

**Initial Statement of Reasons for the Proposed Amendments  
to California Code of Regulations, Title 18, Section 4098,  
*Relief from Liability***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Background and Current Law

California Code of Regulations (CCR), title 18, section (Regulation) 4098, Relief from Liability, became effective in 2002. The State Board of Equalization (Board) adopted Regulation 4098 to implement, interpret, and make specific Revenue and Taxation Code (RTC) section 30284, which provides that a person may be relieved of taxes imposed under the Cigarette and Tobacco Products Tax Law (CTPTL) (commencing with RTC section 30001) and interest or penalties added to those taxes, if the Board finds that the person's failure to make a timely report, return, or payment is due to the person's reasonable reliance on written advice from the Board.

Regulation 4902, Relief from Liability, became effective in 2003. The Board adopted Regulation 4902 to implement, interpret, and make specific several statutes, including RTC section 30284 (discussed above) and RTC section 41098, which currently provides that a person may be relieved of surcharges imposed under the Emergency Telephone Users Surcharge (ETUS) Act (commencing with RTC section 41001) and interest or penalties added to those surcharges, if the California Department of Tax and Fee Administration (Department) finds that the person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Department. Also, the substantive provisions of Regulations 4098 and 4902 were almost identical until 2014 when the Board amended Regulation 4902 to permit "a person with shared accounting and common ownership with [an] audited person" to rely on written advice given by the Board in a prior audit of the audited person under specified circumstances.

In addition, Government Code (GC) 15570.22 transferred the administration of many tax, fee, and surcharge laws from the Board to the Department, operative July 1, 2017, including the administration of the CTPTL and ETUS Act. Also, references to the "Board" in those Department-administered tax, fee, and surcharge laws and the regulations adopted thereunder, including Regulation 4098, mean the "Department" pursuant to GC section 15570.24 and RTC section 20, unless the context requires otherwise.

Furthermore, the Department recently adopted Regulation 2444 to implement, interpret, and make specific RTC section 41098 (discussed above). Regulation 2444 cross references Regulation 4902 and provides additional notice that "A person may be relieved from liability for the payment of the 911 and 988 surcharges [imposed under the ETUS Act], including any penalties and interest added to the surcharges, when that liability resulted from the failure to make a timely return or a payment and such failure is found by the Department to be due to reasonable reliance on written advice given by the Department under the conditions set forth in Regulation 4902."

## Proposed Amendments to Regulation 4098

The Department determined that there is an issue (or problem within the meaning of GC section 11346.2, subdivision (b)) with Regulation 4098 because Regulations 4098 and 4902 implement, interpret, and make specific RTC section 30284, but Regulation 4098 has been inconsistent with Regulation 4902 since 2014. The Department also determined that there is an issue (or problem) with Regulation 4098 because it refers to the Board, rather than the Department. Therefore, the Department determined that it is reasonably necessary to propose to amend Regulation 4098 so that it only cross references and provides further notice regarding the provisions of Regulation 4902 in the same manner as Regulation 2444 and it is no longer inconsistent with Regulation 4902 for the specific purpose of addressing the first issue (or problem). The Department also determined that it is reasonably necessary to propose to amend Regulation 4098 so that it refers to the Department, rather than the Board, for the specific purpose of addressing the second issue (or problem).

The proposed amendments provide that a person may be relieved from the liability for the payment of cigarette and tobacco products taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the “Department to be due to reasonable reliance on written advice given by the Department under the conditions set forth in Regulation 4902.” The proposed amendments also delete the rest of the text from Regulation 4098.

The Department anticipates that the proposed amendments to Regulation 4098 will promote fairness and benefit taxpayers and the Department by eliminating the inconsistency between Regulation 4098 and Regulation 4902 and providing further notice regarding the provisions of Regulation 4902.

### DOCUMENTS RELIED UPON

The Department relied upon its staff’s understanding of the GC, RTC, and Regulations 2444, 4098, and 4902 in proposing the amendments to Regulation 4098. The Department did not rely upon any technical, theoretical, or empirical study, report, or similar document.

### ALTERNATIVES CONSIDERED

The Department considered whether to begin the regular rulemaking process to adopt the proposed amendments to Regulation 4098 discussed above or, alternatively, whether to repeal Regulation 4098 to eliminate the inconsistency between Regulation 4098 and Regulation 4902. The Department decided to begin the regular rulemaking process to adopt the proposed amendments to Regulation 4098 at this time because the Department determined that they were reasonably necessary for the reasons set forth above. Also, the Department determined that amending Regulation 4098 to cross reference and provide further notice regarding the provisions of Regulation 4902 would be more helpful for taxpayers than merely repealing Regulation 4098.

The Department did not reject any other reasonable alternative to the proposed amendments to Regulation 4098, including any reasonable alternative that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative to the proposed amendments to Regulation 4098 has been identified and brought to the Department’s attention that would lessen any adverse impact the proposed action may have on small business,

be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GC SECTION 11346.2, SUBDIVISION (b)(5) AND  
ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3,  
SUBDIVISION (b)

The Department assessed the economic impact of adopting the proposed amendments to Regulation 4098 on California businesses and individuals. The Department determined that businesses and individuals will not incur any costs to comply with the amendments to Regulation 4098 that they would not otherwise incur to comply with the current provisions of Regulations 4098 and 4902. The Department also determined that businesses and individuals will generally benefit from the clarifications provided by the proposed amendments to Regulation 4098, but they will not receive a monetary benefit.

As a result, the Department determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000. The Department also prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and the Department determined in the economic impact assessment that the adoption of the proposed amendments to Regulation 4098 will neither create nor eliminate jobs within the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California.

Furthermore, Regulation 4098 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Department determined that the adoption of the proposed amendments will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state's environment.

The foregoing information also provides the factual basis for the Department's initial determination that the proposed amendments to Regulation 4098 discussed above will not have a significant adverse economic impact on business.