

Regulations 1533.1

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1533.1

Index

1. *Form 400 and Proposed Regulation 1533.1*
2. *Statement of Explanation*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 10/29/10*
- B. *Approved Minutes, 11/16/10*
- C. *Reporters Transcript, 11/16/10*

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 1/14/2011
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-1129-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-1129-01N regarding Farm Equipment and Machinery).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

RECEIVED

JAN 11 2011

State of California
Office of Administrative Law **Board Proceedings**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1533.1

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT

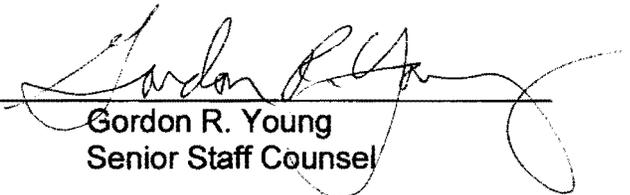
California Code of Regulations, Title 1,
Section 100

OAL File No. 2010-1129-01 N

This Section 100 rulemaking corrects an incorrect subsection cross-reference and adds a missing period after the reference note in Title 18 CCR section 1533.1, *Farm Equipment and Machinery*.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 1/10/2011


Gordon R. Young
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director

Original: Ramon Hirsig
Copy: Richard Bennion

NON-SUBSTANTIVE

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-1129-01N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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ENDORSED FILED
TO THE OFFICE OF
2011 JAN 10 PM 2:12
Delta Bowen
DELTA BOWEN
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
---	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Farm Equipment and Machinery	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1533.1
TITLE(S) 18	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
---	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diane G. Olson</i>	DATE November 29, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
JAN 10 2011
Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1533.1. Farm Equipment and Machinery.

(a) General. . . . (unchanged).

(b) Definitions. For purposes of this regulation:

(1) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(2) . . . (unchanged). “Parts of farm equipment and machinery” means:

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) “Producing and harvesting agricultural products” means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for

shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 - Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(~~5~~)(6) or a person who assists a qualified person as defined in (b)(3).

For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity despite the fact that the property may otherwise be used less than 50% of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.

(6) . . . (unchanged).

(7) . . . (unchanged).

(c) Partial Exemption Certificates.

(1) In General. . . . (unchanged).

(2) Blanket Partial Exemption Certificates. . . . (unchanged).

(3) Form of Partial Exemption Certificate. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

- (G) . . . (unchanged).
 - (4) Retention and Availability of Partial Exemption Certificates. . . . (unchanged).
 - (5) Good Faith. . . . (unchanged).
 - (d) Partial Exemption Certificate for Use Tax. . . . (unchanged).
 - (e) Refund of Partial Exemption.
 - (1) . . . (unchanged).
 - (2) . . . (unchanged).
 - (f) Improper Use of Partial Exemption.
 - (1) Property Used in a Manner Not Qualifying for the Partial Exemption. . . . (unchanged).
 - (2) Purchases by Non-Qualified Persons. . . . (unchanged).
 - (g) Purchaser's Liability for the Payment of Sales Tax.
 - (1) . . . (unchanged).
 - (2) . . . (unchanged).
 - (h) Leases to Qualifying Persons.
 - (1) Leases -In General. . . . (unchanged).
 - (2) Leases -Acquisition Sale and Leaseback. . . . (unchanged).
 - (3) Subsequent Lease of Property Acquired Subject to Partial Exemption. . . . (unchanged).
 - (i) Records. . . . (unchanged).
 - (j) Operative Date. . . . (unchanged).
- Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6356.5, Revenue and Taxation Code.
- Appendix A. . . . (unchanged).
- Appendix B. . . . (unchanged).

Male rats:

- Combined hepatocellular adenomas and carcinomas
- Combined squamous cell papillomas and carcinomas of the stomach
- Testicular interstitial cell tumors of the testes

Female rats:

- Hepatocellular carcinomas and combined hepatocellular adenomas and carcinomas

Female mice:

- Hepatocellular carcinomas and combined hepatocellular adenomas and carcinomas
- Bronchio-alveolar carcinomas and combined bronchio-alveolar adenomas and carcinomas

Thus, the U.S. EPA (1999b) has found that MON 13900 causes increased incidences of malignant or combined malignant and benign tumors in male rats, female rats, and female mice, including rare stomach tumors in male rats and an increased incidence of tumors at multiple sites in male rats and female mice.

