

# Memorandum

**To** : Ms. Cynthia Bridges  
Executive Director (MIC 73)

**Date:** October 8, 2015

**From** :  Randy Ferris, Chief Counsel  
Legal Department (MIC 83)

**Subject** : **Board Meeting, October 27, 2015**  
**Item J - Chief Counsel's Rulemaking Calendar**  
**Regulation 1805, *Aircraft Common Carriers***  
**Regulation 1825, *Aircraft Common Carriers***

We request your approval to place proposed changes to the above referenced uniform local sales and use tax regulation and transactions (sales) and use tax regulation on the Chief Counsel's Rulemaking Calendar for the October 27, 2015, Board meeting. The changes make the regulations consistent with the expiration of the one-quarter percent (0.25%) reduction in the rate of local sales and use tax that may be imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC, § 7200 et seq.) by Revenue and Taxation Code (RTC) section 7203.1, and the corresponding restoration of the partial 80 percent local sales and use tax exemption for aircraft common carriers provided by RTC sections 7202, subdivision (g), and 7203, subdivision (e), operative January 1, 2016.

Assembly Bill No. (AB) 7 (Stats. 2003, 1st Ex. Sess., ch. 13) (ABX 7), enacted the California Fiscal Recovery Financing Act (Gov. Code, § 99000 et seq.), effective August 2, 2003. ABX 7 added RTC sections 6051.5 and 6201.5 to increase the state sales and use tax rate by one-half of one percent (0.50%), operative July 1, 2004, to provide revenue for the Fiscal Recovery Fund included in the act. ABX 7 added RTC section 7203.1 to lower the rate of the taxes that may be imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law by one-half of one percent (0.50%), operative July 1, 2004, in order to prevent the statewide sales and use tax rate from increasing as a result of the enactment of RTC sections 6051.5 and 6201.5. This revenue "exchange" procedure is part of what is commonly referred to as the "Triple Flip." ABX 7 included provisions in RTC sections 6051.5, 6201.5, and 7203.1 providing that those sections would only be operative during the revenue exchange period beginning on July 1, 2004, and ending "on the first day of the first calendar quarter commencing more than 90 days following a notification" from the Director of Finance, pursuant to Government Code (GC) section 99006, subdivision (b), that the tax imposed by RTC sections 6051.5 and 6201.5 is no longer necessary to provide revenue for the Fiscal Recovery Fund. ABX7 also amended RTC sections 7202, subdivision (g), and 7203, subdivision (e), to reduce the partial local sales and use tax exemption for aircraft common

carriers from 80 percent of the local tax rate to 67 percent of the local tax rate during the revenue exchange period.

AB 9 (Stats. 2003, 5th Ex. Sess., ch. 2) (ABX5 9), enacted the Economic Recovery Bond Act (GC, § 99050 et seq.), effective December 12, 2003, and authorized the issuance of up to \$15 billion of bonds to finance the accumulated budget deficit after the act was subsequently approved by the voters, as Proposition 57, at the March 2, 2004, primary election. ABX5 9 reduced the tax rate proposed under the original "Triple Flip" by repealing and reenacting RTC sections 6051.5, 6201.5, and 7203.1 and substituting "one-quarter" for "one-half" of a percent. As a result, the "Triple Flip," as modified by ABX5 9, ultimately increased the state sales and use tax rate by one-quarter percent (0.25%) and decreased by a like amount the Bradley-Burns Uniform Local Sales and Use Tax rate, operative July 1, 2004. The resulting revenues from the one-quarter percent (0.25%) state sales and use tax imposed by RTC sections 6051.5 and 6201.5 are deposited into the Fiscal Recovery Fund. ABX5 9 also repealed and reenacted RTC sections 7202 and 7203 to increase the partial local sales and use tax exemption for aircraft common carriers from 67 percent to 75 percent of the local tax rate during the revenue exchange period.

The Director of Finance recently notified the Board, pursuant to GC section 99006, subdivision (b), that, as of August 5, 2015, the one-quarter percent (0.25%) state sales and use tax imposed by RTC sections 6051.5 and 6201.5 is no longer necessary to provide revenue for the Fiscal Recovery Fund and, as a result, RTC sections 6051.5, 6201.5, and 7203.1 shall cease to be operative and the revenue exchange period will end on January 1, 2016. (Director of Finance's August 5, 2015, letter attached.). Therefore, the local tax rate will increase from one percent (1%) to one and one-quarter percent (1.25%) and the partial local sales and use tax exemption for aircraft common carriers will be restored to 80 percent of the local tax rate on January 1, 2016.

