

# *California Energy Resources Surcharge Regulations*

## *Issued Pursuant to Part 19, Division 2 Revenue and Taxation Code*

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# *FOREWORD*

This publication contains regulations that apply to the California Energy Resources Surcharge Law. The regulations have been adopted by the State Board of Equalization and are designed to implement, interpret, or make specific provisions of the law. Board regulations are revised periodically.

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*Note: This publication contains the applicable regulations in effect when the publication was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, the latter is controlling.*

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# ARTICLE 1. COLLECTION OF SURCHARGE BY ELECTRIC UTILITIES

## Regulation 2300. COLLECTION OF SURCHARGE.

References: Sections 40019, 40019.1, 40020, and 40045, Revenue and Taxation Code.

Every electric utility making sales of electrical energy to consumers in this state shall collect the surcharge from each consumer other than a consumer that is an electric utility or is exempt under Chapter 3, Part 19, of the Revenue and Taxation Code, at the time it collects its billing from the consumer for the electrical energy sold. A consumer is any person receiving electrical energy furnished by an electric utility and includes a person receiving electrical energy for redistribution for the use of his tenants.

An electric utility may collect the surcharge on sales of electrical energy to another electric utility if the purchasing utility certifies in writing to the selling utility that all purchased electrical energy will be consumed by it in such manner as to be subject to the surcharge, that all self-generated electrical energy will be sold to other electrical utilities without collection of the surcharge, and that purchased electrical energy will not be pooled with self-generated electrical energy.

For the purpose of the proper administration of this part, it shall be presumed that electrical energy sold by an electric utility in this state to other than an electric utility is consumed by the purchaser in this state until the contrary is established.

Whenever the rate of the surcharge is increased or decreased, the duty to collect the surcharge from a consumer at such new rate shall commence with the first regular billing period applicable to that consumer which begins on or after the effective date of the change of rate.

The surcharge required to be collected by the electric utility from the consumer shall be added to the charges to the consumer for the electrical energy sold. The amount of the surcharge may be stated separately. If the electric utility does not separately state the amount of the surcharge, the electric utility shall print on the billing a notice to the effect that the charges include energy resources surcharge computed at (applicable rate) mil per kilowatt-hour.

History: Adopted December 18, 1974, effective January 26, 1975.

Amended May 4, 1978, effective June 21, 1978. Deleted original third and fifth paragraphs (obsolete). Added new second and fourth paragraphs to conform to Stats. 1977 (AB 1167, Chap. 624).

## Regulation 2301. DUE AND PAYABLE DATES.

References: Sections 40051, 40052, and 40053, Revenue and Taxation Code.

The surcharges required to be collected by electric utilities are due quarterly on or before the last day of the month next succeeding each calendar quarter.

Amounts of surcharge due for which a billing for the electrical energy is issued by an electric utility to the consumer prior to the close of a calendar quarter are payable with the surcharge return for that quarter.

Any amounts of the surcharge required to be paid or collected that are not billed in the ordinary course of the billings by an electric utility may be determined by the Board against the utility or the consumer, or both.

History: Adopted December 18, 1974, effective January 26, 1975.

## Regulation 2302. SURCHARGE COLLECTIONS A DEBT.

References: Sections 40021 and 40022, Revenue and Taxation Code.

The surcharge required to be collected by the electric utility, and any amount unreturned to the consumer which is not a surcharge but was collected from the consumer as representing a surcharge, constitute debts owed by the electric utility to this state.

Any amounts collected by an electric utility from a consumer on account of the purchase of electrical energy the consumption of which is subject to the surcharge shall be applied proportionately between the liability of the consumer on account of the purchase of the electrical energy and the liability of the consumer for the surcharge. An electric utility

may not apply partial payments by a consumer preferentially to the amount owing the utility for electrical energy, even though the partial payment is in an amount equal to the charge for such energy.

History: Adopted December 18, 1974, effective January 26, 1975.