Formal identification and sufficiency of evidence for pymetrozine: In 1999, the U.S. EPA published a report on pymetrozine, entitled *Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Pymetrozine*, which concludes that the chemical causes cancer (U.S. EPA, 1999c). This report satisfies the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations.

OEHHA is relying on the U.S. EPA's discussion of data and conclusions in the report that pymetrozine causes cancer. The U.S. EPA report concludes pymetrozine is "likely to be a human carcinogen" by the oral route." Evidence described in the report includes studies showing that pymetrozine increased the incidences of hepatocellular carcinomas in male mice and combined benign hepatomas and hepatocellular carcinomas in male and female mice.

Thus, the U.S. EPA (1999c) has found that pymetrozine causes increased incidences of malignant liver tumors in male mice, and combined malignant and benign liver tumors in male and female mice.

Request for comments: OEHHA is committed to public participation in its implementation of Proposition 65. OEHHA wants to ensure that its regulatory decisions are based on a thorough consideration of all relevant information. OEHHA is requesting comments as to whether these three chemicals meet the criteria set forth in the Proposition 65 regulations for authoritative bodies listings. In order to be considered, **comments must be received by OEHHA by 5:00 p.m. on Tuesday, February 22, 2011.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed

to coshita@oehha.ca.gov. Comments submitted in paper form may be mailed or delivered in person in triplicate, or faxed, to the addresses below:

Mailing Address: Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
P.O. Box 4010, MS-19B
Sacramento, California
95812-4010

Fax: (916) 323-8803

Street Address: 1001 I Street
Sacramento, California 95814

If you have any questions, please contact Ms. Oshita at coshita@oehha.ca.gov or at (916) 445-6900.

References

U.S. Environmental Protection Agency (U.S. EPA, 1999a). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of MON 4660. Final Report. Cancer Health Effects Division, Office of Pesticide Programs. December 9, 1999.

U.S. Environmental Protection Agency (U.S. EPA, 1999b). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of MON 13900. Health Effects Division, Office of Pesticides Programs. September 21, 1999.

U.S. Environmental Protection Agency (U.S. EPA, 1999c). Cancer Assessment Document, Evaluation of the Carcinogenic Potential, of Pymetrozine. Health Effects Division, Office of Pesticide Programs. August 24, 1999.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010-1129-01
BOARD OF EQUALIZATION
Farm Equipment and Machinery

This Section 100 rulemaking corrects an incorrect subsection cross-reference and adds a missing period

CALIFORNIA REGULATORY NOTICE REGISTER 2011, VOLUME NO. 3-Z

after the reference note in Title 18 CCR section 1533.1, Farm Equipment and Machinery.

Title 18
California Code of Regulations
AMEND: 1533.1
Filed 01/10/2011
Agency Contact:
Richard E. Bennion (916) 445-2130

File# 2010-1201-01
BOARD OF EQUALIZATION
Membership Fees

This Section 100 rulemaking amends T18 CCR section 1584, Membership Fees, prescribing the application of sales and use tax to membership fees retailers charge to customers to shop at a membership club. The amendment applies the applicable five year California Consumer Price Index (CCPI) change to adjust the threshold level at which membership fees are included in taxable gross receipts of the retailer.

Title 18
California Code of Regulations
AMEND: 1584
Filed 01/12/2011
Agency Contact:
Richard E. Bennion (916) 445-2130

File# 2010-1130-03
BUREAU OF AUTOMOTIVE REPAIR
Enhanced Fleet Modernization Program

This is the certification of compliance for an emergency action that adopted the Bureau of Automotive Repair's component of the Enhanced Fleet Modernization Program so that there will be a mechanism for administration of the state's program for enhancing air quality through the purchase and recycling of highly polluting and inefficient older vehicles.

Title 16
California Code of Regulations
ADOPT: 3394.7 AMEND: 3394.1, 3394.4, 3394.5, 3394.6
Filed 01/11/2011
Effective 01/11/2011
Agency Contact: Steven Hall (916) 255-2135

File# 2010-1227-02
CALIFORNIA DEBT LIMIT ALLOCATION
COMMITTEE
Administration of CA's Limited Tax-Exempt Debt Authority

The California Debt Limit Allocation Committee submitted this emergency readoption action, pursuant

to Government Code section 11346.1, to extend the emergency regulations adopted in OAL File Nos. 2010-0701-02ER and 2010-0720-09ER. Federal tax law imposes a limit on the amount of tax-exempt private activity bonds that a state may issue in a calendar year. The emergency regulations established a comprehensive set of regulations to create an allocation system to administer the state unified volume ceiling of tax-exempt private activity bond allocation to state and local agencies. Adoption of these regulations is deemed to be an emergency under Government Code section 8869.94.