The regulations referenced above explain exemptions from local and district transactions (sales) and use taxes for aircraft common carriers provided by RTC sections 7202, 7203, 7261, and 7262, and both regulations provide the rate of the partial local sales and use tax exemption which may be claimed by aircraft common carriers. The proposed changes to the regulations referenced above clarify that the partial local sales and use tax exemption for aircraft common carriers will apply to 75 percent of the one percent (1%) local tax rate (i.e., .75%) until December 31, 2015, and will apply to 80 percent of the one and one-quarter percent (1.25%) local tax rate (i.e., 1%) on and after January 1, 2016. The proposed changes also delete unnecessary quotation marks from the regulations' exemption certificates, and delete the reference to RTC section 7203.1 from Regulation 1805's reference note.

Staff will request the Board's authorization to make the changes to the regulations under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 because they make the regulations consistent with the expiration of the one-quarter percent (0.25%) decrease in the local sales and use tax rate prescribed by RTC sections 7203.1 and the restoration of the partial 80 percent local sales and use tax exemption for aircraft common carriers on January 1, 2016, revise the formatting of the regulations' exemption certificates,



and update Regulation 1805's reference note, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached are strikeout and underlined versions of the regulations illustrating the proposed revisions.


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

Attachments


Recommendation by:

  
Randy Ferris, Chief Counsel

Approved:


  
Cynthia Bridges, Executive Director

Approved:

  
Lynn Bartolo, Acting Deputy Director  
Sales and Use Tax Department

BOARD APPROVED

At the 10/27/15 Board Meeting

  
Joann Richmond, Chief  
Board Proceedings Division

cc: Ms. Lynn Bartolo (MIC 57)  
Ms. Joann Richmond (MIC 80)  
Mr. Robert Tucker (MIC 82)  
Ms. Susanne Buehler (MIC 92)  
Mr. Bradley M. Heller (MIC 82)  
Ms. Kirsten Stark (MIC 50)  
Ms. Kim Rios (MIC 50)

## Proposed Revisions to Regulation 1805

### Regulation 1805. AIRCRAFT COMMON CARRIERS.

(a) **DEFINITION - "COMMON CARRIERS."** As used herein, the term "common carriers" means persons who engage in the business of transporting persons or property for hire or compensation and who offer their services indiscriminately to the public or to some portion of the public.

#### (b) AIRCRAFT COMMON CARRIERS.

(1) The state-administered Bradley-Burns local sales tax does not apply to sales of tangible personal property to operators of aircraft to be used or consumed principally outside the county in which the sale is made if such property is used or consumed directly and exclusively in the use of such aircraft as common carriers of persons or property under the laws of this state, the United States, or any foreign government. Tax applies, however, to sales of fuel and petroleum products on and after July 29, 1991. Exemption rates and their effective dates are provided in the Appendix.

(2) The state-administered Bradley-Burns local use tax does not apply to the storage, use, or other consumption of tangible personal property purchased by operators of aircraft when such property is used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government. Effective July 29, 1991, this exemption is not available for the storage, use, or other consumption of fuel and petroleum products. This exemption is in addition to that provided in sections 6366 and 6366.1 of the Revenue and Taxation Code.

(c) **CONDITIONS OF EXEMPTION.** The exemption for operators of aircraft common carriers applies only if the property is used directly and exclusively in the exempt activity. This exemption is limited to supplies and equipment (excluding fuel and petroleum products effective July 29, 1991) used or consumed directly in the carriage of persons or property. It does not include office or shop equipment or supplies or any other property not directly used or consumed in the carriage of persons or property.

(d) **LEASES.** If property is leased to an operator of an aircraft common carrier under a lease which is a continuing sale or a continuing purchase, unless otherwise exempted, either the use tax or sales tax applies to the gross receipts from the lease during such period of time that the property is in a taxing jurisdiction.

*Note:* Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7202, and 7203, ~~and 7203.1~~ Revenue and Taxation Code.

