

August 24, 2016

Ms. Joann Richmond
Chief, Board Proceedings Division
VIA E-MAIL: Joann.Richmond@boe.ca.gov
State Board of Equalization
450 N. Street
PO Box 942879
Sacramento, CA 94279-0080

**RE: Board Agenda Item I.3 (August 30, 2016):
Support Alternative B and Request
Deletion of Definition of Participation**

Dear Ms. Richmond:

I am a CPA with over twenty years of experience in the local sales tax arena. I am in receipt of the attached letter from Mr. Robert Cendejas and would like to provide public comment regarding the proposed Alternative Summary Decisions, to be discussed at the Board Meeting on August 30, 2016, regarding Item I.3, Cities of Ontario, Palm Springs, San Diego, Santa Barbara and Counties of Sacramento, San Mateo, 525325, 525326.

As with Mr. Cendejas, I support Alternative B – Member Runner’s Version, because it deletes footnote 3 from Alternative A – Staff’s Version. In addition, I suggest that the sentence beginning on page 3, line 17, also be deleted. This sentence goes far beyond the current definition for a sales tax, which occurs if there is: “Participation in the transaction in any way...,” or the current definition for a use tax, which occurs if there is: “...no participation whatever in the transaction....” Together, both definitions make it clear that the amount and type of participation needed to be a sales tax, is extremely minor. Additionally, staff’s definition creates more confusion and uncertainty by not explaining what is: “meaningful effect,” “real purpose” and “genuine physical interaction.”

I believe the most appropriate way to clarify the definition of participation would be through the Interested Party Regulatory Process. This would enable cities, counties, retailers and tax professionals to provide input, ideas and industry knowledge, as well as explain the problems inherent in staff’s definition in line 17.

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I am very concerned with the unforeseen consequences of line 17. Consequently, I recommend that this Board do what the previous Board did when it considered similar line 17 definitional language by staff, in staff's proposed Summary Decision for The Appeal of Cities of Fontana, Lathrop & San Bernardino, at the oral hearing on October 30, 2013. At that time, the Board Members unanimously voted to delete the similar definitional language.

I strongly recommend and request the definitional language in line 17 be deleted once again and the definition be the subject matter for an Interested Parties Meeting. Likewise, staff's footnote 3 should be deleted for similar reasons, as Board Member Runner has seen fit to do in Alternative B.

Please distribute this letter to the Board Members and their staff and other appropriate parties.

Very truly yours,

RBJ Consulting

A handwritten signature in blue ink, appearing to read "R. Bruce Jacobsohn", with a stylized flourish at the end.

R. Bruce Jacobsohn

Robert E. Cendejas
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August 21, 2016

Ms. Joann Richmond
Chief, Board Proceedings Division
State Board of Equalization
450 N. Street
PO Box 942879
Sacramento, CA 94279-0080

**RE: Board Agenda Item I.3 (August 30, 2016):
Support Alternative B and Request
Deletion of Definition of Participation**

Dear Ms. Richmond:

I would like to provide public comment regarding the proposed Alternative Summary Decisions, to be discussed at the Board Meeting on August 30, 2016, regarding Item I.3, Cities of Ontario, Palm Springs, San Diego, Santa Barbara and Counties of Sacramento, San Mateo, 525325, 525326.

I support Alternative B – Member Runner’s Version, because it deletes footnote 3 from Alternative A – Staff’s Version. However, I suggest that the sentence beginning on page 3, line 17, also be deleted. This sentence goes far beyond the current definition for a sales tax, which occurs if there is: “Participation in the transaction in any way...,” or the current definition for a use tax, which occurs if there is: “...no participation whatever in the transaction....” Together, both definitions make it clear that the amount and type of participation needed to be a sales tax, is extremely minor. Additionally, staff’s definition creates more confusion and uncertainty by not explaining what is: “meaningful effect,” “real purpose” and “genuine physical interaction.”

I believe the most appropriate way to clarify the definition of participation would be through the Interested Party Regulatory Process. This would enable cities, counties, retailers and tax professionals to provide input, ideas and industry knowledge, as well as explain the problems inherent in staff’s definition in line 17.

I am also concerned with the unforeseen consequences of line 17. Changing the definition will have a substantial effect on the Board's long-standing policy of preferring allocation to the place of business of the retailer rather than to county-wide pools where the consumers are located. The cities and major California business organizations have long supported this Board policy and the numerous related changes to the regulations.

The Board has always preferred the determination of sales, as subject to the sales tax, as opposed to the use tax. Changing the definition by using line 17, could have unforeseen consequences in this and perhaps other areas unrelated to local tax allocation.

Consequently, I recommend that this Board do what the previous Board did, when it considered similar line 17 definitional language by staff, in staff's proposed Summary Decision for The Appeal of Cities of Fontana, Lathrop & San Bernardino, at the oral hearing on October 30, 2013. The Board Members unanimously voted to delete the similar definitional language.

Therefore, I strongly recommend and request the definitional language in line 17 be deleted once again and the definition be the subject matter for an Interested Parties Meeting. Likewise, staff's footnote 3 should be deleted for similar reasons, as Board Member Runner has seen fit to do in Alternative B.

Please distribute this letter to the Board Members and their staff and other appropriate parties.

Very truly yours,

Robert E. Cendejas
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