Title 4
California Code of Regulations
ADOPT: 5000, 5010, 5020, 5021, 5030, 5031, 5032, 5033, 5034, 5035, 5036, 5037, 5038, 5039, 5050, 5051, 5052, 5053, 5054, 5055, 5056, 5060, 5061, 5062, 5063, 5064, 5080, 5081, 5082, 5100, 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5120, 5130, 5131, 5132, 5140, 5141, 5142, 5143, 5150, 5151, 5152, 5153, 5154, 5155, 5170, 5180, 5181, 5182, 5183, 5190, 5191, 5192, 5193, 5194, 5200, 5210, 5211, 5212, 5220, 5230, 5231, 5232, 5240, 5250, 5260, 5265, 5266, 5267, 5268, 5269, 5270, 5275, 5280, 5281, 5282, 5283, 5290, 5291, 5300, 5310, 5311, 5312, 5313, 5314, 5315, 5320, 5321, 5330, 5340, 5350, 5360, 5370, 5371, 5372, 5380, 5381, 5382, 5383, 5384, 5400, 5410, 5411, 5420, 5421, 5422, 5423, 5430, 5431, 5432, 5433, 5434, 5435, 5440, 5450, 5460, 5461, 5470, 5480, 5490, 5491, 5492, 5493, 5494, 5500, 5510, 5520, 5530, 5531, 5532, 5533, 5534, 5540, 5550, 5560, 5570, 5571, 5572, 5573, 5580, 5590
Filed 01/06/2011
Effective 01/06/2011
Agency Contact: John Weir (916) 653-8018

File# 2010-1129-04
CALIFORNIA INSTITUTE FOR REGENERATIVE
MEDICINE
Loan Administration Policy

The California Institute for Regenerative Medicine (CIRM) adopted section 100800 in title 17 of the California Code of Regulations to establish their loan administration policy.

Title 17
California Code of Regulations
ADOPT: 100800
Filed 01/10/2011
Effective 01/10/2011
Agency Contact: C. Scott Tocher (415) 396-9136

Regulation 1533.1

Section 100

Index

1. *Form 400 and Proposed Regulation 1533.1*
2. *Statement of Explanation*

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

NONSUBSTANTIVE

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-1129-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Farm Equipment and Machinery	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1533.1
	REPEAL
TITLE(S) 18	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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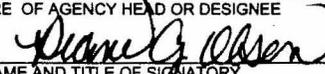
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
---	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE November 29, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1533.1. Farm Equipment and Machinery.

(a) General. . . . (unchanged).

(b) Definitions. For purposes of this regulation:

(1) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(2) . . . (unchanged). “Parts of farm equipment and machinery” means:

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(3) . . . (unchanged).

(4) . . . (unchanged).

(5) “Producing and harvesting agricultural products” means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for

shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 - Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)~~(5)~~(6) or a person who assists a qualified person as defined in (b)(3).

For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity despite the fact that the property may otherwise be used less than 50% of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.

(6) . . . (unchanged).

(7) . . . (unchanged).

(c) Partial Exemption Certificates.

(1) In General. . . (unchanged).

(2) Blanket Partial Exemption Certificates. . . (unchanged).

(3) Form of Partial Exemption Certificate. . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

(G) . . . (unchanged).

(4) Retention and Availability of Partial Exemption Certificates. . . . (unchanged).

(5) Good Faith. . . . (unchanged).

(d) Partial Exemption Certificate for Use Tax. . . . (unchanged).

(e) Refund of Partial Exemption.

(1) . . . (unchanged).

(2) . . . (unchanged).

(f) Improper Use of Partial Exemption.

(1) Property Used in a Manner Not Qualifying for the Partial Exemption. . . . (unchanged).

(2) Purchases by Non-Qualified Persons. . . . (unchanged).

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) . . . (unchanged).

(2) . . . (unchanged).

(h) Leases to Qualifying Persons.

