



STATE OF CALIFORNIA

## STATE BOARD OF EQUALIZATION

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State Controller

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Executive Director

July 31, 2015

Dear Interested Party:

Enclosed is the Second Discussion Paper on Sales and Use Tax Regulation 1698, *Records* and Special Taxes Regulation 4901, *Records*. Before the issue is presented at the Board's October 27, 2105 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, a second interested parties meeting is scheduled as follows:

**August 11, 2015  
Room 122 at 10:00 a.m.  
450 N Street, Sacramento, CA**

If you would like to participate by teleconference, call 1-888-808-6929 and enter access code 7495412. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at [Susanne.Buehler@boe.ca.gov](mailto:Susanne.Buehler@boe.ca.gov) by August 26, 2015. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee staff member Ms. Tracy McCrite at 1-916-323-0536, who will be leading the meeting.

Sincerely,

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

SB:tmc

Enclosures

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

Honorable Jerome E. Horton, Chairman, Third District  
Senator George Runner (Ret.), Vice Chair, First District  
Honorable Fiona Ma, CPA, Member, Second District  
Honorable Diane L. Harkey, Member, Fourth District  
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)  
Ms. Kari Hammond, Board Member's Office, Third District  
Mr. David Hunter, Board Member's Office, Third District  
Ms. Shellie Hughes, Board Member's Office, Third District  
Mr. Sean Wallentine, Board Member's Office, First District  
Mr. Lee Williams, Board Member's Office, First District  
Mr. Alan Giorgi, Board Member's Office, First District  
Mr. Brian Wiggins, Board Member's Office, First District  
Mr. Jim Kuhl, Board Member's Office, Second District  
Ms. Kathryn Asprey, Board Member's Office, Second District  
Mr. John Vigna, Board Member's Office, Second District  
Mr. Tim Morland, Board Member's Office, Second District  
Ms. Lizette Mata, Board Member's Office, Second District  
Mr. Russell Lowery, Board Member's Office, Fourth District  
Mr. Ted Matthies, Board Member's Office, Fourth District  
Mr. Clifford Oakes, Board Member's Office, Fourth District  
Ms. Lynne Kinst, Board Member's Office, Fourth District  
Mr. Ramon Salazar, State Controller's Office (MIC 73)  
Ms. Cynthia Bridges (MIC 73)  
Mr. Randy Ferris (MIC 83)  
Mr. David Gau (MIC 101)  
Ms. Lynn Bartolo (MIC 43)  
Ms. Debbie Kalfsbeek (MIC 62)  
Mr. Todd Gilman (MIC 70)  
Mr. Wayne Mashihara (MIC 47)  
Mr. Kevin Hanks (MIC 49)  
Mr. Mark Durham (MIC 67)  
Mr. Robert Tucker (MIC 82)  
Mr. Jeff Vest (MIC 85)  
Mr. Jeff Angeja (MIC 85)  
Mr. David Levine (MIC 85)  
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Ms. Pam Mash (MIC 82)  
Mr. Richard Parrott (MIC 57)  
Ms. Kirsten Stark (MIC 50)  
Mr. Marc Alviso (MIC 101)  
Mr. Chris Lee (MIC 101)  
Ms. Laureen Simpson (MIC 70)  
Ms. Karina Magana (MIC 47)  
Mr. Ronil Dwarka (MIC 67)  
Ms. Tracy McCrite (MIC 50)

## **SECOND DISCUSSION PAPER**

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

#### **Issue**

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

#### **Staff Recommendation**

Staff recommends amending Regulations 1698 and 4901, as set forth in Exhibit 1 and Exhibit 2, to:

- Define electronic cash register.
- Include an example in subdivision (i) further explaining record retention requirements.
- Update the term machine-sensible records to electronic records throughout the regulations.
- Change the format of the examples provided in subdivision (c)(2)(A).
- Add PDF files as acceptable image-only storage media in subdivision (h) of both regulations.
- Include "other media used in electronic imaging" in subdivision (h) of Regulation 1698 to be consistent with Regulation 4901.

#### **Background**

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

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

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

## SECOND DISCUSSION PAPER

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

#### Discussion

Staff held a meeting with interested parties on June 17, 2015 to discuss proposed amendments to Regulation 1698 and the initial discussion paper, which provided the background for and explained the amendments. Following the meeting, staff received a submission from Mr. Robert Jones of Collins, Mason & Company LLP. Mr. Jones proposed that each occurrence of "microfilm or microfiche" in the regulation be replaced with "microfilm, microfiche, or pdf." Staff addresses this suggestion in the section below.