### Appendix

#### Form of Exemption Certificate for Claiming Exemption Under Regulations 1805 and 1825.

(a) **CERTIFICATE NECESSARY TO SUPPORT EXEMPTION.** All purchasers of tangible personal property claiming exemption from Bradley-Burns local taxes under the provisions of Regulation 1805 or from both Bradley-Burns local taxes and district transactions (sales) and use taxes under Regulation 1825 should file with the seller an exemption certificate in the form shown below. On and after July 1, 1972, for purposes of the Bradley-Burns local taxes, this exemption is limited to 80 percent of the 1.25 percent local tax (i.e., 1%); ~~and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015, this exemption is limited to 75 percent of the 1 percent local tax (i.e., .75%); and, on and after January 1, 2016, this exemption is limited to 80 percent of the 1.25 percent local tax (i.e., 1%).~~

#### (b) FORM OF CERTIFICATE.

AIRCRAFT COMMON CARRIER. The following certificate may be used by a purchaser claiming exemption under Regulation 1825 from district transactions (sales) and use taxes, and/or claiming partial exemption under Regulation 1805 from Bradley-Burns local taxes which: On or before June 30, 2004, is 1 percent; ~~and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015 is .75 percent; and, on and after January 1, 2016, is 1 percent.~~

"The purchaser hereby certifies that the purchaser is the operator of aircraft as a common carrier of persons or property and that the property purchased will be used or consumed principally outside the county in which the sale is made and will be used or consumed directly and exclusively in the use of such aircraft as a common carrier of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of (check which is applicable)

- ☐ (1) the State of California  
☐ (2) the United States  
☐ (3) \_\_\_\_\_  
(Insert the name of the foreign government)

"The purchaser agrees that if the property is used in some other manner or some other purpose, the purchaser will report and pay the tax measured by the purchase price of the property.

"This certificate is given to claim: (check which is applicable)

- ☐ (1) Partial exemption from Bradley-Burns local tax only which: On or before June 30, 2004, is 1 percent; ~~and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015, is .75 percent; and, on and after January 1, 2016 is 1 percent~~
- ☐ (2) Exemption from district tax only
- ☐ (3) Both exemption from district tax and partial exemption from Bradley-Burns local tax which: On or before June 30, 2004 is 1 percent; ~~and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015 is .75 percent; and, on and after January 1, 2016, is 1 percent~~

"Description of property to be purchased \_\_\_\_\_

Name of Seller \_\_\_\_\_  
Purchaser \_\_\_\_\_  
Address \_\_\_\_\_  
Dated \_\_\_\_\_"



## Proposed Revisions to Regulation 1825

### Regulation 1825. AIRCRAFT COMMON CARRIERS.

(a) **DEFINITION - "COMMON CARRIERS."** As used herein, the term "common carriers" means persons who engage in the business of transporting persons or property for hire or compensation and who offer their services indiscriminately to the public or to some portion of the public.

(b) **AIRCRAFT COMMON CARRIERS.**

(1) State-administered district transactions (sales) tax does not apply to sales of tangible personal property to operators of aircraft to be used or consumed principally outside the county in which the sale is made if such property is to be used or consumed directly and exclusively in the use of such aircraft as common carriers of persons or property under the laws of this state, the United States, or any foreign government. Tax applies, however, to sales of fuel and petroleum products on and after July 29, 1991.

(2) State-administered district use tax does not apply to the storage, use, or other consumption of tangible personal property purchased by operators of aircraft when such property is used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government. Effective July 29, 1991, this exemption is not available for the storage, use, or other consumption of fuel and petroleum products. This exemption is in addition to that provided in sections 6366 and 6366.1 of the Revenue and Taxation Code.

(c) **CONDITIONS OF EXEMPTION.** The exemption for operators of aircraft common carriers applies only if the property is used directly and exclusively in the exempt activity. This exemption is limited to supplies and equipment (excluding fuel and petroleum products effective July 29, 1991) used or consumed directly in the carriage of persons or property. It does not include office or shop equipment or supplies or any other property not directly used or consumed in the carriage of persons or property.

(d) **LEASES.** If property is leased to an operator of an aircraft common carrier under a lease which is a continuing purchase, unless otherwise exempted, either the use tax or transactions (sales) tax applies to the gross receipts from the lease during such period of time that the property is in a taxing jurisdiction.

*Note:* Authority cited: Section 7051, 7261 and 7262, Revenue and Taxation Code. Reference: Sections 7261 and 7262, Revenue and Taxation Code.

## Appendix

### Form of Exemptions Certificate for Claiming Exemption Under Regulations 1805 and 1825.

(a) **CERTIFICATE NECESSARY TO SUPPORT EXEMPTION.** All purchasers of tangible personal property claiming exemption from Bradley-Burns local taxes under the provisions of Regulation 1805 or from both Bradley-Burns local taxes and district transactions (sales) and use taxes under Regulation 1825 should file with the seller an exemption certificate in the form shown below. On and after July 1, 1972, for purposes of the Bradley-Burns local taxes, this exemption is limited to 80 percent of the 1.25 percent local tax (i.e., 1%); ~~and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015 this exemption is limited to 75 percent of the 1 percent local tax (i.e., .75%); and, on and after January 1, 2016 this exemption is limited to 80 percent of the 1.25 percent local tax (i.e., 1%).~~

