to a person who relies on advice provided in a prior audit of a person with shared accounting and common ownership because the Board determined that the amendments are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the facts of ABC’s appeal. During the same BTC meeting, the Board also recognized that there might be another issue if there are similar regulations to Regulation 1705 that apply to the special tax and fee programs and the other regulations are not amended to conform to the amendments to Regulation 1705. Therefore, the Board directed staff to recommend conforming amendments to any special tax and fee regulations that are similar to Regulation 1705. As a result, staff determined that Regulation 4902 was the only special tax and fee regulation that was similar to Regulation 1705 and staff drafted amendments to Regulation 4902 to

incorporate the language contained in the proposed amendments to Regulation 1705, in order to ensure that the Board's programs are administered in a uniform manner.

December 17, 2013, BTC Meeting

Board staff subsequently prepared Formal Issue Paper 13-011, which recommended that the Board propose to add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with the audited person." The formal issue paper recommended that the Board propose to add the following language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person's audit report for relief:

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - (A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
 - (B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the

Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The formal issue paper also recommended that the Board amend Regulation 4902, subdivision (a), to clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to *that person*. And, during the December 17, 2013, BTC meeting, staff also recommended changing “that person” to “those persons” to make the amendments to subdivision (a) grammatically correct and fully consistent with a minor change to the proposed amendments to Regulation 1705 that staff would subsequently request and the Board would subsequently authorize later that same day.

Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13-011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the amendments to Regulation 1705 (discussed above). (The Board also subsequently adopted the proposed amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.)

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that relief, under the authorizing statutes, can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The Board has performed an evaluation of whether the proposed amendments to Regulation 4902 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 4902 is the only regulation prov[id]ing guidelines for relief under the authorizing statutes, and the proposed amendments make Regulation 4902 consistent with the amendments to Regulation 1705 discussed above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation [4902] or the proposed amendments to Regulation [4902].¹

¹ The Board previously determined that that there are no comparable federal regulations or statutes to Regulation 4902 or the proposed amendments to Regulation 4902. However, due to a typographical error, the informative digest included in the notice of proposed regulatory action referred to Regulation “1705,” instead of Regulation “4902,” and the typographical error has been corrected in the updated informative digest.

**BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: DECEMBER 17, 2013, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title: Proposed Amendments to Regulation 1655, *Returns, Defects and Replacements*.****Issue:**

Whether the Board should amend Sales and Use Tax Regulation (Regulation) 1655, *Returns, Defects and Replacements*, in order to implement, interpret, and make specific the amendments made to Civil Code sections 1793.2 and 1793.25, by Assembly Bill 242 (AB 242)(Stat. 2011, Ch. 727).

Committee Discussion:

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

Committee Action:

Upon motion by Mr. Runner and seconded by Mr. Horton, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 1655, *Returns, Defects and Replacements*. A copy of the proposed amendments to Regulation 1655 is attached.

Agenda Item No: 2**Title: Proposed Amendments to Regulation 4902, *Relief From Liability*, for the extension of relief based on written advice.****Issue:**

Should the Board revise Regulation 4902, *Relief From Liability*, to extend relief of liability for reliance upon written advice or reliance on a prior audit to another person if that person has a common controlling ownership, and shares accounting functions with the written advice recipient?

Committee Discussion:

Staff introduced the issue and explained that the proposed amendments would extend relief of liability under specific circumstances. Staff also explained that a revision to the proposed amendments was recommended subsequent to the distribution of the issue paper and related materials. Staff requested that the proposed amendments include changing the term "that person" to "those persons" at the end of the second paragraph in subdivision (a).

Staff further noted that the proposed amendments, inclusive of the additional revision, conform Regulation 4902 with the revisions to Sales and Use Tax Regulation 1705, *Relief From Liability*, approved at the August 13, 2013 Business Taxes Committee meeting.

Committee Action:

Upon motion by Mr. Horton and seconded by Ms. Steel, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 4902, *Relief From Liability*, inclusive of changing the term “that person” to “those persons” at the end of the second paragraph in subdivision (a). A copy of the proposed amendments to Regulation 4902 is attached.

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Cynthia Bridges

Cynthia Bridges, Executive Director

BOARD APPROVED

at the December 17, 2013 Board Meeting

/s/ Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Regulation 1655, Returns, Defects and Replacements

Reference: Sections 6006-6012 and 6012.3, Revenue and Taxation Code; Sections 1793.2-1793.25, Civil Code; and Sections 11713.12 and 11713.21, Vehicle Code.

(a) Returned Merchandise.

(1) In General. Except as provided in paragraph (2) of this subdivision, the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if, (1) the full sale price, including that portion designated as "sales tax," is refunded either in cash or credit, and (2) the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer. The amount withheld for rehandling and restocking may not exceed the actual cost of rehandling and restocking the returned merchandise. However, in lieu of using the actual cost for each transaction, the amount withheld for rehandling and restocking may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle (generally one year). If the seller elects to withhold rehandling and restocking amounts based on a percentage of sales price, the seller is bound by that election for the entire accounting cycle for which the election is made and must apply that percentage in lieu of actual cost during that period on all returned merchandise transactions for which rehandling and restocking costs are withheld. The amount withheld as rehandling and restocking costs may not include compensation for increased overhead costs because of the return, for refinishing or restoring the property to salable condition where the necessity therefore is occasioned by customer usage, or for any expense prior to the "sale" (i.e., transfer of title, lease, or possession under a conditional sale contract). Sellers must maintain adequate records which may be verified by audit, documenting the percentage used.

(2) Contract Cancellation Options Required by Car Buyer's Bill of Rights.

(A) Contract Cancellation Option. On and after July 1, 2006, the terms "gross receipts" and "sales price" do not include the purchase price for a contract cancellation option agreement with respect to a contract to purchase a used vehicle with a purchase price of less than forty thousand dollars (\$40,000), which a dealer is required to offer to a buyer pursuant to Vehicle Code section 11713.21. The purchase price for a contract cancellation option described in this subparagraph shall not exceed:

1. Seventy-five dollars (\$75) for a vehicle with a cash price of five thousand dollars (\$5,000) or less;
2. One hundred fifty dollars (\$150) for a vehicle with a cash price of more than five thousand dollars (\$5,000), but not more than ten thousand dollars (\$10,000);

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3. Two hundred fifty dollars (\$250) for a vehicle with a cash price of more than ten thousand dollars (\$10,000), but not more than thirty thousand dollars (\$30,000); or

4. One percent of the purchase price for a vehicle with a cash price of more than thirty thousand dollars (\$30,000), but less than forty thousand dollars (\$40,000).

(B) Restocking Fee. On and after July 1, 2006, the terms “gross receipts” and “sales price” do not include the dollar amount of a restocking fee the buyer must pay to the dealer to exercise the right to cancel a purchase of a used car under a contract cancellation option agreement pursuant to Vehicle Code section 11713.21 as described in subparagraph (A) of this paragraph. The dollar amount of a restocking fee described in this subparagraph shall not exceed:

1. One hundred seventy-five dollars (\$175) if the vehicle's cash price is five thousand dollars (\$5,000) or less;

2. Three hundred fifty dollars (\$350) if the vehicle's cash price is more than five thousand dollars (\$5,000), but less than ten thousand dollars (\$10,000); or

3. Five hundred dollars (\$500) if the vehicle's cash price is ten thousand dollars (\$10,000) or more.

(C) Amounts Refunded to Customers. On and after July 1, 2006, the terms “gross receipts” and “sales price” do not include that portion of the selling price for a used motor vehicle that is refunded to the buyer due to the buyer's exercise of the right to return the vehicle for a refund, which is contained in a contract cancellation option agreement pursuant to Vehicle Code section 11713.21 as described in subparagraph (A) of this paragraph.

(b) Defective Merchandise.

(1) In General. Amounts credited or refunded by sellers to consumers on account of defects in merchandise sold may be excluded from the amount on which tax is computed. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the “trade-in” value must be included in the measure of tax.

(2) Restitution or Replacement Under California Lemon Law.

(A) General. Under subdivision (d) of Civil Code section 1793.2, if a manufacturer is unable to service or repair a “new motor vehicle,” as that term is defined in subdivision (e)(2) of Civil Code section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either replace the motor vehicle or provide the buyer restitution of the purchase price, less specified amounts, at the buyer's election.

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For purposes of this regulation, the term buyer shall include a lessee of a new motor vehicle.

(B) Restitution. A manufacturer who pays a buyer restitution pursuant to, and in complete compliance with, subdivision (d)(2) of Civil Code section 1793.2 is entitled to a refund of the amount of sales or use tax, or sales tax reimbursement included in the restitution paid by the manufacturer to the buyer. The manufacturer may file a claim for refund of that amount with the ~~B~~board. The claim must include a statement that the claim is submitted in accordance with the provisions of section 1793.25 of the Civil Code. The manufacturer must submit with the claim documents evidencing that restitution was made pursuant to, and in complete compliance with, subdivision (d)(2) of Civil Code section 1793.2 including: a copy of the original sales or lease agreement between the buyer and the dealer or lessor of the non-conforming motor vehicle; copies of documents showing all deductions made in calculating the amount of restitution paid to the buyer along with full explanations for those deductions, including settlement documents and odometer statements; a copy of the title branded “Lemon Law Buyback” for the non-conforming motor vehicle returned by the buyer; and proof that the decal the manufacturer is required to affix to that motor vehicle has been so affixed in accordance with section 11713.12 of the Vehicle Code. The manufacturer must also submit with the claim the seller's permit number of the dealer or lessor who made the retail sale or lease of the non-conforming motor vehicle to the buyer, and evidence for one of the following:

1. ~~that~~ The dealer had reported and paid sales tax on the gross receipts from that sale; or
2. The buyer of the motor vehicle had paid the use tax on the sales price for the storage, use, or other consumption of that motor vehicle in this state; or
3. The lessee of the motor vehicle had paid the use tax on the rentals payable from the lease of the vehicle.

For purposes of this regulation, the number of attempts made to repair the non-conforming motor vehicle, if any, prior to providing the customer restitution is not relevant for purposes of determining whether restitution has been made pursuant to subdivision (d)(2) of Civil Code section 1793.2.

(C) Replacement. For purposes of this regulation, a manufacturer who, pursuant to subdivision (d)(2) of Civil Code section 1793.2, replaces a non-conforming motor vehicle with a new motor vehicle substantially identical to the motor vehicle replaced is replacing the motor vehicle under the terms of the mandatory warranty. No additional tax is due unless the buyer is required to pay an additional amount to receive the replacement motor vehicle, in which case tax is due measured by the amount of that payment. If an amount is refunded to the customer as part of the exchange of the non-conforming motor vehicle for the replacement motor vehicle, then that amount is regarded as restitution for purposes of this regulation if it satisfies the requirements of subdivision (d)(2) of Civil Code section 1793.2. The manufacturer may file a claim for refund under subdivision

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(b)(2)(B) of this regulation for the amount of sales or use tax, or sales tax reimbursement that is included in the amount of that restitution paid by the manufacturer to the buyer. For purposes of this regulation, the number of attempts made to repair the non-conforming motor vehicle, if any, prior to providing the customer a replacement is not relevant for purposes of determining whether the replacement has been made pursuant to subdivision (d)(2) of Civil Code section 1793.2.