### Regulation 2303. RELIEF FROM LIABILITY.

Reference: Section 40104, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the energy resources surcharge, including any penalties and interest added to the surcharge, 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 written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

History: Adopted February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite. Common administrative provisions for special taxes programs have been consolidated in Chapter 9.9 Special Taxes Administration. Requirements for relief from liability can be found at the referenced cite.

### Regulation 2304. WORTHLESS ACCOUNTS.

Reference: Section 40023, Revenue and Taxation Code.

An electric utility is relieved from liability to collect the surcharge insofar as the base upon which the surcharge is imposed is represented by accounts which have been found to be worthless and charged off in accordance with generally accepted accounting principles. If the electric utility has previously paid the amount of the surcharge, it may take as a deduction on its return the amount found to be worthless and charged off. If such accounts are thereafter collected in whole or in part, the surcharge so collected shall be paid with the first return filed after such collection.

Electric utilities may charge off their worthless accounts on the basis of their experience ratio provided the write-off percentage includes an allowance for collection on worthless accounts made subsequent to the write-off.

History: Adopted December 18, 1974, effective January 26, 1975.

## ARTICLE 2. EXEMPTIONS AND EXCLUSIONS FROM SURCHARGE

### Regulation 2315. EXEMPTIONS AND EXCLUSIONS.

Reference: Section 40041, Revenue and Taxation Code.

The consumption of electrical energy which this state is prohibited from taxing under the Constitution of the United States or under the Constitution of this state is exempt from the surcharge. The surcharge does not apply to the consumption of electrical energy by foreign governments or by any state of the United States other than the State of California. The surcharge applies to the consumption of purchased electrical energy by the State of California, by any county, city and county, municipality, district, public agency, or subdivision of this state unless otherwise exempt. The surcharge applies to the consumption of purchased electrical energy by charitable, religious, scientific, or educational corporations, funds, or foundations, whether or not the organizations qualify for exemption from property tax or franchise tax.

History: Adopted December 18, 1974, effective January 26, 1975.

### Regulation 2316. SPECIFIC APPLICATIONS.

Reference: Section 40041, Revenue and Taxation Code.

The surcharge does not apply to the consumption of electrical energy by the following persons:

(1) The United States, its unincorporated agencies and instrumentalities;

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States;

(3) The American National Red Cross, its chapters and branches;

(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, Article XIII, Section 28;

(5) Banks, including national banking associations, located within the limits of this state. The exemption for state banks and national banking associations has been repealed beginning with the bank's income year for Bank and Corporation Tax purposes commencing on or after January 1, 1981. The surcharge shall be collected by the electric utility from each state bank and each national banking association beginning with the first regular billing period applicable to that bank which commences on or after the date the bank becomes subject to the surcharge.

(6) Enrolled Indians purchasing and consuming electrical energy on Indian reservations;

(7) Career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States;

(8) Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.

History: Adopted December 18, 1974, effective January 26, 1975.

Amended January 9, 1980, effective February 29, 1980. In (5), changed semicolon to period after "this state," and added the remainder of the paragraph.

### Regulation 2317. CONSUMPTION BY ELECTRIC UTILITIES.

References: Sections 40043 and 40044, Revenue and Taxation Code.

The consumption by an electric utility of self-generated electrical energy is not subject to the surcharge. The consumption by an electric utility of purchased electrical energy that is used directly, lost by dissipation, or unaccounted for in accordance with generally accepted accounting principles by the electric utility in the process of generation, transmission, and distribution of electrical energy is exempt from the surcharge. However, the surcharge applies to the consumption by electric utilities of purchased electrical energy for any other purpose. (The term "consumption" does not include the receiving of purchased electrical energy by an electric utility for resale.)

