Interested Parties Meeting Agenda
Software Technology Transfer Agreements
July 24, 2025

Welcome and Introductions

Item A – General background

- Regulation 1502, Computers, Programs, and Data Processing.
- Technology Transfer Agreement Statutes. (RTC sections 6011(c)(10) and 6012 (c)(10).)
- Regulation 1507, Technology Transfer Agreements (TTAs).
- *Nortel Networks, Inc. v. State Board of Equalization* (2011) 191 Cal.App.4th 1295.
- *Lucent Technologies, Inc. v. State Board of Equalization* (2015) 241 Cal.App.4th 19.
- CDTFA TTA Workshops (2024).
- Proposed New Regulation 1507.1, Software Technology Transfer Agreements.

Item B – Proposed Amendments to Subdivision (f)(1) of Regulation 1502

- Amend the second sentence in subdivision (f)(1)(A) to refer to storage media on which a program is recorded, coded, or punched to make it consistent with subdivision (f)(1).
- Add "Except as provided in Regulation 1507.1" to the beginning of subdivision (f)(1)(B) to limit that subdivision.
- Amend subdivision (f)(1)(D) to clarify that the prewritten program is being transferred electronically and delete the text about the software being transferred from the seller's place of business.
- Amend subdivision (f)(1)(D) to refer to TPP and storage media "on which the program is recorded, coded, or punched" to make it consistent with subdivision (f)(1).
- Add a clarifying example to subdivision (f)(1)(D) to illustrate that if Company X sells a customer a computer and a license to electronically download and use a prewritten program, the sale of the license to electronically download and use the prewritten program is not taxable.

Item C – Proposed Amendments to Subdivision (b) of Regulation 1507

- Add "unless otherwise exempt or excluded" to the end of the first sentence in subdivision (b)(1).
- Add new subdivision (b)(1)(C)(iii) to clarify that a taxpayer may calculate the combined cost of materials and labor used to produce TPP by adding the cost of direct materials and direct labor which must be attributed or allocated to the cost of producing the TPP under generally accepted accounting principles. Also, included an example.

- Add new subdivision (b)(3)(A) to provide that tax applies to the sale or storage, use, or other consumption of a prewritten program transferred on TPP pursuant to a TTA as set forth in Regulation 1507.1.

Item D – Proposed New Regulation 1507.1, Subdivision (a), Definitions

- Defines "computer" and "storage media" so that they have the same meaning as set forth in Regulation 1502.
- Defines "custom software," "prewritten software," and "software" so that they respectively have the same meaning as "custom computer program," "prewritten program," and "program" as set forth in Regulation 1502.
- Provides that "software TTA" means a technology transfer agreement as defined in Regulation 1507 that includes the transfer of copyright or patent interests in software transferred on TPP (e.g. a computer or storage media), as specified in *Nortel* and *Lucent*.
- Defines "bargained-for software," "optional software," and "non-bargained-for software," which are terms used in subdivisions (d) through (g) discussed below.

Item E – Proposed New Regulation 1507.1, Subdivision (b), Software Exclusions

- Incorporates the software exclusions in subdivision (f) of Regulation 1502 to ensure that new Regulation 1507.1 is consistent with Regulation 1502. (See subdivisions (b)(1)-(3).)
- Clarifies that the software exclusions apply to a transaction before the TTA provisions in Regulations 1507 or 1507.1. (See subdivision (b)(4).)
- Clarifies that tax applies to all amounts received from the sale or storage, use, or other consumption of prewritten software transferred on TPP, as provided in subdivisions (f)(1)(A), (B), and (C) of Regulation 1502, where the transfer of the software is not pursuant to a TTA to be consistent with Regulation 1502. (See subdivision (b)(5).)

Item F – Proposed New Regulation 1507.1, Subdivision (c), General Application of Tax to Technology Transfer Agreements

- Incorporates the provisions of subdivisions (b)(1) and (2) of Regulation 1507 to ensure that new Regulation 1507.1 is consistent with Regulation 1507.
- Subdivision (c)(1)(A) provides that tax applies to amounts received for any TPP transferred in a software TTA, unless otherwise exempt or excluded.

- Subdivision (c)(1)(B) provides that tax does not apply to amounts received for the assignment or licensing of intangible copyright or patent interests in software transferred on TPP as part of a software TTA.
- Subdivision (c)(2) also provides that, except as further provided in Regulation 1507.1, the gross receipts or sales price attributable to any TPP transferred as part of a software TTA shall be determined in accordance with subdivisions (b)(1)(A), (B), and (C) of Regulation 1507.