(1) Leases -In General. . . . (unchanged).

(2) Leases -Acquisition Sale and Leaseback. . . . (unchanged).

(3) Subsequent Lease of Property Acquired Subject to Partial Exemption. . . . (unchanged).

(i) Records. . . . (unchanged).

(j) Operative Date. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6356.5, Revenue and Taxation Code.

Appendix A. . . . (unchanged).

Appendix B. . . . (unchanged).

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1533.1, *Farm Equipment and Machinery*.

A. Factual Basis

The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation) 1533.1, *Farm Equipment and Machinery*, in 2002 to prescribe the application of the partial exemption from sales and use tax for sales and purchases of “farm equipment and machinery, . . . purchased for use by a qualified person [and] to be used primarily in producing and harvesting agricultural products” provided by Revenue and Taxation Code (RTC) section 6356.5. Regulation 1533.1, subdivision (b)(6) defines the term “qualified person” as that term is used in RTC section 6356.5. Regulation 1533.1, subdivision (b)(5) defines the phrase “producing and harvesting agricultural products,” as that phrase is used in RTC section 6356.5; however, the last sentence in the first paragraph of subdivision (b)(5) incorrectly cross-references itself, instead of subdivision (b)(6), for the definition of a “qualified person,” as follows:

Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by *a qualified person as defined in (b)(5)* or a person who assists a qualified person as defined in (b)(3). (Italics added.)

Therefore, the Board proposes to revise the last sentence of the first paragraph of subdivision (b)(5) to correctly refer to a qualified person as defined in subdivision “(b)(6),” rather than a qualified person as defined in subdivision (b)(5). The Board has determined that this change to Regulation 1533.1 is appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because the change merely corrects an internal cross-referencing error and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Furthermore, the Board has noticed that there is no period at the end of the reference note for Regulation 1533.1 and the Board proposes to add a period to the end of the reference note to correct the typographical error. The Board has determined that this change to Regulation 1533.1 is appropriate for processing under Rule 100 because the change merely corrects a typographical error and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

The Board is not proposing any further changes to Regulation 1533.1 or appendices A and B to Regulation 1533.1.

B. Proposed Change to Regulation 1533.1

Proposed change to Regulation 1533.1:

Regulation 1533.1. Farm Equipment and Machinery.

(a) General. . . . (unchanged).

(b) Definitions. For purposes of this regulation:

(1) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(2) . . . (unchanged). “Parts of farm equipment and machinery” means:

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) “Producing and harvesting agricultural products” means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 - Food and Kindred Products

of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(5)(6) or a person who assists a qualified person as defined in (b)(3).

For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity despite the fact that the property may otherwise be used less than 50% of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.

(6) . . . (unchanged).

(7) . . . (unchanged).

(c) Partial Exemption Certificates.

(1) In General. . . . (unchanged).

(2) Blanket Partial Exemption Certificates. . . . (unchanged).

(3) Form of Partial Exemption Certificate. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) . . . (unchanged).

(G) . . . (unchanged).

(4) Retention and Availability of Partial Exemption Certificates. . . . (unchanged).

(5) Good Faith. . . . (unchanged).

(d) Partial Exemption Certificate for Use Tax. . . . (unchanged).

(e) Refund of Partial Exemption.

(1) . . . (unchanged).

(2) . . . (unchanged).

(f) Improper Use of Partial Exemption.

(1) Property Used in a Manner Not Qualifying for the Partial Exemption. . . . (unchanged).

(2) Purchases by Non-Qualified Persons. . . . (unchanged).

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) . . . (unchanged).

(2) . . . (unchanged).

(h) Leases to Qualifying Persons.

(1) Leases -In General. . . . (unchanged).

(2) Leases -Acquisition Sale and Leaseback. . . . (unchanged).

(3) Subsequent Lease of Property Acquired Subject to Partial Exemption. . . . (unchanged).

(i) Records. . . . (unchanged).

(j) Operative Date. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6356.5, Revenue and Taxation Code.

Appendix A. . . . (unchanged).

Appendix B. . . . (unchanged).