#### Electronic Imaging

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

When preparing the second discussion paper, staff determined that Special Taxes Regulation 4901, *Records*, mirrors Regulation 1698 for implementing and making specific the record keeping requirements for Special Taxes programs. Regulation 4901 contains language in subdivision (h)(1) and (h)(2) that states "microfilm, microfiche or other media used in electronic imaging." As such, staff proposes to amend Regulation 1698 subdivisions (a)(4), (h)(1), and (h)(2) to replace each occurrence of "microfilm or microfiche" with "microfilm, microfiche, PDF files, or other media used in electronic imaging," and add "PDF files" in subdivisions (a)(5), (h)(1), and (h)(2) of Regulation 4901. Furthermore, staff proposes to mirror the additional amendments to Regulation 1698, as discussed below, in Regulation 4901 to ensure consistency among the Sales and Use Tax and Special Taxes regulations.

#### Definitions

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

#### Record Retention

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

## **SECOND DISCUSSION PAPER**

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

#### Regulation 4901

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

#### Other Amendments

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

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

### **Summary**

Staff remains open to any comments, suggestions, and input from interested parties on this issue. Staff invites interested parties to participate in the interested parties meeting scheduled for August 11, 2015. The deadline for interested parties to provide written responses to this discussion paper is August 26, 2015.

Prepared by the Tax Policy Division, Sales and Use Tax Department  
Current as of 07/23/2015

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

## REGULATION 1698. RECORDS.

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

### (a) DEFINITIONS.

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

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

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

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

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

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

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

### (b) GENERAL.

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

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

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

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

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

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

**(1) GENERAL.**

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

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

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

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

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

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

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

8. shipping detail.

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

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

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

(4) BUSINESS PROCESS INFORMATION.

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

(B) The taxpayer shall be capable of demonstrating:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(g) HARDCOPY RECORDS.**

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

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

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

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

**(h) ALTERNATIVE STORAGE MEDIA.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. the conversion of files created on an obsolete computer system;
- b. restoration of lost or damaged files and the actions to be taken;
- c. use of taxpayer computer resources, and

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

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

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

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

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

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

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

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

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

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

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

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

## REGULATION 4901. RECORDS.

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

### (a) DEFINITIONS.

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

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

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

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

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

(~~E~~C) Childhood Lead Poisoning Prevention Fee, Health and Safety Code ~~S~~section 105310; Revenue and Taxation Code ~~S~~sections 43001–43651;

(~~F~~D) Cigarette and Tobacco Products Tax, Revenue and Taxation Code ~~S~~sections 30001–30481;

(~~G~~E) Diesel Fuel Tax, Revenue and Taxation Code ~~S~~sections 60001–60709;

(~~H~~F) Emergency Telephone Users Surcharge, Revenue and Taxation Code ~~S~~sections 41001–41176;

(~~I~~G) Energy Resources Surcharge, Revenue and Taxation Code ~~S~~sections 40001–40216;

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

(~~J~~I) Hazardous Substances Tax, Health and Safety Code ~~S~~sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code ~~S~~sections 43001–43651;

(~~K~~J) Integrated Waste Management Fee, Public Resources Code ~~S~~sections 40000–48008; Revenue and Taxation Code ~~S~~sections 45001–45984;

(~~K~~I) Motor Vehicle Fuel Tax, Revenue and Taxation Code ~~S~~sections 7301–8526;

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

(~~N~~L) Occupational Lead Poisoning Prevention Fee, Health and Safety Code ~~S~~section 105190; Revenue and Taxation Code ~~S~~sections 43001–43651;

(~~O~~M) Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code ~~S~~sections 46001–46751;

(~~P~~N) Underground Storage Tank Maintenance Fee, Revenue and Taxation Code ~~S~~sections 50101–50162;

(~~Q~~O) Use Fuel Tax, Revenue and Taxation Code ~~S~~sections 8601–9355;

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

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

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

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

(~~3~~4) "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.

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

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

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

(~~6~~7) "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~~8) "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~~Electronic records are considered records under Revenue and Taxation Code ~~S~~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~~ELECTRONIC RECORDS.**

**(1) GENERAL.**

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

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format 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~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

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

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

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

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

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

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

**(4) BUSINESS PROCESS INFORMATION.**

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

(B) The taxpayer shall be capable of demonstrating:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(g) HARDCOPY RECORDS.**

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

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

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

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

**(h) ALTERNATIVE STORAGE MEDIA.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. the conversion of files created on an obsolete computer system;
- b. restoration of lost or damaged files and the actions to be taken;
- c. use of taxpayer computer resources, and

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

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

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

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

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

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

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

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

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

(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records 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.