(D) The amount of use tax the board is required to reimburse the manufacturer shall be limited to the amount of use tax the manufacturer is required to pay to or for the lessee pursuant to Civil Code section 1793.2.

(c) Replacement Parts -Warranties.

(1) In General -Definitions. “Mandatory Warranty.” A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. “Optional Warranty.” A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller, i.e., the buyer is free to contract with anyone he or she chooses.

(2) Mandatory Warranties. The sale of tangible personal property includes the furnishing, pursuant to the guaranty provisions of the contract of sale, or mandatory warranty, of replacement parts or materials, and if the property subject to the warranty is sold at retail, the measure of the tax includes any amount charged for the guaranty or warranty, whether or not separately stated. The sale of the replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable.

(3) Optional Warranties. The person obligated under an optional warranty contract to furnish parts, materials, and labor necessary to maintain the property is the consumer of the materials and parts furnished and tax applies to the sale of such items to that person. If he or she purchased the property for resale or from outside California, without tax paid on the purchase price, he or she must report and pay tax upon the cost of such property to him or her when he or she appropriates it to the fulfillment of the contract of warranty.

(4) Deductibles. A deductible paid by a customer under the terms of a mandatory or optional warranty contract is subject to tax measured by the amount of the deductible allocable to the sale of tangible personal property to the customer. For example, if the itemized sales price of tangible personal property (or the fair retail value if not separately itemized) provided pursuant to a warranty is 50 percent of the total fair retail value of the repairs and the deductible is \$100, 50 percent of that deductible, \$50, would be allocable to the sale of tangible personal property and would be subject to tax, whether the warranty were optional or mandatory. Unless otherwise stated in the warranty contract, when either an optional or a mandatory warranty provides that the customer will pay a deductible towards repairs and services provided under the warranty, the person providing the warranty contract is liable for any tax or tax reimbursement otherwise payable by the customer with respect to that deductible.

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REGULATION 4902, RELIEF FROM LIABILITY

Reference: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, Revenue and Taxation Code.

(a) GENERAL. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

(1) Written advice given by the board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the board in a prior audit ~~of that person~~ under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to ~~that~~those persons.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under

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subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census, (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

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

- A. Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
- B. Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.
- C. Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above.

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

History: Adopted February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite.

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



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

PROPERTY AND SPECIAL TAXES DEPARTMENT

450 N STREET, SACRAMENTO, CALIFORNIA

PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0363

1-916-445-1516 • FAX 1-916-323-8765

www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

December 6, 2013

CYNTHIA BRIDGES
Executive Director

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the December 17, 2013 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 4902, *Relief From Liability*.

Action 1 on the Agenda concerns proposed amendments to Regulation 4902 to extend relief of liability for the reliance on written advice or reliance on a prior audit to another person in certain circumstances. Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **December 17, 2013** in Room 121 at the address shown above.

Sincerely,

David J. Gau, Deputy Director
Property and Special Taxes Department

DJG: rsz

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC:71)
Senator George Runner (Ret.), Member, Second District (via email)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District
Mr. Michael Vigil, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Third District

Mr. Tim Treichelt, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Alan Giorgi, Board Member's Office, Second District
Ms. Lynne Kinst, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Cynthia Bridges (MIC:73)
Mr. Randy Ferris (MIC:83)
Mr. Todd Gilman (MIC: 70)
Mr. Robert Tucker (MIC:82)
Mr. Bradley Heller (MIC:82)
Mr. Scott Claremon (MIC:82)
Mr. Lawrence Mendel (MIC:82)
Ms. Susanne Buehler (MIC:92)
Mr. Bradley Miller (MIC:92)
Ms. Kirsten Stark (MIC:50)
Mr. Clifford Oakes (MIC: 50)
Ms. Lynn Whitaker (MIC:50)
Ms. Lynn Bartolo (MIC: 57)
Ms. Debbie Kalfsbeek (MIC: 57)
Mr. Lou Feletto (MIC: 62)
Ms. Laureen Simpson (MIC: 70)

AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

Action 1 – Staff Recommendation	<p><u>Regulation 4902. <i>Relief From Liability.</i></u></p> <p>(a) IN GENERAL. A person may be relieved from the liability for the payment of tax, defined in section 4901 (a) (7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:</p> <p>(1) Written advice given by the board under the conditions set forth in subdivision (b) below, or</p> <p>(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or</p> <p>(3) Written advice given by the board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.</p> <p>Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or <u>a person with shared accounting and common ownership with the audited person</u> or by a legal or statutory successor to that person.</p> <p>The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or</p>
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AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

Action 1 – Staff Recommendation

constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.

Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person

AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

<p>Action 1 – Staff Recommendation</p>	<p>seeking relief knew such advice was erroneous.</p> <p><u>For the purposes of this regulation a person is considered to have shared accounting and common ownership if the person:</u></p> <p><u>(1) Is engaged in the same line of business as the audited person.</u></p> <p><u>(2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and</u></p> <p><u>(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:</u></p> <p><u>(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.</u></p> <p><u>(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.</u></p> <p><u>(C) Shared accounting policies and procedures.</u></p> <p><u>These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as</u></p>
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AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

<p>Action 1 – Staff Recommendation</p>	<p><u>notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.</u></p> <p>(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:</p> <p>(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or</p> <p>(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.</p> <p>(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.</p>
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Issue Paper Number 13-011



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

Proposed Amendments to Regulation 4902, *Relief From Liability*; extension of relief based on written advice

I. Issue

Should the Board revise Regulation 4902, *Relief From Liability*, to extend relief of liability for reliance upon written advice or reliance on a prior audit to another person if that person has a common controlling ownership, and shares accounting functions with the written advice recipient?

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize the publication of amendments to Regulation 4902, *Relief From Liability*, as proposed in Exhibit 2 to extend reliance upon written advice relief to a person if the liability was the result of a person relying on erroneous advice received or provided from the prior audit of another person when:

1. The person seeking relief is engaged in the same line of business or activity as the audited person;
2. The person seeking relief shares with the audited person common verifiable controlling ownership of 50% or greater or has a common majority shareholder;
3. The person seeking relief has shared accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation exists.
 - A shared accounting staff or outside firm maintains books and records and prepares returns and/or schedules for Board of Equalization (BOE) tax and fee programs.
 - Shared accounting policies and procedures exist.

The requirements must be established as existing throughout the periods for which the relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective advice from the BOE. Accordingly, if a written rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to the parties that relied on prior advice that the prior written advice may no longer be relied upon. These proposed

amendments conform with the revisions to Regulation 1705, *Relief From Liability*, adopted at the August 13, 2013 Business Taxes Committee meeting.

III. Other Alternative(s) Considered

Do not approve the proposed changes to Regulation 4902, *Relief From Liability*.

IV. Background

All programs administered by the BOE's Property and Special Taxes Department's (PSTD) special taxes and fees divisions have law sections corresponding to section 6596 of the Revenue and Taxation Code for the sales and use tax program, granting taxpayers relief of liability due to reliance upon written advice. For purposes of this issue paper, the phrase "section 6596 relief" and "section 6596" will be used in lieu of listing all sections of the Revenue and Taxation Code pertaining to relief of liability due to reliance upon written advice provided by statute for the special taxes and fee programs administered by the Board.

Initially, all special taxes and fee programs administered by the BOE's PSTD had individual regulations for section 6596 relief. On February 3, 2003, each of the regulations were amended or adopted to reference section 6596 relief provided under Regulation 4902, *Relief From Liability*.

Please refer to Exhibit 3 for a list of Revenue and Taxation Code sections and Regulations by tax/fee program which correspond to section 6596 relief.

Regulation 4902, *Relief From Liability*, was adopted by the Board on February 3, 2003, to allow a single, detailed regulation providing section 6596 relief guidelines for all special taxes and fees programs administered by the BOE's PSTD. Regulation 4902, *Relief From Liability* was developed to mirror the 6596 relief provisions granted under Sales and Use Tax Regulation 1705, *Relief From Liability*, and incorporates all of Regulation 1705's previous amendments made through February 3, 2003, including extending 6596 relief to trade or industry association members when an association requests written advice on behalf of its members.

Revenue and Taxation Code section 6596 provides for relief from tax/fees, interest and penalty charges due on a transaction or activity if the Board determines that the tax/feepayer failed to pay the tax or fee because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the activity or transaction; the request must have identified the tax/feepayer to whom the advice applied; and, the request must have fully described the facts and circumstances of the activity or transaction. Regulation 4902, *Relief From Liability* (c) states, in part, that "[p]resentation of the person's books and records for examination by an auditor shall be deemed a written request for the audit report."

All special taxes and fee section 6596 statutes contain a subsection (d) clause providing that only the "person" making a request for written advice shall be entitled to rely upon BOE's written advice to that person. Additionally, all special taxes and fees programs have a corresponding reference to Revenue and Taxation Code section 6005 for a definition of a "person." Generally, tax/feepayers cannot obtain relief by relying upon a written communication from the BOE given or addressed to another person, even if the transaction or activity is similar. However, a person may rely upon advice given to the person's representative, provided that the representative identifies the person for whom the advice is requested. Please refer to Exhibit 3 for the special taxes and fees programs law sections corresponding to sections 6596(d) and 6005.

V. Discussion

At its August 13, 2013 Business Taxes Committee Meeting, the Board authorized publication of an amended Regulation 1705, *Relief From Liability*, which extended 6596 relief to a person who, under the sales and use tax program, relies on advice provided in a prior audit of a person with shared accounting and common ownership. A complete background and discussion of the issue can be found in the Regulation 1705 Issue Paper, http://www.boe.ca.gov/meetings/pdf/IP_1705_Package.pdf.

During the same meeting, the Board recommended staff amend the regulations for the special taxes and fee programs to incorporate similar relief provisions for those tax and fee payers. All special taxes and fees regulations pertaining to section 6596 were adopted or amended to reference Regulation 4902 for section 6596 relief in February 2003; therefore only Regulation 4902 requires amending. Amending Regulation 4902 to incorporate the language contained in Regulation 1705 approved by the Board on August 13, 2013, would ensure the BOE's programs are administered in a uniform manner.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends that the Board approve and authorize the publication of Regulation 4902, *Relief From Liability*, as proposed in Exhibit 2, to extend relief of a liability to a person if the liability was a result of the person relying on erroneous advice received or provided from the prior audit of another person. The person seeking relief must meet the following criteria:

1. The person seeking relief must be engaged in the same line of business or activity as the audited person;
2. The person seeking relief must share with the audited person common verifiable controlling ownership of 50% or greater or has a common majority shareholder;
3. The person seeking relief must have shared accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax or fee return preparation.
 - A shared accounting staff or outside firm which maintains books and records and prepares tax or fee returns for programs administered by the BOE.
 - Shared accounting policies and procedures.

