

Memorandum

To : Mr. David J. Gau
Executive Director (MIC 73)

Date: June 2, 2017

From : Ms. Amy Kelly, Acting Chief Counsel
Legal Department (MIC 83)

JK for AK

Subject : **Board Meeting, June 20-22, 2017**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1707, *Electronic Funds Transfer*

We request your approval to place proposed changes to Sales and Use Tax Regulation 1707, *Electronic Funds Transfer*, on the Chief Counsel's Rulemaking Calendar for the June 20-22, 2017, Board meeting. The proposed changes incorporate and make the regulation consistent with the amendments made to Revenue and Taxation Code (RTC) section 6479.3 by Assembly Bill No. (AB) 821 (Stats. 2016, ch. 811), effective January 1, 2017.

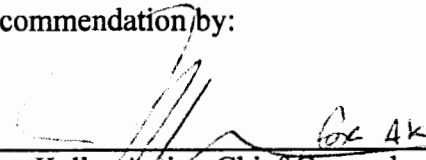
RTC section 6479.3 requires any person whose estimated tax liability averages \$10,000 or more per month to remit amounts due by electronic funds transfer. A person required to remit amounts due pursuant to this section who remits taxes or prepayments by means other than electronic funds transfer is assessed a penalty of ten percent of the taxes incorrectly remitted and 6 percent of the prepayment amounts incorrectly remitted. AB 821 added subdivision (k) to RTC section 6479.3 to provide that "[b]efore January 1, 2022, a person issued a seller's permit for a place of business that is a dispensary, as defined in subdivision (n) of Section 19300.5 of the Business and Professions Code, may remit amounts due for retail sales at the dispensary by a means other than electronic funds transfer." Therefore, the proposed changes revise subdivision (b)(1) of Regulation 1707 and add new subdivision (b)(3) to Regulation 1707 to incorporate and make the regulation consistent with the provisions of RTC section 6479.3, subdivision (k).

We will request the Board's authorization to make the changes to Regulation 1707 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 regulation consistent with the amendments made to RTC section 6479.3 by AB 821, effective January 1, 2017, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

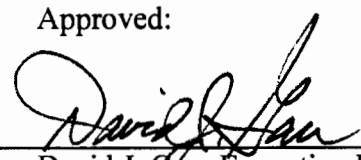
Attached is a strikeout and underlined version of the regulation illustrating the proposed changes.

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

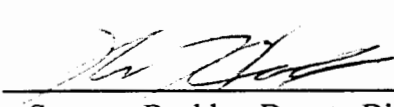
Recommendation by:


Amy Kelly, Acting Chief Counsel

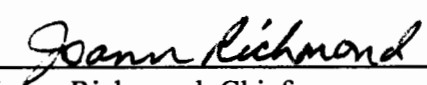
Approved:


David J. Gau, Executive Director

Approved:


Susanne Buehler, Deputy Director
Business Tax and Fee Department

BOARD APPROVED
At the 6-20-17 Board Meeting


Joann Richmond, Chief
Board Proceedings Division

Attachments

cc: Ms. Susanne Buehler (MIC 43)
Ms. Joann Richmond (MIC 80)
Mr. Robert Tucker (MIC 82)
Ms. Trista Gonzalez (MIC 92)
Mr. Bradley M. Heller (MIC 82)
Ms. Kirsten Stark (MIC 50)
Ms. Kim Rios (MIC 50)

Regulation 1707. ELECTRONIC FUNDS TRANSFER.

(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 due. 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 section 6479.3 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 (h) 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. Prior to January 1, 2006, persons with an estimated monthly tax liability of twenty thousand dollars (\$20,000) or more are required to remit amounts due by electronic funds transfer under procedures set forth in this regulation. Except as provided in subdivision (b)(3), ~~o~~Operative January 1, 2006, persons with an estimated monthly tax liability of ten thousand dollars (\$10,000) or more 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 an annual review of all persons with sales and use tax permits. The review is performed by calculating an average monthly tax liability for a twelve-month period. Persons whose average monthly tax liability equals or exceeds the threshold for mandatory participation will be required to remit payments by electronic funds transfer. If a person did not begin making sales until after the beginning of the designated twelve-month review period, then the monthly tax liability will be calculated based upon the number of months in which sales were made (for example, in a calendar year review period, if the person obtains a seller's permit and begins making sales in May, the total tax liability would be divided by eight to determine the average monthly tax liability since there are eight months remaining in the evaluation period). Persons registering to report and pay sales or use tax for the first time, except certain successors, will not be required to participate in the electronic funds transfer program until an annual review is conducted.

A successor will be regarded as having an estimated tax liability that equals or exceeds the threshold for mandatory participation in the electronic funds transfer program when the monthly tax liability of the predecessor equalled or exceeded the threshold for mandatory participation 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 liability of the purchased locations 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 an annual 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 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 subdivision shall be liable for penalty as provided under Revenue and Taxation Code section 6479.3.

(2) **VOLUNTARY PARTICIPATION.** Any person not meeting the criteria for mandatory participation set forth in subdivision (b)(1) 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.

(3) **DISPENSARIES.** Before January 1, 2022, a person issued a seller's permit for a place of business that is a dispensary, as defined in Business and Professions Code section 19300.5, subdivision (n), may remit amounts due for retail sales at the dispensary by a means other than electronic funds transfer.

(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 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 section 6479.3.

(e) **FAILURE TO PAY BY ELECTRONIC FUNDS TRANSFER.** Any person required to pay taxes by electronic funds transfer must continue to do so until the Board advises that person otherwise in writing. Any person required to pay taxes 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 section 6479.3.

(f) **REPORTING PREPAYMENTS.** Any person required to make prepayments will not receive and is not required to file prepayment forms; however, a payment must still be made by electronic funds transfer.

(g) **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.

(h) **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 by the Federal Reserve Wire Transfer transaction.

Authority cited: Section 7051, Revenue and Taxation Code. *Reference:* Sections 6479.3 and 6479.5, Revenue and Taxation Code