When an electric utility purchases electrical energy and pools in its system the energy with electrical energy generated by it, the consumption of electrical energy in this state from the pool by the utility during any quarter shall be deemed to be a consumption of energy generated by it to the extent that the kilowatt-hours of the electrical energy generated by it during the quarter exceed the kilowatt-hours consumed by the electric utility. When an electric utility consumes electrical energy purchased from another electric utility, which has not been pooled in its system with electrical energy generated by it, the surcharge will apply to the consumption of the purchased electrical energy, unless the consumption is otherwise exempt.

History: Adopted December 18, 1974, effective January 26, 1975.

## ARTICLE 3. REGISTRATION, RETURNS, AND REPORTS

### Regulation 2329. REGISTRATION.

Reference: Section 40035, Revenue and Taxation Code.

Every electric utility selling electric energy for consumption in this state shall register with the Board upon a form prescribed by the Board and shall set forth the name under which the utility transacts or intends to transact business, the principal office address and the mailing address of the utility, and such other information as the Board may require.

History: Adopted December 18, 1974, effective January 26, 1975.

## Regulation 2330. ELECTRIC UTILITY RETURNS.

References: Sections 40061 and 40062, Revenue and Taxation Code.

Every electric utility shall file an electrical energy surcharge return on a form prescribed by the Board showing the number of kilowatt-hours of electrical energy generated, purchased, and used together with deductions claimed and the amount of surcharge due for the preceding quarterly period. The return shall be signed by a responsible officer or agent of the electric utility and shall be accompanied by a payment for the surcharge due.

The return and the payment shall be filed quarterly on or before the last day of the month next succeeding each calendar quarter. Amounts of surcharge due for which a billing for the electrical energy is issued by an electric utility to the consumer prior to the close of a calendar quarter are payable with the surcharge return for that quarter.

History: Adopted December 18, 1974, effective January 26, 1975.

## Regulation 2331. CONSUMER RETURNS.

References: Sections 40063 and 40064, Revenue and Taxation Code.

Every person purchasing electrical energy the consumption of which is subject to the surcharge and who has not paid the surcharge billed and required to be collected by an electric utility shall file a return with the Board on or before the last day of the month following each calendar quarter for the preceding quarterly period. The return shall be filed in such form as the Board may prescribe and shall be filed by the person required to file the return or by his duly authorized agent. The person required to file a return shall deliver the return together with a remittance of the amount of the surcharge payable to the office of the Board.

The Board may require the filing of returns by consumers in circumstances where it finds that consumers' liabilities are not being included in the return of an electric utility or it determines that consumer returns are necessary for the efficient administration of the electrical energy surcharge. The Board may require consumers' returns to cover periods other than calendar quarters.

History: Adopted December 18, 1974, effective January 26, 1975.

## Regulation 2332. REPORTS

References: Section 40171 and 40175, Revenue and Taxation Code.

Every electric utility registered with the Board shall annually file a report with the Board in such form as the Board may prescribe setting forth its estimate of the kilowatt-hours it will sell and use to which the surcharge will apply during the period September 1 through August 31 following the date of the estimate. The report shall be filed no later than June 30 of each year. In addition, every electric utility registered with the Board shall annually file a report with the Board in such form as the Board may prescribe setting forth its estimate of the kilowatt-hours it will sell and use to which the surcharge will apply during the period March 1 through the last day of February following the date of the estimate. This report shall be filed no later than December 31 of each year.

In addition to any other reports or returns required, the Board may require additional, supplemental, or other reports from electric utilities, consumers, and any other person generating, purchasing, transmitting, distributing, or consuming electrical energy, including verification of the information to be given on and the times for filing of such reports. The Board may require reports of estimates of future availability, generation, sales, and consumption of electrical energy from electric utilities and other persons as it may deem necessary.

History: Adopted December 18, 1974, effective January 26, 1975.

Amended August 1, 1979, effective September 16, 1979. Deleted commencing date in second sentence. Added third sentence describing annual report due December 31.

### Regulation 2333. PAYMENT BY ELECTRONIC FUNDS TRANSFER.

Reference: Sections 40067 and 40069, Revenue and Taxation Code.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

History: Adopted March 22, 2005, effective July 7, 2005.