The new requirements must be established as having existed throughout the periods for which relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective written advice provided by the BOE. Accordingly, if a written recission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to the parties that relied on the prior advice that the prior written advice may no longer be relied upon.

B. Pros of Alternative 1

- Ensures special taxes and fee program's regulation contains conforming language to the sales and use tax program's Regulation 1705.
- Clarifies that reliance upon written advice relief provisions extend to tax and feepayers who would be reasonably expected to rely on the advice given during a prior audit.
- The requirement that the related person share common ownership with the audited person or written advice recipient is specific and narrowly tailored.
- The proposed revisions are also limited to situations in which a person would reasonably be expected to rely on the advice by the provision that requires the elements to exist throughout the period for which relief is sought and also indicates if the BOE provides a written notification to the audited person or any person with shared controlling ownership and centralized accounting functions, the advice may no longer be relied upon.

C. Cons of Alternative 1

The requirements that the person be engaged in the same line of business and share accounting functions are narrowly defined.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of a revised Regulation 4902, *Relief From Liability*.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 4902 and thereby begin the formal rulemaking process. Staff will also notify tax and feepayers of the revised regulation through other outreach efforts (website revisions, newsletter articles, etc.).

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation and engaging in other outreach efforts is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

Minimal. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

While the overall impact is minimal, tax/feepayers seeking reliance upon written advice relief would have to provide sufficient documentation to allow staff to determine if they are eligible to have the relief extended to them.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Other Alternatives

A. Description of Alternative

Do not approve proposed Regulation 4902, *Relief From Liability*.

B. Pros of Alternative

The BOE would not incur the workload associated with processing and publicizing the regulation.

C. Cons of Alternative

- Not revising Regulation 4902 would result in the continuation of inconsistencies between the special tax and fee programs and those of the sales and use tax program, which provides relief from liability guidance in Regulation 1705.
- Relief to tax and fee payers who incur liabilities because of their reasonable reliance on prior audit advice to a person within the same industry that has shared accounting functions and a common controlling ownership will continue to be denied under the current language in Regulation 4902.

D. Statutory or Regulatory Change for Alternative

None.

E. Operational Impact of Alternative

None.

F. Administrative Impact of Alternative

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative

None.

H. Critical Time Frames of Alternative

None.

Preparer/Reviewer Information

Prepared by: Policy and Compliance Division, Property and Special Taxes Department

Current as of: November 22, 2013

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

**Proposed Amendments to Regulation 4902, *Relief From Liability*;
extension of relief based on written advice****I. Issue**

Should the Board revise Regulation 4902, *Relief From Liability*, to extend relief of liability for reliance upon written advice or reliance on a prior audit to another person if that person has a common controlling ownership or is the successor, and shares accounting functions with the written advice recipient?

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize the publication of Regulation 4902, *Relief From Liability*, as proposed in Exhibit 2 to extend reliance upon written advice relief to a person if the liability was the result of a person relying on erroneous advice received or provided from the prior audit of another person when:

1. The person seeking relief is engaged in the same line of business or activity as the audited person;
2. The person seeking relief shares with the audited person common verifiable controlling ownership of 50% or greater or has a common majority shareholder;
3. The person seeking relief has shared accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation exists.
 - A shared accounting staff or outside firm maintains books and records and prepares returns and/or schedules for Board of Equalization tax and fee programs.
 - Shared accounting policies and procedures exist.

The requirements must be established as existing throughout the periods for which the relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective advice from the Board. Accordingly, if a written

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rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to the parties that relied on the prior written advice that the prior written advice may no longer be relied upon.

III. Other Alternative(s) Considered

Do not approve proposed amendment to Regulation 4902, *Relief From Liability*.

Background, Methodology, and Assumptions**Alternative 1 – Staff Recommendation**

Staff recommendation will amend Regulation 4902 to incorporate the language contained in Regulation 1705 approved by the Board on August 13, 2013 ensuring the Board's programs are administered in a uniform manner.

Therefore, staff recommendation will have a minimal impact on revenues because it is expected that only a small number of businesses currently excluded from relief from liability based on prior written advice will be extended relief. In addition, staff recommendation clarifies that relief from liability based on prior written advice extends to taxpayers who would be reasonably expected to rely on the erroneous advice given during a prior audit. Staff further explains that the provisions that the related person share common ownership with the audited person are specific and narrowly tailored. Finally, staff asserts that the proposed revisions are also limited to situations in which a person would reasonably be expected to rely on the erroneous advice by the provision that requires the elements to exist throughout the period for which relief is sought. Another limiting factor is the provision that if the Board provides a written notification to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to all parties that relied on the prior advice that the prior written advice may no longer be relied upon.

Other Alternatives Considered

Alternative 2 – Do not amend Regulation 4902, *Relief From Liability*.

There is nothing in the alternative 2 that would impact special taxes and fees revenue.

Revenue Summary

Alternative 1 – staff recommendation will have a minimal impact on revenue.

Alternative 2 – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate is subject to suggested changes made by Mr. Joe Fitz, Chief, Research and Statistics Section, Legislative and Research Division, and Ms. Debbie Kalfsbeek, Administrator, Program Policy and Administration Branch,

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Property and Special Taxes Department. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of November 22, 2013.

REGULATION 4902. RELIEF FROM LIABILITY.

Reference: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, Revenue and Taxation Code.

(a) GENERAL. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

(1) Written advice given by the board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the board in a prior audit ~~of that person~~ under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under

subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census, (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

- A. Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
- B. Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.
- C. Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above.

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

History: Adopted February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite.

List of Relief From Liability Based on Reliance Upon Written Advice Regulations and Statutes for Special Taxes and Fees Programs

Tax or Fee Program	Regulation	Regulation-Referenced R & T Code	Person Requesting Written Advice Must be Person Receiving : Referenced R & T Code	"Person" Defined Referenced Code
Motor Vehicle Fuel Tax	1124	7657.1	7657.1(b)	7329 (R&T)
Underground Storage Tank Fee	1248	50112.5	50112.5(b)	25299.25 (H&S)*
Use Fuel Tax	1335	8879	8879(b)	8606 (R&T)
Diesel Fuel Tax	1422	60210	60210(b)	60008 (R&T)
Oil Spill Prev. & Admin. Fee	2250	46158	46158(b)	46020 (R&T)
Energy Resources Surcharge	2303	40104	40104(b)	40004 (R&T)
Emergency Telephone Users Surcharge	2432	41098	41098(b)	41003 (R&T)
Alcoholic Beverage Tax	2570	32257	32257(b)	23008 (B&P)**
Hazardous Substances Tax	3021	43159	43159(b)	43006 (R&T)
Integrated Waste Mgmt. Fee	3302	45157	45157(b)	45006 (R&T)
Fee Collections Procedure Law	3502	55045	55045(b)	55002 (R&T)
Cigarette and Tobacco Products Tax	4105	30284	30284(b)	30010 (R&T)

*Health and Safety Code

**Business and Professions Code

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 17, 2013

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Committee:

Betty T. Yee
Chair

Michelle Steel
Member

Jerome E. Horton
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:

Susanne Buehler

Lawrence Mendel

Stephen Smith

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 DECEMBER 17, 2013

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

7 MS. RICHMOND: Our next matter is the
8 Business Taxes Committee.

9 MR. HORTON: Okay. Let's take a ten-minute
10 break, Members, and we will return to the Business
11 Tax Committee.

12 Is that okay, Member Yee?

13 MS. YEE: Yeah.

14 MR. HORTON: All right.

15 (Break taken.)

16 MR. HORTON: Members, let us convene the
17 meeting of the Board of Equalization.

18 Ms. Richmond, what is our next matter?

19 MS. RICHMOND: Our next matter on today's
20 agenda is Business Taxes Committee. Ms. Yee is the
21 Chair of that committee.

22 Ms. Yee.

23 MS. YEE: Thank you, Ms. Richmond.

24 Members, we are convening the Business
25 Taxes Committee. Two items before the committee
26 today. The first is proposed amendment to
27 Regulation 1655 relating to returns, defects and
28 replacements; and secondly, proposed revisions to

1 Regulation 4902 relating to relief of liability.

2 Let me have Ms. Buehler introduce both
3 issues.

4 MS. BUEHLER: Good morning. I'm Susanne
5 Buehler with the Sales and Use Tax Department.

6 We do have two agenda items for your
7 consideration this morning. We will take each
8 agenda item and the respective action item
9 separately before moving to the next.

10 With me for Agenda Item 1 is Mr. Lawrence
11 Mendel from our Legal Department.

12 For this agenda item, we request your
13 approval and authorization to publish proposed
14 amendments to Sales and Use Tax Regulation 1655,
15 Returns, Defects and Replacements.

16 The proposed amendments clarify that the
17 Board of Equalization is required to reimburse a
18 vehicle manufacturer for the use tax that the
19 manufacturer's required to pay a buyer or lessee
20 when replacing a vehicle or making restitution under
21 the Lemon Law.

22 These amendments will ensure the regulation
23 is consistent with provisions of the Civil Code as
24 amended by Assembly Bill 242.

25 We are happy to answer any questions you
26 may have on this topic.

27 MS. YEE: Okay. Thank you, Ms. Buehler.

28 Members? Comments?

1 MR. RUNNER: Move to adopt.

2 MR. HORTON: Second.

3 MS. YEE: Motion by Senator Runner to adopt
4 the proposed revision that authorized publication.
5 Second by Mr. Horton.

6 Without objection, that motion carries.

7 Thank you.

8 MS. BUEHLER: Thank you.

9 With me for Agenda Item 2 is Mr. Steve
10 Smith from our Legal Department.

11 For this agenda item we request your
12 approval and authorization to publish proposed
13 amendments to Special Taxes Administration
14 Regulation 4902, Relief from Liability.

15 The proposed amendments extend relief from
16 liability to a person who relies on a prior audit of
17 another person under specific circumstances. A
18 revision to the proposed amendments has been
19 recommended subsequent to the distribution of the
20 issue paper and related materials.

21 At the end of the second paragraph in
22 subdivision (a) staff proposes that the term "that
23 person" be revised to "those persons." We
24 respectfully request that this addition --
25 additional revision be included as part of the
26 action item for this item.

27 The proposed amendments, inclusive of the
28 revision just mentioned, conform Regulation 4902

1 with the revisions to Sales and Use Tax Regulation
2 1705, Relief from Liability, approved for
3 publication at the August 13, 2013 Business Taxes
4 Committee meeting.

