

**TITLE 18. CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION**

**PROPOSED AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 18, SECTION 4098,
RELIEF FROM LIABILITY**

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority in Revenue and Taxation Code (RTC) section 30451, proposes to adopt amendments to California Code of Regulations (CCR), title 18, section (Regulation) 4098, Relief from Liability. The proposed amendments cross reference and provide further notice regarding the provisions of Regulation 4902, Relief from Liability.

AUTHORITY

RTC section 30451

REFERENCE

RTC section 30284

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Background and Current Law

Regulation 4098 became effective in 2002. The Board adopted Regulation 4098 to implement, interpret, and make specific 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 similar 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 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 several 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 to have the effect and accomplish the objective 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, to have the effect and accomplish the objective 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.

The Department has performed an evaluation of whether the proposed amendments to Regulation 4098 are inconsistent or incompatible with existing state regulations and determined that they are not inconsistent or incompatible with existing state regulations. This is because Regulations 4098, 4902, and 35050 are the only state regulations that implement, interpret, and make specific RTC section 30284, Regulation 35050 is already consistent with Regulation 4902, and the proposed amendments make Regulation 4098 consistent with Regulation 4902. The Department has also determined that there are no existing federal regulations or statutes that are comparable to the proposed amendments to Regulation 4098.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the adoption of the proposed amendments to Regulation 4098 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

ONE-TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the adoption of the proposed amendments to Regulation 4098 will result in an absorbable \$577 one-time cost for the Department to update its website after the proposed regulatory action is completed. The Department has determined that the adoption of the proposed amendments to Regulation 4098 will not result in any other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the adoption of the proposed amendments to Regulation 4098 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS

The Department has determined that the adoption of the proposed amendments to Regulation 4098 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE 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 and determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000. Therefore, the Department prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the economic impact assessment, the Department determined that the proposed amendments to Regulation 4098 will neither create nor eliminate jobs in 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, the Department determined that the proposed amendments to Regulation 4098 will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 4098 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Department must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose 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.

CONTACT PERSONS

Questions regarding the substance the proposed amendments to Regulation 4098 should be directed to Sarah Smith, Business Taxes Administrator II, by telephone at (916) 309-5292, by e-mail at Sarah.Smith@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Sarah Smith, MIC:50, 651 Bannon Street, Suite 100, Sacramento, CA 95811-0299.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by e-mail at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 651 Bannon Street, Suite 100, Sacramento, CA 95811-0299. Kim DeArte is the designated backup contact person to Sarah Smith.

WRITTEN COMMENT PERIOD

The written comment period ends on May 11, 2026. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt the proposed amendments to Regulation 4098. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted during the day of and at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted during the day of or at the public hearing before the Department decides whether to adopt the proposed amendments to Regulation 4098.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department has prepared copies of the text of the proposed amendments to Regulation 4098 illustrating the express terms of the proposed action. The Department has also prepared an initial statement of reasons for the proposed amendments to Regulation 4098, which includes the economic impact assessment required by GC section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 651 Bannon Street, Suite 100, Sacramento, California. The express terms of the proposed amendments to Regulation 4098, and the initial statement of reasons are also available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed amendments to Regulation 4098. However, any interested person or their authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GC SECTION 11346.8

The Department may adopt the proposed amendments to Regulation 4098 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made pursuant to GC section 11346.8, the Department will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider timely written comments it receives regarding a sufficiently related change.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Department adopts the proposed amendments to Regulation 4098, the Department will prepare a final statement of reasons. Upon its completion, the final statement of reasons will be made available for inspection at 651 Bannon Street, Suite 100, Sacramento, California, and available upon request by contacting the contact person(s) named above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice, initial statement of reasons, and the text of the proposed amendments to Regulation 4098 are available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm. If the Department publishes other related documents, they will also be available at that website.