Memorandum

To : Ms. Kristine Cazadd
Interim Executive Director, MIC: 73

Date: October 29, 2010

From : ^{RMF}Randy Ferris, Acting Chief Counsel
Legal Department, MIC:83

Subject : **Board Meeting, November 16-18, 2010**
Item J
Chief Counsel's Rulemaking Calendar
Regulation 1533.1, Farm Equipment and Machinery

Sales and Use Tax Regulation 1533.1, *Farm Equipment and Machinery*, was originally adopted in 2002. Board staff recently discovered a typographical error that resulted in Regulation 1533.1, subdivision (b)(5) incorrectly cross-referencing itself, rather than correctly cross-referencing subdivision (b)(6), for the definition of the term "qualified person."

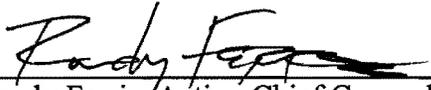
To correct this cross-referencing error, we request your approval to place Board staff's proposed revisions to Regulation 1533.1 on the Chief Counsel's Rulemaking Calendar for the November 16-18, 2010, Board meeting in order to request the Board's authorization to amend the regulation under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The revisions delete the incorrect cross-reference to subdivision (b)(5) currently found in the last sentence of the first paragraph of subdivision (b)(5) and replace it with a cross-reference to subdivision (b)(6). The change is appropriate for processing under Rule 100 because it corrects a cross-referencing error and does 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 revisions.

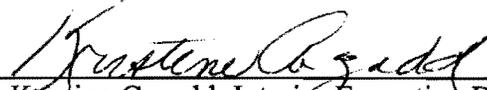
If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Approved:



Randy Ferris, Acting Chief Counsel



Kristine Cazadd, Interim Executive Director

Approved:

BOARD APPROVED

At the 11-16-10 Board Meeting



Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department



Diane Olson, Chief
Board Proceedings Division

Attachments

- cc: Mr. Jeffrey L. McGuire (MIC 43)
- Ms. Diane Olson (MIC 80)
- Ms. Christine Bisauta (MIC 82)
- Mr. Bradley M. Heller (MIC 82)
- Ms. Susanne Buehler (MIC 92)
- Mr. Geoffrey E. Lyle (MIC 50)
- Ms. Leila Hellmuth (MIC 50)
- Mr. Bradley Miller (MIC 50)

Regulation 1533.1. FARM EQUIPMENT AND MACHINERY

Reference: Section 6356.5, Revenue and Taxation Code

(a) GENERAL. Commencing on and after September 1, 2001, Section 6356.5 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of farm equipment and machinery, and parts of farm equipment and machinery purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products. The terms “farm equipment and machinery,” “parts of farm equipment and machinery,” “qualified person,” and “producing and harvesting agricultural products” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) “Farm equipment and machinery” means implements of husbandry, which include:

(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, fuel storage equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, agricultural operating structures, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope. Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.

Agricultural operating structures include single purpose agricultural or horticultural structures as defined in Treasury Regulation 1.48-10 (26 CFR 1.48-10). Such structures must be specifically designed and constructed for the permitted purposes of housing, raising and feeding of livestock or the commercial production of plants. A structure is specifically designed and constructed if it is not economic to design and construct the structure for the intended qualifying purpose and then use the structure for a different purpose. A structure qualifies as single purpose agricultural or horticultural structure only if it is used exclusively for a permitted purpose. The structure may not be used for any nonpermissible purposes such as processing, marketing, or more than incidental use for storing feed and equipment. A single purpose agricultural structure also houses equipment necessary to house, raise and feed livestock including, but not limited to, equipment necessary to contain livestock, to provide them with feed or water, and to control the temperature, lighting, and humidity of the interior structure. Examples of structures that qualify as a single purpose agricultural or horticultural structure include, but are not limited to, a farrowing barn, greenhouse, free stall barn, milking parlor, and egg production or poultry brooding facility. Single purpose agricultural or horticultural structures do not include general purpose farm buildings.

Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation, a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, and articles of clothing, except clothing designed primarily to protect a commodity or to apply agricultural chemicals as described in 3 CCR 6738.

(B) Any new or used vehicle, as defined in Chapter 1, Division 16 of the Vehicle Code, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code.

A list of typical vehicles regarded as farm equipment and machinery is set forth in Appendix A.