## ARTICLE 4. RECORDS

### Regulation 2343. RECORDS.

References: Sections 40172 and 40173, 40174, and 40175, Revenue and Taxation Code.

**(a) GENERAL.** A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulation, Title 18, Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), a taxpayer shall comply with the following requirements.

Every electric utility engaged in generating, purchasing, transmitting, distributing, consuming, or selling electrical energy in this state shall keep and maintain adequate and complete records showing:

(1) The electrical energy generated, purchased, transmitted, distributed, consumed, and sold in this state.

(2) Meter readings and other records as may be necessary for the accurate determination of the kilowatt-hours of electrical energy generated, purchased, consumed, or sold in this state. For sales or use measured by a basis other than metering, the records shall show the other measurement and the method of computing the kilowatt-hours of electrical energy so sold or used.

(3) All deductions allowed by law and claimed in filing returns, except for the electrical energy used or lost in generation, transmission, and/or distribution.

(4) The methods and amounts used in computing its reports of estimates of future availability, generation, sales, and consumption of electrical energy.

History: Adopted December 18, 1974, effective January 26, 1975.

Amended February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite. Common administrative provisions for special taxes programs have been consolidated in Chapter 9.9 Special Taxes Administration. General recordkeeping requirements can be found at the cite referenced in subdivision (a). Subdivision (b) has been added to identify additional recordkeeping requirements.

## CHAPTER 9.9 SPECIAL TAXES ADMINISTRATION - MISCELLANEOUS

### Regulation 4901. RECORDS.

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

**(a) DEFINITIONS.**

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

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

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

**(C)** Ballast Water Management Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;

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

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

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

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

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

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

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

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

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

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

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

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

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

**(Q)** Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355.

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

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

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

(5) "Machine-sensible record" — a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

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

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

**(b) GENERAL.**

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

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

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

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

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

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

(1) General.

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

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

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

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

**(A)** Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., exempt), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the board to interpret the coded information.

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

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

(4) BUSINESS PROCESS INFORMATION.

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

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

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

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

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

**(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

**(g) HARDCOPY RECORDS.**

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

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

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

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

**(h) ALTERNATIVE STORAGE MEDIA.**

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

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

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

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

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

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

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

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

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

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

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

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

1. document understandings reached with the board, which may include, but is not limited to, any one or more of the following issues:

   a. the conversion of files created on an obsolete computer system;

   b. restoration of lost or damaged files and the actions to be taken;

   c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

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

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

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

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

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

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

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

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

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

History: Adopted February 5, 2003, effective May 28, 2003.

## 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 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. 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.

**(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.

## Regulation 4905. PAYMENT BY ELECTRONIC FUNDS TRANSFER.

Reference: Sections 7659.9, 7659.92, 8760, 8762, 30190, 30192, 32260, 32262, 40067, 40069, 41060, 41062, 43170, 43172, 45160, 45162, 46160, 46162, 50112.7, 50112.9, 55050, 55052, 60250, and 60252, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer.

(2) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(3) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of tax or fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(4) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(5) “Federal Reserve Wire Transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Revenue and Taxation Code sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250 may be made by Federal Reserve Wire Transfer only if payment cannot, for good cause, be made according to subdivision (a)(1) of this regulation, and the use of Federal Reserve Wire Transfer is preapproved pursuant to subdivision (g) of this regulation. Banking costs incurred for the Federal Reserve Wire Transfer transaction charged to the person and to the state shall be paid by the person originating the transaction.