Item G – Proposed New Regulation 1507.1, Subdivisions (a)(1), (a)(4), and (d), Definitions and Presumptions for Bargained-for and Non-Bargained-for Software

- Subdivision (a) (1) provides:
    - "Bargained-for software" means patented and/or copyrighted prewritten software transferred on TPP that the retailer separately or specifically agreed to sell or license intangible copyright or patent interests in for consideration.
    - It shall be rebuttably presumed that prewritten software is bargained-for software if the retailer provides an invoice, receipt, or other document to the purchaser, contemporaneous with the sale or license of the software, showing that the retailer separately or specifically agreed to sell or license intangible copyright or patent interests in the software for a consideration. The Department may rebut the presumption by establishing that the prewritten software was non-bargained-for software.
    - Three examples.
- Subdivision (a)(4) provides:
    - "Non-bargained-for software" means prewritten software transferred on TPP that the retailer did not separately or specifically agree to sell or license intangible copyright or patent interests in.
    - It shall be rebuttably presumed that software transferred on TPP is non-bargained-for software, unless the retailer maintains a copy of an invoice, receipt, or other document provided to the purchaser, contemporaneous with the transaction, showing that the retailer separately or specifically agreed to sell or license intangible copyright or patent interests in the software.
    - Two examples.
- Subdivision (d)(1) provides that it shall be rebuttably presumed that bargained-for software was transferred pursuant to a software TTA.

- Subdivision (d)(2) provides that it shall be presumed that:
    - Non-bargained-for software was not transferred pursuant to a software TTA;
    - The value of the TPP on which non-bargained-for software is transferred equals or exceeds the amount charged for the TPP with the non-bargained-for software; and
    - Tax applies to all amounts received from the sale or storage, use, or other consumption of non-bargained-for software, as provided in subdivision (b)(4).

Item H – Proposed New Regulation 1507.1, Subdivisions (a)(5) and (e), Definition of Optional Software and Specific Application of Tax to Bargained-for Software

- Subdivision (a)(5) provides that "optional software" means patented and/or copyrighted software that a purchaser is not required to purchase as a condition of the sale of the TPP on which the software is transferred as part of a software TTA.
- Subdivision (e)(1) clarifies that when a retailer transfers optional bargained-for software to a purchaser on TPP pursuant to a software technology transfer agreement, and the retailer separately states the price for the optional bargained-for software from a reasonable price charged for the TPP, including any other prewritten software on the TPP:
    - Tax does not apply to the separately stated amount charged for the optional bargained-for software;
    - Tax applies to the reasonable separately stated amount charged for the TPP, including any other prewritten software on the TPP, unless the retailer establishes that the gross receipts or sales price attributable to the TPP is less than that amount pursuant subdivision (b)(1)(A), (B), or (C) of Regulation 1507 or subdivision (e)(2); and
    - Includes an example.
- Subdivision (e)(2) clarifies that when a retailer transfers bargained-for software to the purchaser on TPP pursuant to a software TTA, and the retailer does not separately state the price charged for the bargained-for software from a reasonable price charged for the TPP, including any non-bargained-for software on the TPP, or the bargained-for software is not optional, the retailer may elect to pay or collect tax on a taxable percentage of the total amount charged for the bargained-for software and the TPP, including any non-bargained-for software on the TPP, if:
    - The taxable percentage is 80 percent or more and the taxable percentage was pre-certified to the Department; or
    - The taxable percentage is less than 80 percent and the Department pre-certified the taxable percentage; or

  - The retailer can substantiate upon audit that bargained-for software was in fact transferred on the TPP and that the retail selling price attributable to the TPP, including any non-bargained-for software on the TPP, as determined in accordance with subdivision (b)(1)(B) or (C) of Regulation 1507, does not exceed the taxable percentage.

- Subdivision (e)(2) includes three examples.

Item I – Proposed New Regulation 1507.1, Subdivision (f), Precertification to the Department

- Subdivision (f)(1) provides that a seller may elect to pre-certify a taxable percentage of 80 percent or more for specific TPP (product) on which bargained-for software is transferred.
  - The seller must submit all the information required by subdivision (f)(3) (required information) to the Department in good faith to elect to pre-certify a taxable percentage of 80 percent or more for a product.
  - The required information must be submitted to the Department before the seller or an authorized retailer may use the pre-certified percentage.
- Subdivision (f)(2) provides that if a seller submits the required information in good faith, the Department will rebuttably presume that the retail selling price of the product on which bargained-for software is transferred does not exceed the seller's pre-certified percentage of the total amount charged for the bargained-for software and the product, including any non-bargained-for software on the product. The rebuttable presumption will only apply to the sale, use, or lease of the specific product identified in the required information.
- Subdivision (f)(3) requires a seller to submit the following information to the Department:
  - A general description of the seller's business.
  - A description of the product sold in the regular course of the seller's business and the bargained-for software transferred on the product, and the seller's pre-certified taxable percentage of 80 percent or more for the product.
  - The seller's statement made to the best of seller's knowledge that bargained-for software will be transferred on the product pursuant to software TTAs and based on the seller's cost information or valuation study, documentation of which may be requested by the Department, the retail selling price of the product without the bargained-for software does not exceed the seller's pre-certified taxable percentage of the total amount charged for the bargained-for software and the product, including any non-bargained-for software on the product, as determined in accordance with subdivision (b)(1)(A), (B), and (C) of Regulation 1507.
- Subdivision (f)(3) also provides that a seller may elect to pre-certify a taxable percentage of 80 percent or more for multiple products on which bargained-for software is transferred

by submitting a schedule containing the required information for each product and a single seller's statement for the products in substantially the same form as described above.