(2) "Parts of farm equipment and machinery" means:

(A) All component parts and contrivances such as belts, shafts, pipes, hoses and moving parts, that are parts of farm equipment and machinery as defined in subdivision (b)(1) which can be separated from the farm equipment and machinery and replaced. Parts of farm equipment and machinery do not include items that are consumed (e.g., burned, evaporate, dissolve, dissipate) through the regular use of the farm equipment and machinery (e.g., gasoline, cleaning agents, solutions, chemicals) which are ordinarily supplies; however, engine oil not consumed (i.e., not consumed as part of fuel for a two-stroke engine) is regarded as a component part.

(B) All repair and replacement parts for farm equipment and machinery as defined in subdivision (b)(1), which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the farm equipment and machinery, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person, a person that assists a qualified person, or another person.

(3) "Person that assists a qualified person" means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses farm equipment and machinery in assisting a person engaged in a line of business described in subdivision (b)(6) below. A person that assists a qualified person may perform a construction contract only if the person performing the contract

is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(5). A person that assists a qualified person must provide physical aid or assistance in the actual producing and harvesting of agricultural products owned by the qualified person and not merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person that assists such persons.

(4) "Primarily" means used 50 percent or more of the time in producing and harvesting agricultural products as defined in subdivision (b)(5).

(5) "Producing and harvesting agricultural products" means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 – Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(6)(5) or a person who assists a qualified person as defined in (b)(3).

For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity despite the fact that the property may otherwise be used less than 50% of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.

(6) "Qualified person" means a person engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains,

field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in (b)(3) above, that uses qualified property to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.

(7) "Qualified property" means farm equipment and machinery, and the parts thereof, as defined in subdivision (b)(1)-(2) used primarily in producing and harvesting agricultural products.

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) **IN GENERAL.** Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(2) **BLANKET PARTIAL EXEMPTION CERTIFICATES.** In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix B may be used as a blanket partial exemption certificate. Appendix B may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) **FORM OF PARTIAL EXEMPTION CERTIFICATE.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of

which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products.

(E) A statement that the purchaser is a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or is a person that assists such classified person by performing an agricultural service described in Codes 0711 to 0783 of the SIC Manual.

(F) Description of property purchased.

(G) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or in which a person that assists a qualified person states that he or she performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual and states that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products. If the qualified person or person that assists a qualified person is buying property of a kind not normally used in producing and harvesting agricultural products, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified property or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION.

(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.

(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(h) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property – In General," may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used in producing and harvesting agricultural products, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

(2) **LEASES—ACQUISITION SALE AND LEASEBACK.** A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) **SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION.** If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.

(i) **RECORDS.** Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was used by the qualified person primarily in producing and harvesting agricultural products.

(j) **OPERATIVE DATE.** This regulation is operative as of September 1, 2001.

Regulation 1533.1. (Continued)

Appendix A. The following is a list of typical vehicles regarded as farm equipment and machinery:

1. A lift carrier or other vehicle designed and used exclusively for the lifting and carrying of implements of husbandry or tools used exclusively for the production or harvesting of agricultural products, when operated or moved upon a highway.
2. A trailer of the tip-bed type when used exclusively in the transportation of other implements of husbandry or tools used exclusively for the production or harvesting of agricultural products.
3. A trailer or semi-trailer having no bed, and designed and used solely for transporting a hay loader or swather.
4. A spray or fertilizer applicator rig used exclusively for spraying or fertilizing in the conduct of agricultural operations, except anhydrous ammonia fertilizer applicator rigs which have a transportation capacity in excess of 500 gallons.
5. A trailer or semi-trailer which has a maximum transportation capacity in excess of 500 gallons, but not more than 1,000 gallons, used exclusively for the transportation and application of anhydrous ammonia, if the vehicle is either equipped with operating brakes or is towed upon a highway by a motor truck that is assigned a manufacturer's gross vehicle weight rating of 3/4 ton or more.
6. A nurse rig or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of an applicator rig or an airplane used for the dusting, spraying, fertilizing, or seeding of crops.
7. A row duster.
8. A wagon or van used exclusively for carrying products of farming from one part of a farm to another part thereof, or from one farm to another farm, and used solely for agricultural purposes, including any van used in harvesting alfalfa or cotton, which is only incidentally operated or moved on a highway as a trailer.
9. A wagon or portable house on wheels used solely by shepherds as a permanent residence in connection with sheep raising operations and moved from one part of a ranch to another part thereof or from one ranch to another ranch, which is only incidentally operated or moved on a highway as a trailer.
10. A trap wagon, as defined in Vehicle Code Section 36016, moved from one part of a ranch to another part of the same ranch or from one ranch to another, which is only operated or moved on a highway incidental to agricultural operations. The fuel tank or tanks of the trap wagon shall not exceed 1,000 gallons total capacity.
11. Any vehicle which is operated upon a highway only for the purpose of transporting agricultural products and is in no event operated along a highway for a total distance greater than one mile from the point of origin of the trip.
12. A portable honey-extracting trailer or semi-trailer.
13. A fertilizer nurse tank or trailer that is not self-propelled and which is moved unladen on the highway and auxiliary to the use of a spray or fertilizer applicator rig.
14. Any cotton trailer when used on the highways for the exclusive purpose of transporting cotton from a farm to a cotton gin, and returning the empty trailer to such farm.
15. A truck tractor or truck tractor and semi-trailer combination which is owned by a farmer and operated on the highways, (1) only incidental to a farming operation, (2) not for compensation, and (3) for a distance of not more than two miles (on the highway) each way. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on all wheels, and only to semi-trailers used in combination with such a truck tractor and exclusively in production or harvesting of tomatoes. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.
16. Any farm tractor used upon a highway to draw a farm trailer carrying farm produce, or to draw any trailer or semi-trailer carrying other implements of husbandry, between farms, or from a farm to a processing or handling point and returning with or without the trailer.

Appendix B.

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

I, as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.¹

Type of Farm Equipment and Machinery (or parts² thereof)*

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (If applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable) ³
TITLE		TELEPHONE NUMBER
ADDRESS	CITY	STATE, ZIP

- ¹ Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.
- ² If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.
- ³ If you are not required to hold a seller's permit, please enter "Not Applicable."

Tuesday, November 16, 2010

The Board met at its offices at 450 N Street, Sacramento, at 11:46 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CHIEF COUNSEL MATTERS

RULEMAKING

Proposed Amendments to Regulation 1584, *Membership Fees*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding section 100 changes to Regulation 1584, *Membership Fees*, that would adjust the threshold for the nominal amount of membership fees to \$55 effective January 1, 2011, to reflect changes in the California Consumer Price Index (Exhibit 11.1).

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Regulation 1584, *Membership Fees*, as recommended by staff.

Mr. Horton directed staff to report back to him as to whether the pending changes to the definition of “nominal amount” in Regulation 1584, *Membership Fees*, will shift the burden of taxation, or increase or decrease the sales and use tax base.

Exhibits to these minutes are incorporated by reference.

Proposed Amendments to Regulation 1533.1, *Farm Equipment and Machinery*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding section 100 changes to Regulation 1533.1, *Farm Equipment and Machinery*, that would correct a cross-referencing error currently found in subdivision (b)(5) (Exhibit 11.2).

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Sales and Use Tax Regulation 1533.1, *Farm Equipment and Machinery*, as recommended by staff.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the determination of the effect of Proposition 10 on cigarette and tobacco products consumption (Exhibit 11.3).

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

NOVEMBER 16, 2010

ITEM J2

PROPOSED AMENDMENTS TO REGULATION 1533.1

Reported by: Kathleen Skidgel

CSR No. 9039

P R E S E N T

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For the Board
of Equalization:

Betty Yee
Chair

Jerome E. Horton
Vice-Chair

Barbara Alby
Acting Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane G. Olson,
Chief
Board Proceedings
Division

For Board of
Equalization Staff:

Bradley Heller
Staff Counsel

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1 450 N STREET

2 SACRAMENTO, CALIFORNIA

3 NOVEMBER 16, 2010

4 ---oOo---

5 MS. OLSON: Next item is J2, Amendments to
6 Regulation 1533.1, farm equipment and machinery.

7 MS. YEE: Okay. Mr. Heller.

8 MR. HELLER: And, again, our Board staff's here to
9 request authorization to complete a Rule 100 change to
10 Regulation 1533.1 to correct a cross-referencing error in
11 subdivision (b) (5) so that it cross-references subdivision
12 (b) (6).

13 MS. YEE: Okay.

14 MS. MANDEL: So moved.

15 MR. HORTON: Second.

16 MS. YEE: Okay. Motion by Ms. Mandel, second by
17 Mr. Horton. Without objection, motion carries.

18 Thank you very much.

19 MR. HELLER: Thank you.

20 (The matter concluded at 11:52 a.m.)

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