**(b) PARTICIPATION.**

(1) MANDATORY PARTICIPATION. Persons with an estimated monthly tax or fee liability of twenty thousand dollars ($20,000) or more under the applicable part of the Revenue and Taxation Code, are required to remit amounts due by electronic funds transfer under procedures set forth in this regulation. To identify mandatory participants, the Board shall conduct a periodic review of all persons with licenses, permits, or other authorization under sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250. The review is performed by calculating an average monthly tax or fee liability for a twelve-month period. Persons whose average monthly tax or fee liability equals or exceeds twenty thousand dollars will be required to remit payments by electronic funds transfer. If a person did not engage in a covered activity until after the beginning of the designated twelve-month review period, then the monthly tax or fee liability will be calculated based upon the number of months in which covered activities occurred (for example, in a calendar year review period, if the person obtains a permit or license and begins operations for which a tax or fee may be imposed in May, the total tax or fee liability would be divided by eight to determine the average monthly tax or fee liability since there are eight months remaining in the evaluation period). Persons registering to report and pay a tax or fee for the first time, except certain successors, will not be required to participate in the electronic funds transfer program until a review is conducted.

A successor will be regarded as having an estimated tax or fee liability of twenty thousand dollars ($20,000) or more per month when the monthly tax or fee liability of the predecessor equaled or exceeded twenty thousand dollars per month or the predecessor was a mandatory participant in the electronic funds transfer program. If the successor purchases a portion of a business that is required to participate in the mandatory electronic funds transfer program (e.g. a multiple outlet business that only sells some, but not all of its locations), the average monthly tax or fee liability of the purchased business will be computed to determine if the successor meets the threshold to be identified as a mandatory participant in the electronic funds transfer program.

After review, if a person drops below the threshold for mandatory participation, the Board shall provide notification, in writing, that the status has been changed from mandatory participation to voluntary participation in the electronic funds transfer program. If, at that time, a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until the taxpayer or feepayer is notified by the Board, in writing, of an effective date of withdrawal from the program. Any person who fails to comply with the mandatory participation requirements under this section shall be liable for a penalty as provided under the applicable Revenue and Taxation Code sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250.

(2) VOLUNTARY PARTICIPATION. Any person not meeting the criteria for mandatory participation set forth in subdivision (b)(1) of this regulation may participate in the program on a voluntary basis. A person must register with the Board prior to participation. If a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until notified by the Board, in writing, of an effective date of withdrawal from the program.

**(c) DATE OF PAYMENT.** Payment is deemed complete on the date the electronic funds transfer is initiated, if the settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

**(d) FILING OF RETURNS.** In addition to a tax or fee payment made by electronic funds transfer, a return must be filed on or before the due date. Any person who fails to comply with this provision shall be subject to penalty charges as provided under Revenue and Taxation Code sections 7659.9(d), 8760(d), 30190(d), 32260(d), 40067(d), 41060(d), 43170(d), 45160(d), 46160(d), 50112.7(d), 55050(d), and 60250(d).

**(e) FAILURE TO PAY BY ELECTRONIC FUNDS TRANSFER.** Any person required to pay tax or fee by electronic funds transfer must continue to do so until the Board advises them otherwise in writing. Any person required to pay taxes or fees by electronic funds transfer, as set forth in subdivision (b)(1), who does not pay through electronic funds transfer but uses another means (e.g., pay by check), will be assessed a penalty as provided by Revenue and Taxation Code sections 7659.9(e), 8760(e), 30190(e), 32260(e), 40067(e), 41060(e), 43170(e), 45160(e), 46160(e), 50112.7(e), 55050(e), and 60250(e).

**(f) ZERO AMOUNT DUE.** When no tax is due for a given period, a zero dollar transaction must be made by electronic funds transfer or the Board must receive written notification stating that no tax is due for that period.

**(g) EMERGENCIES.** In emergency situations, a Federal Reserve Wire Transfer transaction may be used to transmit a payment. A Federal Reserve Wire Transfer is an electronic payment system used by federal reserve banks to transfer funds instantaneously. Generally, this method of payment is not approved for recurring transactions. Authorization must be received from the Board prior to making a payment by Federal Reserve Wire Transfer. The person who originates the transfer shall be responsible for any fees incurred in paying by a Federal Reserve Wire Transfer transaction.