- Subdivision (f)(4) clarifies that in the absence of evidence to the contrary, a seller will be presumed to have submitted the required information in good faith if the seller's information is complete and otherwise appears valid on its face.
- Subdivision (f)(5) provides that a seller's precertification for a product remains in effect and applies to sales or leases of the product until revoked or revised in writing by the seller, or until there is a material change to the retail selling price attributable to the product. A material change occurs when the retail selling price of the product without the bargained-for software, as determined in accordance with subdivisions (b)(1)(A), (B), and (C) of Regulation 1507, exceeds the seller's pre-certified taxable percentage of total amount charged for the bargained-for software and the product, including any non-bargained-for software on the product.
- Subdivision (f)(6) provides that a seller that submits the required information to pre-certify a taxable percentage of 80 percent or more for a product that it sells for resale in the regular course of business may also submit a statement or schedule authorizing other retailers to elect to use the seller's pre-certified taxable percentage when they sell the product with the bargained-for software pursuant to software TTAs.
    - A seller may authorize each retailer by name or may state that all persons that will make retail sales of such product pursuant to a software TTA are authorized retailers.
    - A seller may only authorize retailers to elect to use the seller's pre-certified taxable percentage for a product if the seller also authorizes the Department in writing to disclose the following information to the retailer when necessary to determine the correct amount of tax due on sales or leases of the product:
        - The information the seller submitted about the product pursuant to subdivision (f)(3).
        - The seller's written statement or schedule authorizing the retailer to elect to use the seller's pre-certified taxable percentage.
        - The seller's revocation or revision of its precertification for the product.
        - A material change in the retail selling price attributable to the product.
- Subdivision (f)(6) also provides that if a seller submits a statement or schedule authorizing a retailer to elect to use the seller's pre-certified taxable percentage for a product on which bargained-for software is transferred, the Department will rebuttably presume that the retailer's selling price for the product does not exceed the authorizing seller's pre-certified percentage of 80 percent or more of the total amount charged for the bargained-for software

and the product, including any non-bargained-for software on the product, while the seller's precertification is in effect.

Item J – Proposed New Regulation 1507.1, Subdivision (g), Precertification by the Department

- Subdivision (g)(1) provides that a seller may submit a written request for the Department to pre-certify a taxable percentage of less than 80 percent for a product on which bargained-for software is transferred.
- Subdivision (g)(2) provides that the Department will only pre-certify a taxable percentage of less than 80 percent for a product if:
    - The seller submits all the information required by subdivision (f) to the Department and the cost information or valuation study the seller used to determine that the retail selling price of the product without the bargained-for software does not exceed the seller's requested taxable percentage of the total amount charged for the bargained-for software and the product, including any non-bargained-for software on the product, as determined in accordance with subdivision (b)(1)(A), (B), or (C) of Regulation 1507; and
    - The Department determines in its sole discretion that the retail selling price of the product on which bargained-for software is transferred does not exceed the seller's requested taxable percentage of the total amount charged for the bargained-for software and the product, including any non-bargained-for software on the product.
- Subdivision (g)(3) provides that the Department's precertification for a product remains in effect and applies to sales or leases of the product until revoked or revised in writing by the Department, or until there is a material change in the retail selling price attributable to the product as determined in accordance with subdivisions (b)(1)(A), (B), and (C) of Regulation 1507.
    - A material change occurs when the retail selling price of the product without the bargained-for software, as determined in accordance with subdivisions (b)(1)(A), (B), and (C) of Regulation 1507, exceeds the Department's pre-certified taxable percentage of the total amount charged for the bargained-for software and the product, including any non-bargained-for software on the product.
- Subdivision (g)(4) clarifies that if the Department pre-certifies a taxable percentage of less than 80 percent for a product pursuant to a seller's request and the seller sells the product for resale in the regular course of business, the seller may authorize other retailers to elect to use the Department's pre-certified taxable percentage for the product if the seller complies with all the requirements of subdivision (f)(6).

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Item K – Conclusion

- Written comments regarding this proposed rulemaking or suggestions for alternative regulatory language are due August 14, 2025.
- Please submit to BTFD-BTC.InformationRequests@cdtfa.ca.gov.
- Next steps.

Contact Information

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