5 We are happy to answer any questions you
6 may have on this topic.

7 MS. YEE: Okay, thank you, Ms. Buehler.
8 Questions, Members?

9 MR. HORTON: Move to adoption.

10 MS. YEE: Motion by Mr. Horton to adopt the
11 proposed revision to authorize publications. Is
12 there a second?

13 MS. STEEL: Second.

14 MS. YEE: Second by Ms. Steel.

15 Without objection, that motion carries.

16 Thank you very much, Members.

17 MS. BUEHLER: Thank you.

18 MS. YEE: And this concludes the Business
19 Taxes Committee.

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REPORTER'S CERTIFICATE

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State of California)
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County of Sacramento)

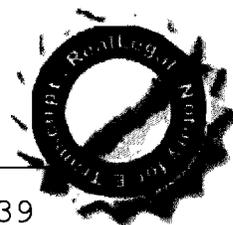
I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on December 17, 2013 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 6 constitute a complete and accurate transcription of the shorthand writing.

Dated: January 8, 2013

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter



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

Proposed Amendment of Special Taxes and Fees Regulation 4902, *Relief from Liability*

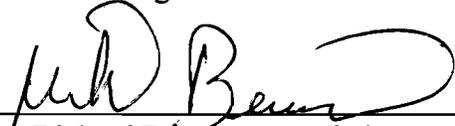
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

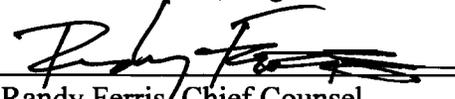
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement Prepared by  Date 4-11-14
Richard Bennion, Regulations Coordinator

Approved by  Date 4/11/14
Randy Ferris, Chief Counsel

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

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

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

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

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 4902, Relief from Liability			NOTICE FILE NUMBER Z

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

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

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

Please see the attached.

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

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

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

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

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

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

Explain: _____

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

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

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

If YES, explain briefly: _____

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

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____
 - a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - d. Describe other economic costs that may occur: _____

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

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

4. Will this regulation directly impact housing costs? YES NO
 If YES, enter the annual dollar cost per housing unit: \$ _____
 Number of units: _____

5. Are there comparable Federal regulations? YES NO
 Explain the need for State regulation given the existence or absence of Federal regulations: _____
 Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

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

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

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

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

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

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

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

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

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

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

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

Explain: _____

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

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

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

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

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

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

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

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

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

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

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

YES NO

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

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

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

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

STD 399 (REV 12/2013)

FISCAL IMPACT STATEMENT

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

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

\$ _____

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

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

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

\$ _____

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

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

Case of: _____ vs. _____

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

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

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

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

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

- 3. Annual Savings. (approximate)
\$ _____

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

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

- 6. Other. Explain _____

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

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

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

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

\$ _____

It is anticipated that State agencies will:

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

b. Increase the currently authorized budget level for the _____ Fiscal Year

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

\$ _____

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

4. Other. Explain _____

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

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

\$ _____

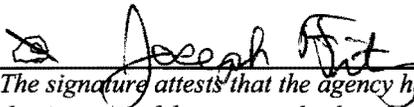
2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

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

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

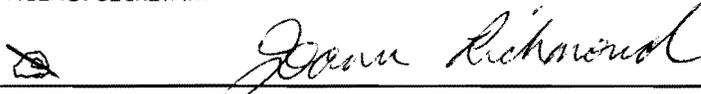


DATE

February 25, 2014

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

AGENCY SECRETARY



DATE

February 25, 2014

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

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

Exempt under SAM section 6615

DATE

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to
California Code of Regulations, Title 18, Section 4902,
Relief from Liability

Currently, under subdivision (a) of Revenue and Taxation Code (RTC) sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210 (hereafter referred to as the authorizing statutes), if the State Board of Equalization (Board) finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of the special taxes and fees and any penalties or interest added thereto, which the Board administers under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The liability for the special tax or fee due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

In addition, under subdivision (c) of the authorizing statutes, a person requesting relief is currently required to file with the Board a copy of the person's written request to the Board for advice, a copy of the written advice the Board provided in response, the person's statement under penalty of perjury setting forth the facts on which the person's request for relief is based, and any other information the Board requires.

California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, implements, interprets, and makes specific the provisions of the authorizing statutes referenced above. The proposed amendments to Regulation 4902:

- Clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person”;
- Clarify that written advice provided in an audit may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to “those persons”;
- Clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person; and
- Require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief.

As a result, the proposed amendments will permit some additional persons to qualify for relief, and choose to incur any costs associated with requesting relief under subdivision (c) of the authorizing statutes. However, the proposed amendments do not require any person to rely on another person’s audit report or file a request for relief. Therefore, the proposed amendments do not impose any costs on any persons, including businesses.

Further, there is a limited class of persons that will actually have the shared accounting and common ownership with one or more other persons described in the proposed amendments to Regulation 4902. And, each person in the limited class will only be eligible for relief due to the person’s reliance on another person’s audit report during the periods that the person actually has the shared accounting and ownership with the other person and actually relies on the other person’s audit report. Therefore, the proposed amendments to Regulation 4902 will provide some relief to some of the persons in the limited class described above. However, the proposed amendments will not benefit every person in the limited class described above, they will not have any impact on persons that are not part of the limited class described above, and the Board does not anticipate receiving a significant number of new requests for relief due to the proposed amendments.

Furthermore, the Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that relief, under the authorizing statutes, can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

Therefore, based upon the foregoing information and all of the information in the rulemaking file, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the enactment of the authorizing statutes has and will have on individuals and businesses, and the Board has

determined that the proposed amendments will have a minimal impact on revenue. The Board has also determined that the proposed amendments to Regulation 4902 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period. And, the Board has determined that the proposed amendments to Regulation 4902:

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

Finally, Regulation 4902 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2014-0224-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

FEB 24 '14 MAR 07 '14

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 Relief from Liability		TITLE(S) 18	FIRST SECTION AFFECTED 4902	2. REQUESTED PUBLICATION DATE March 7, 2014
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	----------------------------------------------------------

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

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

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

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

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

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
-----------------------------------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------	----------------------------------------------------------

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

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

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

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

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

For use by Office of Administrative Law (OAL) only

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 4902, *Relief from Liability*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, which implements, interprets, and makes specific provisions for relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board. The proposed amendments to Regulation 4902, subdivision (a), clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to “those persons.” The proposed amendments add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” The proposed amendments also add language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on April 22-24, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on April 22, 23, or 24, 2014. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 4902.

AUTHORITY

RTC section 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601

REFERENCE

RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

The Board administers special taxes and fees under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws). Each of the special tax and fee laws contains a statute, which defines “person” or incorporates a definition of “person.” (See RTC §§ 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf. Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.) The special tax and fee laws also contain RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, which authorize the Board to grant a person relief under certain circumstances (hereafter, collectively referred to as the authorizing statutes).

Currently, under subdivision (a) of the authorizing statutes, if the Board finds that a person’s failure to make a timely return or payment is due to the person’s reasonable reliance on written advice from the Board, the person may be relieved of special taxes and fees and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person’s failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;

- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

Also, currently, subdivision (d) of the authorizing statutes generally provides that “[o]nly the person making the written request shall be entitled to rely on the [B]oard’s written advice to that person.”

Regulation 4902 implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (b)(1), currently requires that a representative’s written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board’s written response to the representative for relief;
- Regulation 4902, subdivision (c) currently applies to audits, states that the “[p]resentation of [a] person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report,” and prescribes the circumstances under which an audit report may be relied upon for relief; and
- Regulation 4902, subdivision (a), currently provides that “[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.”

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. Subdivision (e) currently provides that:

A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

As a result, a person cannot generally obtain relief by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief by relying on written advice the Board gave to the person’s representative or trade or industry association under specified circumstances.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 4902

Need for Clarification

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Prior to the Board's adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with relief guidelines for all the special tax and fee programs administered by the Board's PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the relief provisions in Regulation 1705, *Relief From Liability*, because Regulation 1705 implements, interprets, and make specific RTC section 6596, which is substantially similar to the authorizing statutes. And, Regulation 4902 incorporates all of Regulation 1705's previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending relief to trade or industry association members when an association requests written advice on their behalf.

On February 5, 2003, the Board also adopted amendments to Regulations 1124, 1248, 1335, 1422, 2250, 2432, and 2570, which refer to the relief guidelines described in Regulation 4902. And, the Board adopted Regulations 2303, 3021, 3302, 3502, and 4105, which are all called "Relief from Liability" or "Relief From Liability," to provide specific regulations under the authorizing statutes in the Energy Resources Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Fee Collection Procedures Law, and the Cigarette and Tobacco Products Tax Law, respectively, that also refer to the relief guidelines in Regulation 4902.

During its October 23-25, 2012, Board meeting, the Board conducted a hearing regarding a sales and use tax appeal filed by a business entity (hereafter referred to as ABC). During the hearing, ABC indicated that it followed written advice provided during the Board's prior audit of another business entity (hereafter referred to as XYZ). ABC stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Also, records indicated that XYZ and ABC were related entities because XYZ owned more than 50 percent of ABC. Therefore, during the hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for relief under RTC section 6596. In response to ABC's arguments, the Board referred the issue of whether relief from sales and use tax liabilities, under RTC section 6596, should only be available to the person who actually received the written advice from the Board or that person's

legal or statutory successor under certain circumstances, such as those presented in ABC's appeal, to the Board's Business Tax Committee (BTC) for further development.

At its August 13, 2013, BTC Meeting, the Board voted to propose amendments to Regulation 1705 to extend relief, under RTC section 6596, to a person who relies on advice provided in a prior audit of a person with shared accounting and common ownership because the Board determined that the amendments are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the facts of ABC's appeal. During the same BTC meeting, the Board also recognized that there might be another issue if there are similar regulations to Regulation 1705 that apply to the special tax and fee programs and the other regulations are not amended to conform to the amendments to Regulation 1705. Therefore, the Board directed staff to recommend conforming amendments to any special tax and fee regulations that are similar to Regulation 1705. As a result, staff determined that Regulation 4902 was the only special tax and fee regulation that was similar to Regulation 1705 and staff drafted amendments to Regulation 4902 to incorporate the language contained in the proposed amendments to Regulation 1705, in order to ensure that the Board's programs are administered in a uniform manner.

December 17, 2013, BTC Meeting

Board staff subsequently prepared Formal Issue Paper 13-011, which recommended that the Board propose to add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with the audited person." The formal issue paper recommended that the Board propose to add the following language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person's audit report for relief:

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate

sharing of centralized accounting functions includes, but is not limited to, the following:

- (A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
- (B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.
- (C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The formal issue paper also recommended that the Board amend Regulation 4902, subdivision (a), to clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to *that person*. And, during the December 17, 2013, BTC meeting, staff also recommended changing “that person” to “those persons” to make the amendments to subdivision (a) grammatically correct and fully consistent with a minor change to the proposed amendments to Regulation 1705 that staff would subsequently request and the Board would subsequently authorize later that same day.

Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13-011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the amendments to Regulation 1705 (discussed above). (The Board also subsequently adopted the proposed amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.)

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that relief, under the authorizing statutes, can apply to a person who the Board would reasonably expect to

rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The Board has performed an evaluation of whether the proposed amendments to Regulation 4902 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 4902 is the only regulation providing guidelines for relief under the authorizing statutes, and the proposed amendments make Regulation 4902 consistent with the amendments to Regulation 1705 discussed above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1705 or the proposed amendments to Regulation 1705.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 4902 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 4902 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 4902 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 4902 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at Pamela.Mash@boe.ca.gov, or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on April 22, 2014, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 4902 during the April 22-24, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 4902. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 4902 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 4902, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 4902 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 4902, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

BOE-Board Meeting Material

From: BOE-Board Meeting Material
Sent: Friday, March 07, 2014 9:31 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Angeles, Joel; Appleby, Jaclyn; Armenta, Christopher; Baetge, Michelle; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Boyle, Kevin; Bridges, Cynthia; Brown, Michele C; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya; Delgado, Maria; Dixon, Camille; Duran, David; Elliott, Claudia; Epolite, Anthony (Legal); Ferris, Randy (Legal); Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Goehring, Teresa; Hale, Mike; Hamilton, Tabitha; Hanohano, Rebecca; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie; Kinst, Lynne; Kruckenber, Kendra; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); LoFaso, Alan; Madrigal, Claudia; MarcyJo.Mandel@boe.ca.gov; Matsumoto, Sid; McGuire, Jeff; Miller, Brad; mmandel@sco.ca.gov; Moon, Richard (Legal); Morquecho, Raymond; Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston, Natasha; Richmond, Joann; Riley, Denise (Legal); Salazar, Ramon; Salgado-Ponce, Sylvia; Schultz, Glenna; Shah, Neil; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vasquez, Rosalyn; Vigil, Michael; Wallentine, Sean; Whitaker, Lynn; White, Sharon; Williams, Lee; Zivkovich, Robert
Subject: FW: State Board of Equalization - Announcement of Regulatory Change 4902

The State Board of Equalization proposes to adopt amendments to Regulation 4902, *Relief from Liability*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on April 22-24, 2014.

The proposed amendments to Regulation 4902, *Relief from Liability*, extend relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board to a person who relies on advice provided in a prior audit of a related person, under specific circumstances.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_4902_2014.htm.

Questions regarding the substance of the proposed amendments should be directed to Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at Pamela.Mash@boe.ca.gov, or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

Please do not reply to this message.

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

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
<Legal.Regulations@BOE.CA.GOV>
Sent: Friday, March 07, 2014 10:54 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 4902

The State Board of Equalization proposes to adopt amendments to Regulation 4902, Relief from Liability. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on April 22-24, 2014.

The proposed amendments to Regulation 4902, Relief from Liability, extend relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board to a person who relies on advice provided in a prior audit of a related person, under specific circumstances.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_4902_2014.htm.

Questions regarding the substance of the proposed amendments should be directed to Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at Pamela.Mash@boe.ca.gov<<mailto:Pamela.Mash@boe.ca.gov>>, or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov<<mailto:Richard.Bennion@boe.ca.gov>> or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 4902, *Relief from Liability*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, which implements, interprets, and makes specific provisions for relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board. The proposed amendments to Regulation 4902, subdivision (a), clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to “those persons.” The proposed amendments add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” The proposed amendments also add language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on April 22–24, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

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

the matter may be heard on April 22, 23, or 24, 2014. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 4902.

AUTHORITY

RTC section 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601

REFERENCE

RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

The Board administers special taxes and fees under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws). Each of the special tax and fee laws contains a statute, which defines “person” or incorporates a definition of “person.” (See RTC §§ 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf. Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.) The special tax and fee laws also contain RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, which authorize the Board to grant a person relief under certain circumstances (hereafter, collectively referred to as the authorizing statutes).

Currently, under subdivision (a) of the authorizing statutes, if the Board finds that a person’s failure to

make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of special taxes and fees and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

Also, currently, subdivision (d) of the authorizing statutes generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

Regulation 4902 implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (b)(1), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for relief;
- Regulation 4902, subdivision (c) currently applies to audits, states that the "[p]resentation of [a] person's books and records for examination by an auditor shall be deemed to be a written request for the audit report," and prescribes the circumstances under which an audit report may be relied upon for relief; and
- Regulation 4902, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person."

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. Subdivision (e) currently provides that:

A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

As a result, a person cannot generally obtain relief by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief by relying on written advice the Board gave to the person's representative or trade or industry association under specified circumstances.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 4902

Need for Clarification

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Prior to the Board's adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with relief guidelines for all the special tax and fee programs administered by the Board's PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the relief provisions in Regulation 1705, *Relief From Liability*, because Regulation 1705 implements, interprets, and make specific RTC section 6596, which is substantially similar to the authorizing statutes. And, Regulation 4902 incorporates all of Regulation 1705's previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending relief to trade or industry association members when an association requests written advice on their behalf.

On February 5, 2003, the Board also adopted amendments to Regulations 1124, 1248, 1335, 1422, 2250, 2432, and 2570, which refer to the relief guidelines de-

scribed in Regulation 4902. And, the Board adopted Regulations 2303, 3021, 3302, 3502, and 4105, which are all called “Relief from Liability” or “Relief From Liability,” to provide specific regulations under the authorizing statutes in the Energy Resources Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Fee Collection Procedures Law, and the Cigarette and Tobacco Products Tax Law, respectively, that also refer to the relief guidelines in Regulation 4902.

During its October 23–25, 2012, Board meeting, the Board conducted a hearing regarding a sales and use tax appeal filed by a business entity (hereafter referred to as ABC). During the hearing, ABC indicated that it followed written advice provided during the Board’s prior audit of another business entity (hereafter referred to as XYZ). ABC stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Also, records indicated that XYZ and ABC were related entities because XYZ owned more than 50 percent of ABC. Therefore, during the hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for relief under RTC section 6596. In response to ABC’s arguments, the Board referred the issue of whether relief from sales and use tax liabilities, under RTC section 6596, should only be available to the person who actually received the written advice from the Board or that person’s legal or statutory successor under certain circumstances, such as those presented in ABC’s appeal, to the Board’s Business Tax Committee (BTC) for further development.

At its August 13, 2013, BTC Meeting, the Board voted to propose amendments to Regulation 1705 to extend relief, under RTC section 6596, to a person who relies on advice provided in a prior audit of a person with shared accounting and common ownership because the Board determined that the amendments are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the facts of ABC’s appeal. During the same BTC meeting, the Board also recognized that there might be another issue if there are similar regulations to Regulation 1705 that apply to the special tax and fee programs and the other regulations are not amended to conform to the amendments to Regulation 1705. Therefore, the Board directed staff to recommend conforming amendments to any special tax and fee regulations that are similar to Regulation 1705. As a result, staff determined that Regulation 4902 was the only special tax and fee regulation

that was similar to Regulation 1705 and staff drafted amendments to Regulation 4902 to incorporate the language contained in the proposed amendments to Regulation 1705, in order to ensure that the Board’s programs are administered in a uniform manner.

December 17, 2013, BTC Meeting

Board staff subsequently prepared Formal Issue Paper 13–011, which recommended that the Board propose to add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” The formal issue paper recommended that the Board propose to add the following language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief:

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - (A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
 - (B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.
 - (C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The formal issue paper also recommended that the Board amend Regulation 4902, subdivision (a), to clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to *that person*. And, during the December 17, 2013, BTC meeting, staff also recommended changing “that person” to “those persons” to make the amendments to subdivision (a) grammatically correct and fully consistent with a minor change to the proposed amendments to Regulation 1705 that staff would subsequently request and the Board would subsequently authorize later that same day.

Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13–011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the amendments to Regulation 1705 (discussed above). (The Board also subsequently adopted the proposed amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.)

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that relief, under the authorizing statutes, can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The Board has performed an evaluation of whether the proposed amendments to Regulation 4902 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are

not inconsistent or incompatible with existing state regulations because Regulation 4902 is the only regulation proving guidelines for relief under the authorizing statutes, and the proposed amendments make Regulation 4902 consistent with the amendments to Regulation 1705 discussed above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1705 or the proposed amendments to Regulation 1705.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 4902 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 4902 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 4902 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON
HOUSING COSTS

The adoption of the proposed amendments to Regulation 4902 will not have a significant effect on housing costs.

DETERMINATION REGARDING
ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at Pamela.Mash@boe.ca.gov, or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on April 22, 2014, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 4902 during the April 22-24, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 4902. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF
REASONS AND TEXT OF
PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 4902 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 4902, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES
PURSUANT TO GOVERNMENT CODE
SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 4902 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regula-

tion will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

If the Board adopts the proposed amendments to Regulation 4902, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FISH AND
WILDLIFE**

**CESA CONSISTENCY DETERMINATION
REQUEST FOR
Elm Tree Fueling Station Project
(2080-2014-004-03)
Sonoma County**

The Department of Fish and Wildlife (CDFW) received a notice on February 24, 2014, that Mangal Dhillon proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves subdividing the 0.98-acre project site into two parcels: Parcel 1 (31,143 square feet) is to be developed with a fueling station and small market; and Parcel 2 (11,600 square feet) is to provide a small park and picnic area. The proposed project will occur at 874 North Wright Road, Santa Rosa, Sonoma County, California.

The U.S. Fish and Wildlife Service issued a no jeopardy federal biological opinion (Service File No. 08ESMF00-2013-F0091-2)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on February 21, 2014, which considered the effects of the project on the state threatened and federally endangered California tiger salamander (*Ambystoma californiense*), and state and federally endangered Sebastopol meadowfoam (*Limnanthes vincularis*).

Pursuant to California Fish and Game Code section 2080.1, Mangal Dhillon is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed project. If the CDFW determines

the BO and ITS are consistent with CESA for the proposed project, Mangal Dhillon will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the project.

**DEPARTMENT OF FISH AND
WILDLIFE**

**CESA CONSISTENCY DETERMINATION
REQUEST FOR
Fruit Growers Supply Company — HCP
(2080-2014-003-01)
Siskiyou County**

The California Department of Fish and Wildlife (CDFW) received a notice on February 18, 2014, that Fruit Growers Supply Company (FGS) proposes to rely on a consultation with the U.S. Fish and Wildlife Service (Service) to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves timber operations and related management activities including, but not limited to timber harvest, yarding timber, loading and landing operations, fire prevention and suppression, salvage and transport of timber products, road construction and maintenance, extraction of rock, sand, and gravel from small borrow pits, silviculture, stand regeneration and improvement, and monitoring and reporting. The proposed project will occur on 152,178 acres of timberland in three company management units: the Klamath River, Scott Valley; and portions of the Grass Lake unit in Siskiyou County, California.