History: Adopted March 22, 2005, effective July 7, 2005.

Amended January 31, 2006, effective April 20, 2006. Revised language in section (b)(2) in conformity with Assembly Bill 1765 (Stats. 2005, Ch. 519) to delete the requirement that a person voluntarily participating in the EFT program must do so for a minimum of one year.

## BOARD FIELD OFFICES

| CITY | AREA CODE | NUMBER | CITY | AREA CODE | NUMBER | CITY | AREA CODE | NUMBER |
|---|---|---|---|---|---|---|---|---|
| Bakersfield | 661 | 395-2880 | Redding | 530 | 224-4729 | Van Nuys | 818 | 904-2300 |
| Chula Vista | 619 | 409-7440 | Riverside | 951 | 680-6400 | Ventura | 805 | 677-2700 |
| Culver City | 310 | 342-1000 | Sacramento | 916 | 227-6700 | West Covina | 626 | 480-7200 |
| El Centro | 760 | 352-3431 | Salinas | 831 | 443-3003 | | | |
| Eureka | 707 | 445-6500 | San Diego | 619 | 525-4526 | **Offices for Out-of-State Accounts** | | |
| Fresno | 559 | 248-4219 | San Francisco | 415 | 356-6600 | Chicago, IL | 312 | 201-5300 |
| Laguna Hills | 949 | 461-5711 | San Jose | 408 | 277-1231 | Houston, TX | 281 | 531-3450 |
| Long Beach | 562 | 901-2483 | San Marcos | 760 | 510-5850 | New York, NY | 212 | 697-4680 |
| Norwalk | 562 | 466-1694 | Santa Ana | 714 | 558-4059 | Sacramento, CA | 916 | 227-6600 |
| Oakland | 510 | 622-4100 | Santa Rosa | 707 | 576-2100 | | | |
| Rancho Mirage | 760 | 346-8096 | Suisun City | 707 | 428-2041 | | | |

## TO ORDER BOARD PUBLICATIONS

To order copies of publications, forms, and regulations, you may:

**Call or visit a Board office.** If you plan to visit, please call ahead to make sure they have a copy in stock.

**Call our toll-free number:** 800-400-7115. Leave a recorded request 24 hours a day for a specific form, publication, or regulation, or, during working hours, talk to a representative.

TDD/TTY 800-735-2929

**Use our fax-back service.** Available 24 hours a day through the toll-free number. A recorded message will describe which types of documents are available and explain how you can have them sent to you by fax.

**Use the Internet.** Use your computer to download a publications order form or certain publications.
Enter: www.boe.ca.gov

## WRITTEN TAX ADVICE

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction if the Board determines that you reasonably relied on written advice from the Board regarding the transaction. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstance of the transaction.

You may also request written advice regarding a particular activity or transaction. Your request should be in writing and fully describe the facts and circumstances of the activity in question. Please mail your request to the following address: State Board of Equalization, Excise Taxes Division, P.O. Box 942879, Sacramento, CA 94279-0056

## TAXPAYERS' RIGHTS ADVOCATE OFFICE

If you have been unable to resolve a disagreement with the Board, or if you would like to know more about your rights under the law, contact the Taxpayers' Rights Advocate for help:

| | | |
|---|---|---|
| Taxpayers' Rights Advocate, MIC:70 | 888-324-2798 | toll-free phone |
| State Board of Equalization | 916-324-2798 | phone |
| PO Box 942879 | 916-323-3319 | fax |
| Sacramento, CA 94279-0070 | | |

## TAX EVASION HOTLINE

Tax evasion hurts businesses that are paying their fair share. If you wish to report a case of suspected tax evasion, call our toll-free hotline at 888-334-3300, Monday through Friday, 8:00 a.m. – 5:00 p.m. (Pacific time), except State holidays.

*State Board of Equalization*
*450 N Street*
*PO Box 942879*
*Sacramento, CA 94279-0056*