(b) **FORM OF CERTIFICATE.**

AIRCRAFT COMMON CARRIER. The following certificate may be used by a purchaser claiming exemption under Regulation 1825 from district transactions (sales) and use taxes, and/or claiming partial exemption under Regulation 1805 from Bradley-Burns local taxes which: On or before June 30, 2004 is 1 percent; and, on and after July 1, 2004, ~~until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015 is .75 percent; and, on and after January 1, 2016 is 1 percent.~~

"The purchaser hereby certifies that the purchaser is the operator of aircraft as a common carrier of persons or property and that the property purchased will be used or consumed principally outside the county in which the sale is made and will be used or consumed directly and exclusively in the use of such aircraft as a common carrier of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of (check which is applicable)

☐ (1) the State of California

☐ (2) the United States

☐ (3) \_\_\_\_\_

(Insert the name of the foreign government)

"The purchaser agrees that if the property is used in some other manner or some other purpose, the purchaser will report and pay the tax measured by the purchase price of the property.

"This certificate is given to claim: (check which is applicable)

☐ (1) Partial exemption from Bradley-Burns local tax only which: On or before June 30, 2004 is 1 percent; ~~and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015 is .75 percent; and, on and after January 1, 2016 is 1 percent~~

☐ (2) Exemption from district tax only

☐ (3) Both exemption from district tax and partial exemption from Bradley-Burns local tax which: On or before June 30, 2004 is 1 percent; ~~and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, until December 31, 2015 is .75 percent; and, on and after January 1, 2016 is 1 percent~~

"Description of property to be purchased \_\_\_\_\_

Name of Seller \_\_\_\_\_

Purchaser \_\_\_\_\_

Address \_\_\_\_\_

Dated \_\_\_\_\_ "





DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

EDMUND G. BROWN JR. • GOVERNOR  
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ [www.dof.ca.gov](http://www.dof.ca.gov)

**RECEIVED**

August 5, 2015

AUG 07 2015

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

Honorable John Chiang  
State Treasurer  
Executive Office  
915 Capitol Mall, Room 110  
Sacramento, CA 95814

Ms. Cynthia Bridges  
Executive Director  
Board of Equalization  
450 N Street, Room 2322  
Sacramento, CA 95814

Dear Treasurer Chiang and Ms. Bridges:

As of August 5 2015, escrow accounts were established for the defeasance of the remaining \$929.7 million in outstanding State of California Economic Recovery Bonds (the "Bonds"), authorized and issued pursuant to the Master Indenture of Trust, dated May 1, 2004, by and between the State, Acting By and Through the Economic Recovery Financing Committee, and the State Treasurer, as trustee, as previously amended and supplemented (the "Master Indenture"). The escrow accounts will fund all future principal, interest, and administrative costs until the final maturity of the Bonds in 2019.

As a result of this defeasance, I, Michael Cohen, Director of Finance of the State of California, do hereby notify you pursuant to Section 99006(b) of the Government Code that:

(i) Payment of the principal of and interest on all of the Bonds and Ancillary Obligations Outstanding has been irrevocably provided for pursuant to the Master Indenture and no Bonds or Ancillary Obligations are deemed "outstanding" pursuant to the Master Indenture; and

(ii) No other bonds were or will be issued pursuant to the California Fiscal Recovery Financing Act.

Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Master Indenture.

This notification shall serve to end the "revenue exchange period," as defined in Section 7203.1(b) of the Revenue and Taxation Code, on December 31, 2015. As a result, the reduced tax rates set forth in Section 7203.1(a) shall cease to become operative and will revert to the rates as described in Sections 7202 and 7203 as of January 1, 2016. Further, this notification

shall serve to render Sections 6051.5 and 6201.5 of the Revenue and Taxation Code inoperative as of January 1, 2016.

A handwritten signature in black ink, appearing to read "Michael Cohen", with a stylized flourish at the end.

MICHAEL COHEN  
Director

cc: Mr. Blake Fowler, Director, Public Finance Division, State Treasurer's Office  
Ms. Julie Giordano, Assistant Director, Public Finance Division, State Treasurer's Office  
Mr. Gary Watkins, Manager, Public Finance Division, State Treasurer's Office  
Chairman Jerome E. Horton, Board of Equalization  
Vice Chair George Runner, Board of Equalization  
Fiona Ma, Member, Board of Equalization  
Diane L. Harkey, Member, Board of Equalization  
Betty T. Yee, State Controller