The Service issued an intra-service federal biological and conference opinion (Service File No. 81333-2011-F-0018)(BO) and incidental take statement (ITS) on April 20, 2012, for the Project pursuant to section 10(a)(1)(B) of the federal Endangered Species Act. The BO considered the effects of the project on the state candidate and federally threatened northern spotted owl (*Strix occidentalis caurina*) based on the following documents: (1) the FGS Habitat Conservation Plan (HCP), (2) the Final Environmental Impact Statement, and (3) the final Implementation Agreement (IA).

Pursuant to California Fish and Game Code section 2080.1, FGS is requesting a determination that the BO and ITS, which requires implementation of and compliance with the BO and its related ITS, IA and HCP, are consistent with CESA for purposes of the Project. If CDFW determines the BO and ITS are consistent with CESA for the proposed project, FGS will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the project.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

50 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

March 7, 2014

To Interested Parties:

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 4902, *Relief from Liability*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, which implements, interprets, and makes specific provisions for relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board. The proposed amendments to Regulation 4902, subdivision (a), clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to “those persons.” The proposed amendments add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” The proposed amendments also add language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on April 22-24, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on April 22, 23, or 24, 2014. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 4902.

AUTHORITY

RTC section 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601

REFERENCE

RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

The Board administers special taxes and fees under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws). Each of the special tax and fee laws contains a statute, which defines "person" or incorporates a definition of "person." (See RTC §§ 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf. Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.) The special tax and fee laws also contain RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, which authorize the Board to grant a person relief under certain circumstances (hereafter, collectively referred to as the authorizing statutes).

Currently, under subdivision (a) of the authorizing statutes, if the Board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of special taxes and fees and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

Also, currently, subdivision (d) of the authorizing statutes generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

Regulation 4902 implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (b)(1), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for relief;
- Regulation 4902, subdivision (c) currently applies to audits, states that the "[p]resentation of [a] person's books and records for examination by an auditor shall be deemed to be a written request for the audit report," and prescribes the circumstances under which an audit report may be relied upon for relief; and
- Regulation 4902, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person."

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. Subdivision (e) currently provides that:

A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

As a result, a person cannot generally obtain relief by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief by relying on written advice the Board gave to the person's representative or trade or industry association under specified circumstances.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 4902

Need for Clarification

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Prior to the Board's adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with relief guidelines for all the special tax and fee programs administered by the Board's PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the relief provisions in Regulation 1705, *Relief From Liability*, because Regulation 1705 implements, interprets, and make specific RTC section 6596, which is substantially similar to the authorizing statutes. And, Regulation 4902 incorporates all of Regulation 1705's previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending relief to trade or industry association members when an association requests written advice on their behalf.

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hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for relief under RTC section 6596. In response to ABC's arguments, the Board referred the issue of whether relief from sales and use tax liabilities, under RTC section 6596, should only be available to the person who actually received the written advice from the Board or that person's legal or statutory successor under certain circumstances, such as those presented in ABC's appeal, to the Board's Business Tax Committee (BTC) for further development.

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December 17, 2013, BTC Meeting

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For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and

(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

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Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13-011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the amendments to Regulation 1705 (discussed above). (The Board also subsequently adopted the proposed amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.)

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that relief, under the authorizing

statutes, can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The Board has performed an evaluation of whether the proposed amendments to Regulation 4902 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 4902 is the only regulation providing guidelines for relief under the authorizing statutes, and the proposed amendments make Regulation 4902 consistent with the amendments to Regulation 1705 discussed above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1705 or the proposed amendments to Regulation 1705.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 4902 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 4902 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 4902 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 4902 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at Pamela.Mash@boe.ca.gov, or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action

should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on April 22, 2014, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 4902 during the April 22-24, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 4902. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 4902 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 4902, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

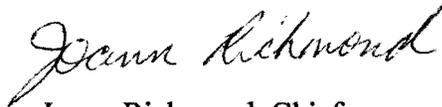
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 4902 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 4902, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

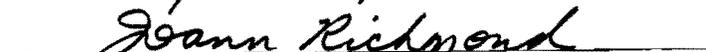
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STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the April 22, 2014 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 4902, *Relief from Liability***

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

Current Law

Sales and Use Tax

The State Board of Equalization (Board) administers California's sales and use tax. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs.

Revenue and Taxation Code (RTC) section 6005 defines the term "person" for purposes of the Sales and Use Tax Law (RTC § 6001 et seq.). RTC section 6596 (section 6596), subdivision (a), provides for relief from sales and use tax, interest, and penalty charges due on a transaction or activity if the Board determines that a person failed to file a timely return or pay the tax because the person reasonably relied on written advice from the Board (hereafter referred to as section 6596 relief). For section 6596 relief to apply, section 6596, subdivision (b), provides that the Board must find that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to sales and use tax and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to tax, or stated the conditions under which the activity or transaction is subject to tax;
- In reasonable reliance on the Board's written advice, the person did not charge sales tax reimbursement or collect use tax from his or her customers or pay a use tax on the described activity or transaction; and
- The liability for taxes due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

In addition, under section 6596, subdivision (c), a person requesting section 6596 relief is required to file with the Board a copy of the person's written request to the Board for advice, a copy of the written advice the Board provided in response, the person's statement under penalty of perjury setting forth the facts on which the person's request for relief is based, and any other information the Board requires. And, section 6596, subdivision (d), generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

California Code of Regulations, title 18, section (Regulation) 1705, *Relief From Liability*, implements, interprets, and makes specific the provisions of section 6596. As relevant here:

- Regulation 1705, subdivision (b)(1), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for section 6596 relief;
- Regulation 1705, subdivision (c), currently applies to audits, states that the "[p]resentation of [a] person's books and records for examination by an auditor shall be deemed to be a written request for the audit report," and prescribes the circumstances under which an audit report may be relied upon for section 6596 relief; and
- Regulation 1705, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person."

Also, as relevant here, subdivision (e) was added to Regulation 1705 in 1999 to explain the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for section 6596 relief. The first sentence of Regulation 1705, subdivision (e), which was included in the 1999 amendments, currently provides that "[a] trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation."

Special Taxes and Fees

The Board also administers a number of special taxes and fees, in addition to the sales and use tax. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Each of the special tax and fee laws have a corresponding statute to RTC section 6005, which defines "person" or incorporates a definition of "person."¹ Also, each of the special

¹ See RTC sections 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf.

tax and fee laws have a corresponding statute to section 6596, which authorizes the Board to grant a person relief from liability due to the person's reasonable reliance upon written advice from the Board.

Currently, under subdivision (a) of RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210 (hereafter referred to as the authorizing statutes), if the Board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of the special taxes and fees administered under the special tax and fee laws, and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

In addition, under subdivision (c) of the authorizing statutes, a person requesting relief is currently required to file with the Board a copy of the person's written request to the Board for advice, a copy of the written advice the Board provided in response, the person's statement under penalty of perjury setting forth the facts on which the person's request for relief is based, and any other information the Board requires. And, currently, subdivision (d) of the authorizing statutes generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

Regulation 4902, *Relief from Liability*, implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person;"
- Regulation 4902, subdivision (b), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for relief; and

Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.

- Regulation 4902, subdivision (c), currently applies to audits, states that the “[p]resentation of [a] person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report,” and prescribes the circumstances under which an audit report may be relied upon for relief.

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. And, Regulation 4902, subdivision (e), currently provides that “[a] trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.”

As a result, a person cannot generally obtain relief from special taxes and fees by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief from special taxes and fees by relying on written advice the Board gave to the person’s representative or trade or industry association under specified circumstances.

Proposed Amendments

Need for Clarification

Prior to the Board’s adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to section 6596 relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with section 6596 relief guidelines for all special tax and fee programs administered by the Board’s PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the section 6596 relief provisions in Regulation 1705 and incorporates all of Regulation 1705’s previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending section 6596 relief to trade or industry association members when an association requests written advice on their behalf.

On February 5, 2003, the Board also adopted amendments to Regulations 1124, 1248, 1335, 1422, 2250, 2432, and 2570, which refer to the guidelines for section 6596 relief described in Regulation 4902. And, the Board adopted Regulations 2303, 3021, 3302, 3502, and 4105, which are all called “Relief from Liability” or “Relief From Liability,” to provide specific section 6596 relief regulations under the authorizing statutes in the Energy Resources Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Fee Collection Procedures Law, and the Cigarette and Tobacco Products Tax Law, respectively, that also refer to the guidelines for section 6596 relief described in Regulation 4902.

During its October 23-25, 2012, Board meeting, the Board conducted a hearing regarding a sales and use tax appeal filed by a business entity (hereafter referred to as ABC). During the hearing, ABC indicated that it followed written advice provided during the Board's prior audit of another business entity (hereafter referred to as XYZ). ABC stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Also, records indicated that XYZ and ABC were related entities because XYZ owned more than 50 percent of ABC. Therefore, during the hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for section 6596 relief. In response to ABC's arguments, the Board referred the issue of whether section 6596 relief from sales and use tax liabilities should only be available to the person who actually received the written advice from the Board or that person's legal or statutory successor under certain circumstances, such as those presented in ABC's appeal, to the Board's Business Tax Committee (BTC) for further development.

At its August 13, 2013, BTC meeting, the Board voted to propose amendments to Regulation 1705 to extend section 6596 relief to a person who relies on advice provided in a prior audit of a person with shared accounting and common ownership because the Board determined that the amendments are reasonably necessary for the specific purpose of addressing the issue presented by the facts of ABC's appeal. During the same meeting, the Board also recognized that there might be another issue (or problem within the meaning of Government Code section 11346.2, subdivision (b)(1)) if there are similar regulations to Regulation 1705 that apply to the special tax and fee programs and the other regulations are not amended to conform to the amendments to Regulation 1705. Therefore, the Board directed staff to recommend conforming amendments to any special tax and fee regulations that are similar to Regulation 1705. As a result, staff determined that Regulation 4902 was the only special tax and fee regulation that was similar to Regulation 1705 and staff drafted amendments to Regulation 4902 to incorporate the language contained in the proposed amendments to Regulation 1705, in order to ensure the Board's programs are administered in a uniform manner.

December 17, 2013, BTC Meeting

Board staff subsequently prepared Formal Issue Paper 13-011, which recommended that the Board propose to add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with the audited person." The formal issue paper recommended that the Board propose to add the following language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person's audit report for relief:

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The formal issue paper also recommended that the Board amend Regulation 4902, subdivision (a), to clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to *that person*. And, during the December 17, 2013, BTC meeting, staff also recommended changing “that person” to “those persons” to make the amendments to subdivision (a) grammatically correct and fully consistent with a minor change to the proposed amendments to Regulation 1705 that staff would subsequently request and the Board would subsequently authorize later that same day.

Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13-011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary for the specific purpose of addressing the issue (or problem) presented by the amendments to Regulation 1705 (discussed above).²

² The Board subsequently adopted the amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that section 6596 relief can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The adoption of the proposed amendments to Regulation 4902 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 4902.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-011, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its December 17, 2013, BTC meeting in deciding to propose the amendments to Regulation 4902 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 4902 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 4902 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 4902 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

As previously explained, subdivision (c) of the authorizing statutes currently requires a person requesting section 6596 relief from a special tax or fee liability due to the person's reasonable reliance on written advice from the Board to file with the Board a copy of the person's written request to the Board for advice, a copy of the written advice the Board provided in response, the

person's statement under penalty of perjury setting forth the facts on which the person's request for relief is based, and any other information the Board requires.

As previously explained, the proposed amendments to Regulation 4902:

- Clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with the audited person";
- Clarify that written advice provided in an audit may be relied upon by the person audited "or a person with shared accounting and common ownership with the audited person" or by a legal or statutory successor to "those persons";
- Clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person; and
- Require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person's audit report for relief.

As a result, the proposed amendments will permit some additional persons to qualify for relief, and choose to incur any costs associated with requesting relief under subdivision (c) of the authorizing statutes. However, the proposed amendments do not require any person to rely on another person's audit report or file a request for relief under the authorizing statutes. Therefore, the proposed amendments do not impose any costs on any persons, including businesses.

In addition, there is a limited class of persons that will actually have the shared accounting and common ownership with one or more other persons described in the proposed amendments to Regulation 4902. And, each person in the limited class will only be eligible for relief due to the person's reliance on another person's audit report during the periods that the person actually has the shared accounting and common ownership with the other person and actually relies on the other person's audit report. Therefore, the proposed amendments to Regulation 4902 will provide some relief to some of the persons in the limited class described above. However, the proposed amendments will not benefit every person in the limited class described above, they will not have any impact on persons that are not part of the limited class described above, and the Board does not anticipate receiving a significant number of new requests for relief due to the proposed amendments.

As a result, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the enactment of the authorizing statutes has and will have on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 4902 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period. Also, based on these facts and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Regulation 4902 will neither create nor

eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 4902 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulation 4902 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 4902 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 4902**

4902. Relief from Liability.

(a) General. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

(1) Written advice given by the board under the conditions set forth in subdivision (b) below;
or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the board in a prior audit ~~of that person~~ under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those personsthat person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) Advice Provided in a Written Communication. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) Written Advice Provided in a Prior Audit. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

(1) Is engaged in the same line of business as the audited person,

(2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and

(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

(d) Annotations and Legal Rulings of Counsel. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above.

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) Trade or Industry Associations. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, Revenue and Taxation Code. Reference: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210, Revenue and Taxation Code.

Regulation History

Type of Regulation: Special Taxes and Fees

Regulation: 4902

Title: 4902, *Relief from Liability*

Preparation: Pamela Mash

Legal Contact: Pamela Mash

The proposed amendments to Regulation 4902, *Relief from Liability*, extend relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board to a person who relies on advice provided in a prior audit of a related person, under specific circumstances.

History of Proposed Regulation:

April 22-24, 2014	Public Hearing
March 7, 2014	OAL publication date; 45-day public comment period begins; Interested Parties mailing
February 25, 2014	Notice to OAL
December 17, 2013	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Special Tax and Fees Regulation 4902, *Relief from Liability*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on March 7, 2014, 46 days prior to the public hearing.

April 21, 2014

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

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

APRIL 22, 2014

ITEM F

PUBLIC HEARINGS

ITEM F3

PROPOSED ADOPTION OF AMENDMENTS TO SPECIAL TAXES AND
FEES REGULATION 4902, RELIEF FROM LIABILITY

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 Staff:

Pamela Mash
Tax Counsel
Legal Department

Bradley Heller
Tax Counsel IV
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 APRIL 22, 2014

4 ---oOo---

5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next item is F3,
7 Proposed Adoption of Amendments to Special Taxes and
8 Fees Regulation 4902, Relief from Liability.

9 MS. MASH: I'm Pamela Mash, along with
10 Bradley Heller from the Board's Legal Department.

11 Vote to adopt the proposed payments to
12 special taxes and fees Regulation 4902, relief from
13 liability.

14 There have been no comments received from
15 the -- regarding the proposed amendments.

16 Thank you.

17 MS. YEE: So move.

18 MR. HORTON: Moved by Member Yee. Second
19 by Member Steel.

20 Without objection, Members, such will be
21 the order.

22 ---oOo---

REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

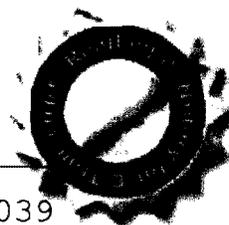
I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on April 22, 2014 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 3 constitute a complete and accurate transcription of the shorthand writing.

Dated: April 23, 2014

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter



2014 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, April 22, 2014

PUBLIC HEARINGS**F1 Property Taxes - State Assesseees' Presentations on the Valuation of State-Assessed Properties**

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, was available to answer question regarding presentations on the valuation of state-assessed properties.

Speaker: Peter W. Michaels, Law Offices of Peter Michaels representing State Assessed Gas/Electric, Intercounty Pipeline, Telephone and Railroad Companies

F2 Proposed Adoption of Amendments to Sales and Use Tax Regulation 1655, Returns, Defects and Replacements

Monica Silva, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments, which clarify the regulation's provisions regarding restitution and replacement under the "Lemon Law" apply to use tax under specified circumstances (Exhibit 4.7).

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

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 adopted the proposed amendments as recommended by staff.

F3 Proposed Adoption of Amendments to Special Taxes and Fees Regulation 4902, Relief from Liability

Pamela Mash, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments, which extend relief to a person who relies on advice provided in a prior audit of a related person, under specific circumstances (Exhibit 4.8).

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the proposed amendments as recommended by staff.

[G1] LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *G1.1 Ronald Avedisian, 434518 (AC)*.

Note: These minutes are not final until Board approved.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

150 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

March 7, 2014

To Interested Parties:

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 4902, *Relief from Liability***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, which implements, interprets, and makes specific provisions for relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board. The proposed amendments to Regulation 4902, subdivision (a), clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to “those persons.” The proposed amendments add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” The proposed amendments also add language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on April 22-24, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on April 22, 23, or 24, 2014. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 4902.

AUTHORITY

RTC section 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601

REFERENCE

RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

The Board administers special taxes and fees under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws). Each of the special tax and fee laws contains a statute, which defines "person" or incorporates a definition of "person." (See RTC §§ 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf. Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.) The special tax and fee laws also contain RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, which authorize the Board to grant a person relief under certain circumstances (hereafter, collectively referred to as the authorizing statutes).

Currently, under subdivision (a) of the authorizing statutes, if the Board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of special taxes and fees and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

Also, currently, subdivision (d) of the authorizing statutes generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

Regulation 4902 implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (b)(1), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for relief;
- Regulation 4902, subdivision (c) currently applies to audits, states that the "[p]resentation of [a] person's books and records for examination by an auditor shall be deemed to be a written request for the audit report," and prescribes the circumstances under which an audit report may be relied upon for relief; and
- Regulation 4902, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person."

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. Subdivision (e) currently provides that:

A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

As a result, a person cannot generally obtain relief by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief by relying on written advice the Board gave to the person's representative or trade or industry association under specified circumstances.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 4902

Need for Clarification

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Prior to the Board's adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with relief guidelines for all the special tax and fee programs administered by the Board's PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the relief provisions in Regulation 1705, *Relief From Liability*, because Regulation 1705 implements, interprets, and make specific RTC section 6596, which is substantially similar to the authorizing statutes. And, Regulation 4902 incorporates all of Regulation 1705's previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending relief to trade or industry association members when an association requests written advice on their behalf.

On February 5, 2003, the Board also adopted amendments to Regulations 1124, 1248, 1335, 1422, 2250, 2432, and 2570, which refer to the relief guidelines described in Regulation 4902. And, the Board adopted Regulations 2303, 3021, 3302, 3502, and 4105, which are all called "Relief from Liability" or "Relief From Liability," to provide specific regulations under the authorizing statutes in the Energy Resources Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Fee Collection Procedures Law, and the Cigarette and Tobacco Products Tax Law, respectively, that also refer to the relief guidelines in Regulation 4902.

During its October 23-25, 2012, Board meeting, the Board conducted a hearing regarding a sales and use tax appeal filed by a business entity (hereafter referred to as ABC). During the hearing, ABC indicated that it followed written advice provided during the Board's prior audit of another business entity (hereafter referred to as XYZ). ABC stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Also, records indicated that XYZ and ABC were related entities because XYZ owned more than 50 percent of ABC. Therefore, during the

hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for relief under RTC section 6596. In response to ABC's arguments, the Board referred the issue of whether relief from sales and use tax liabilities, under RTC section 6596, should only be available to the person who actually received the written advice from the Board or that person's legal or statutory successor under certain circumstances, such as those presented in ABC's appeal, to the Board's Business Tax Committee (BTC) for further development.

At its August 13, 2013, BTC Meeting, the Board voted to propose amendments to Regulation 1705 to extend relief, under RTC section 6596, to a person who relies on advice provided in a prior audit of a person with shared accounting and common ownership because the Board determined that the amendments are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the facts of ABC's appeal. During the same BTC meeting, the Board also recognized that there might be another issue if there are similar regulations to Regulation 1705 that apply to the special tax and fee programs and the other regulations are not amended to conform to the amendments to Regulation 1705. Therefore, the Board directed staff to recommend conforming amendments to any special tax and fee regulations that are similar to Regulation 1705. As a result, staff determined that Regulation 4902 was the only special tax and fee regulation that was similar to Regulation 1705 and staff drafted amendments to Regulation 4902 to incorporate the language contained in the proposed amendments to Regulation 1705, in order to ensure that the Board's programs are administered in a uniform manner.

December 17, 2013, BTC Meeting

Board staff subsequently prepared Formal Issue Paper 13-011, which recommended that the Board propose to add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with the audited person." The formal issue paper recommended that the Board propose to add the following language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person's audit report for relief:

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and

(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The formal issue paper also recommended that the Board amend Regulation 4902, subdivision (a), to clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to *that person*. And, during the December 17, 2013, BTC meeting, staff also recommended changing “that person” to “those persons” to make the amendments to subdivision (a) grammatically correct and fully consistent with a minor change to the proposed amendments to Regulation 1705 that staff would subsequently request and the Board would subsequently authorize later that same day.

Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13-011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the amendments to Regulation 1705 (discussed above). (The Board also subsequently adopted the proposed amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.)

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that relief, under the authorizing

statutes, can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The Board has performed an evaluation of whether the proposed amendments to Regulation 4902 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 4902 is the only regulation providing guidelines for relief under the authorizing statutes, and the proposed amendments make Regulation 4902 consistent with the amendments to Regulation 1705 discussed above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1705 or the proposed amendments to Regulation 1705.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 4902 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 4902 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 4902 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 4902 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at Pamela.Mash@boe.ca.gov, or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action

should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on April 22, 2014, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 4902 during the April 22-24, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 4902. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 4902 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 4902, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

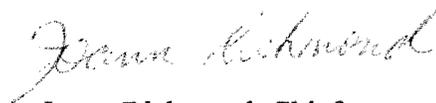
The Board may adopt the proposed amendments to Regulation 4902 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

March 7, 2014

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 4902, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 4902, *Relief from Liability***

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

Current Law

Sales and Use Tax

The State Board of Equalization (Board) administers California's sales and use tax. The Board's Sales and Use Tax Department is responsible for administering the Board's sales and use tax programs.

Revenue and Taxation Code (RTC) section 6005 defines the term "person" for purposes of the Sales and Use Tax Law (RTC § 6001 et seq.). RTC section 6596 (section 6596), subdivision (a), provides for relief from sales and use tax, interest, and penalty charges due on a transaction or activity if the Board determines that a person failed to file a timely return or pay the tax because the person reasonably relied on written advice from the Board (hereafter referred to as section 6596 relief). For section 6596 relief to apply, section 6596, subdivision (b), provides that the Board must find that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to sales and use tax and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to tax, or stated the conditions under which the activity or transaction is subject to tax;
- In reasonable reliance on the Board's written advice, the person did not charge sales tax reimbursement or collect use tax from his or her customers or pay a use tax on the described activity or transaction; and
- The liability for taxes due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

In addition, under section 6596, subdivision (c), a person requesting section 6596 relief is required to file with the Board a copy of the person's written request to the Board for advice, a copy of the written advice the Board provided in response, the person's statement under penalty of perjury setting forth the facts on which the person's request for relief is based, and any other information the Board requires. And, section 6596, subdivision (d), generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

California Code of Regulations, title 18, section (Regulation) 1705, *Relief From Liability*, implements, interprets, and makes specific the provisions of section 6596. As relevant here:

- Regulation 1705, subdivision (b)(1), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for section 6596 relief;
- Regulation 1705, subdivision (c), currently applies to audits, states that the "[p]resentation of [a] person's books and records for examination by an auditor shall be deemed to be a written request for the audit report," and prescribes the circumstances under which an audit report may be relied upon for section 6596 relief; and
- Regulation 1705, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person."

Also, as relevant here, subdivision (e) was added to Regulation 1705 in 1999 to explain the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for section 6596 relief. The first sentence of Regulation 1705, subdivision (e), which was included in the 1999 amendments, currently provides that "[a] trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation."

Special Taxes and Fees

The Board also administers a number of special taxes and fees, in addition to the sales and use tax. As relevant here, those special taxes and fees are administered under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws).

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Each of the special tax and fee laws have a corresponding statute to RTC section 6005, which defines "person" or incorporates a definition of "person."¹ Also, each of the special

¹ See RTC sections 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf.

tax and fee laws have a corresponding statute to section 6596, which authorizes the Board to grant a person relief from liability due to the person's reasonable reliance upon written advice from the Board.

Currently, under subdivision (a) of RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210 (hereafter referred to as the authorizing statutes), if the Board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of the special taxes and fees administered under the special tax and fee laws, and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

In addition, under subdivision (c) of the authorizing statutes, a person requesting relief is currently required to file with the Board a copy of the person's written request to the Board for advice, a copy of the written advice the Board provided in response, the person's statement under penalty of perjury setting forth the facts on which the person's request for relief is based, and any other information the Board requires. And, currently, subdivision (d) of the authorizing statutes generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

Regulation 4902, *Relief from Liability*, implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person;"
- Regulation 4902, subdivision (b), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for relief; and

Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.

- Regulation 4902, subdivision (c), currently applies to audits, states that the “[p]resentation of [a] person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report,” and prescribes the circumstances under which an audit report may be relied upon for relief.

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. And, Regulation 4902, subdivision (e), currently provides that “[a] trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.”

As a result, a person cannot generally obtain relief from special taxes and fees by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief from special taxes and fees by relying on written advice the Board gave to the person’s representative or trade or industry association under specified circumstances.

Proposed Amendments

Need for Clarification

Prior to the Board’s adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to section 6596 relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with section 6596 relief guidelines for all special tax and fee programs administered by the Board’s PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the section 6596 relief provisions in Regulation 1705 and incorporates all of Regulation 1705’s previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending section 6596 relief to trade or industry association members when an association requests written advice on their behalf.

On February 5, 2003, the Board also adopted amendments to Regulations 1124, 1248, 1335, 1422, 2250, 2432, and 2570, which refer to the guidelines for section 6596 relief described in Regulation 4902. And, the Board adopted Regulations 2303, 3021, 3302, 3502, and 4105, which are all called “Relief from Liability” or “Relief From Liability,” to provide specific section 6596 relief regulations under the authorizing statutes in the Energy Resources Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Fee Collection Procedures Law, and the Cigarette and Tobacco Products Tax Law, respectively, that also refer to the guidelines for section 6596 relief described in Regulation 4902.

During its October 23-25, 2012, Board meeting, the Board conducted a hearing regarding a sales and use tax appeal filed by a business entity (hereafter referred to as ABC). During the hearing, ABC indicated that it followed written advice provided during the Board's prior audit of another business entity (hereafter referred to as XYZ). ABC stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Also, records indicated that XYZ and ABC were related entities because XYZ owned more than 50 percent of ABC. Therefore, during the hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for section 6596 relief. In response to ABC's arguments, the Board referred the issue of whether section 6596 relief from sales and use tax liabilities should only be available to the person who actually received the written advice from the Board or that person's legal or statutory successor under certain circumstances, such as those presented in ABC's appeal, to the Board's Business Tax Committee (BTC) for further development.

At its August 13, 2013, BTC meeting, the Board voted to propose amendments to Regulation 1705 to extend section 6596 relief to a person who relies on advice provided in a prior audit of a person with shared accounting and common ownership because the Board determined that the amendments are reasonably necessary for the specific purpose of addressing the issue presented by the facts of ABC's appeal. During the same meeting, the Board also recognized that there might be another issue (or problem within the meaning of Government Code section 11346.2, subdivision (b)(1)) if there are similar regulations to Regulation 1705 that apply to the special tax and fee programs and the other regulations are not amended to conform to the amendments to Regulation 1705. Therefore, the Board directed staff to recommend conforming amendments to any special tax and fee regulations that are similar to Regulation 1705. As a result, staff determined that Regulation 4902 was the only special tax and fee regulation that was similar to Regulation 1705 and staff drafted amendments to Regulation 4902 to incorporate the language contained in the proposed amendments to Regulation 1705, in order to ensure the Board's programs are administered in a uniform manner.

December 17, 2013, BTC Meeting

Board staff subsequently prepared Formal Issue Paper 13-011, which recommended that the Board propose to add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with the audited person." The formal issue paper recommended that the Board propose to add the following language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person's audit report for relief:

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The formal issue paper also recommended that the Board amend Regulation 4902, subdivision (a), to clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to *that person*. And, during the December 17, 2013, BTC meeting, staff also recommended changing “that person” to “those persons” to make the amendments to subdivision (a) grammatically correct and fully consistent with a minor change to the proposed amendments to Regulation 1705 that staff would subsequently request and the Board would subsequently authorize later that same day.

Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13-011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary for the specific purpose of addressing the issue (or problem) presented by the amendments to Regulation 1705 (discussed above).²

² The Board subsequently adopted the amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that section 6596 relief can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The adoption of the proposed amendments to Regulation 4902 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 4902.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-011, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its December 17, 2013, BTC meeting in deciding to propose the amendments to Regulation 4902 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 4902 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 4902 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 4902 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

As previously explained, subdivision (c) of the authorizing statutes currently requires a person requesting section 6596 relief from a special tax or fee liability due to the person's reasonable reliance on written advice from the Board to file with the Board a copy of the person's written request to the Board for advice, a copy of the written advice the Board provided in response, the

person's statement under penalty of perjury setting forth the facts on which the person's request for relief is based, and any other information the Board requires.

As previously explained, the proposed amendments to Regulation 4902:

- Clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with the audited person";
- Clarify that written advice provided in an audit may be relied upon by the person audited "or a person with shared accounting and common ownership with the audited person" or by a legal or statutory successor to "those persons";
- Clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person; and
- Require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person's audit report for relief.

As a result, the proposed amendments will permit some additional persons to qualify for relief, and choose to incur any costs associated with requesting relief under subdivision (c) of the authorizing statutes. However, the proposed amendments do not require any person to rely on another person's audit report or file a request for relief under the authorizing statutes. Therefore, the proposed amendments do not impose any costs on any persons, including businesses.

In addition, there is a limited class of persons that will actually have the shared accounting and common ownership with one or more other persons described in the proposed amendments to Regulation 4902. And, each person in the limited class will only be eligible for relief due to the person's reliance on another person's audit report during the periods that the person actually has the shared accounting and common ownership with the other person and actually relies on the other person's audit report. Therefore, the proposed amendments to Regulation 4902 will provide some relief to some of the persons in the limited class described above. However, the proposed amendments will not benefit every person in the limited class described above, they will not have any impact on persons that are not part of the limited class described above, and the Board does not anticipate receiving a significant number of new requests for relief due to the proposed amendments.

As a result, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the enactment of the authorizing statutes has and will have on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 4902 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period. Also, based on these facts and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Regulation 4902 will neither create nor

eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 4902 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulation 4902 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 4902 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 4902**

4902. Relief from Liability.

(a) General. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

- (1) Written advice given by the board under the conditions set forth in subdivision (b) below;
or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the board in a prior audit ~~of that person~~ under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those persons~~that person~~.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) Advice Provided in a Written Communication. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) Written Advice Provided in a Prior Audit. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

(1) Is engaged in the same line of business as the audited person,

(2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and

(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

(d) Annotations and Legal Rulings of Counsel. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above.

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) Trade or Industry Associations. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, Revenue and Taxation Code. Reference: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210, Revenue and Taxation Code.

Regulation History

Type of Regulation: Special Taxes and Fees

Regulation: 4902

Title: 4902, *Relief from Liability*

Preparation: Pamela Mash

Legal Contact: Pamela Mash

The proposed amendments to Regulation 4902, *Relief from Liability*, extend relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board to a person who relies on advice provided in a prior audit of a related person, under specific circumstances.

History of Proposed Regulation:

April 22-24, 2014	Public Hearing
March 7, 2014	OAL publication date; 45-day public comment period begins; Interested Parties mailing
February 25, 2014	Notice to OAL
December 17, 2013	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA