

REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW NOTICE PUBLICATION REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2015-0617-015	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 29 2015

2:02 PM

2015 JUN 17 PM 1:45
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
Office of Tourism

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE Changes to the Tourism Marketing Act Regulations	TITLE(S) 10	FIRST SECTION AFFECTED 5350	2. REQUESTED PUBLICATION DATE April 17, 2015
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Scott M. Plamondon	TELEPHONE NUMBER (916) 558-6043	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2015,182	PUBLICATION DATE 5/1/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Minor revisions to the regulations regarding the Tourism Marketing Act	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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 5350, 5353, 5354, 5354.1, 5356, 5357.1, 5357.2, 5358.6, 5358.7, 5358.10
TITLE(S) 10	REPEAL 5358.1

3. TYPE OF FILING			
<input checked="" 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 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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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 checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input 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 checked="" 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 Scott M. Plamondon	TELEPHONE NUMBER (916) 558-6043	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) splamondon@weintraub.com
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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>Christine T. Jeter</i>	DATE 6/17/2015
TYPED NAME AND TITLE OF SIGNATORY President and CEO/Director of Tourism	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 29 2015

Office of Administrative Law

Title 10. Investment
Chapter 7.65.

TOURISM MARKETING ACT

Subchapter 1. Definitions

§ 5350. Definitions.

- (a) "Accommodation Location" is any passenger car rental location on the property of a hotel, motel or other accommodation facility.
- (b) "Act" means the California Tourism Marketing Act, Government Code Section 13995 *et seq.*
- (c) "Airport Location" is any passenger car rental location on an airport property or servicing an airport and subject to either an airport concession agreement or an airport access fee agreement.
- (d) "Assessed Business" means a Business which derives any California Gross Receipts from a California Business Location from one or more Industry Segments and participates in the Tourism Assessment Program by paying an annual Assessment pursuant to the Act.
- (e) "Assessment" means the amount of Business Location annual fees owed by the Assessed Business to the Office pursuant to the Act.
- (f) "Assessment Rate" for the Passenger Rental Car Industry Segment shall be set forth in Section 5357.1 below.
~~calculated by taking (i) the funding required for the Commission under the Act (\$25,000,000 for fiscal year 2006-2007; \$50,000,000 for fiscal year 2007-2008 and thereafter) less (ii) the Estimated Amount for such fiscal year, and dividing this result by (iii) the estimated Revenue for the entire Passenger Car Rental Industry segment for such fiscal year as determined under Section 5357.1 below. For all other segments, the "Assessment Rate" shall be as determined by referendum under the Act.~~
- (g) "Authorized Representative" means a person authorized by the Business to sign and provide the information required in the Registration Form and the Ballot. Examples of authorized representatives include sole proprietor, corporate officers, general partners and fiduciaries.
- (h) "Ballot" means the written document sent to Assessed Businesses consisting of the information listed in Section 5355.
- (i) "Business" means an individual (sole proprietorship), partnership, fiduciary, corporation, association, or any other business organization, whether operating on a profit or nonprofit basis.
- (j) "Business Location" means the California street address where Travel and Tourism Revenues are generated by a Business. If the Business has more than one business license for a single address, then each activity requiring a business license is a separate Business Location.
- (k) California Travel and Tourism Commission ("CTTC") is the commission that promotes California as a tourism destination, both domestically and internationally. It is headquartered at 980 9th Street, Suite 480, Sacramento, CA 95814.

(l) "California Gross Receipts" means gross receipts minus returns and allowances from sales in California. Examples of California Gross Receipts are the amount shown on line 1c of Schedule F, Form 100 of the California Franchise Tax Board, 1996 revision date, line 3 on Schedule C, Form 1040 of the Internal Revenue Service, 1996 revision date, or for multi-state operations, column (b) on line 3, "total sales" of schedule R-1 of the California Franchise Tax Board, 1996 revision date.

(m) "Commissioner" means a member of the board of commissioners of the California Travel and Tourism Commission, established pursuant to Government Code Section 13995.40.

(n) "Estimated Amount" means for a given fiscal year the sum of the amount estimated by the Office to be (i) payable as Assessments by all Assessed Businesses other than the Passenger Car Rental Industry Segment and (ii) contributed by the State of California general funding.

(o) "Expenditures" shall mean the total amount of dollars budgeted in a given fiscal year to be spent by CTTC, including without limitation utilities, rent, insurance, services, products, goods, advertising, salaries, building equipment, fixed, tangible and intangible assets.

(p) "Exempt Business" means a Business meeting one or both of the following requirements:

- (1) The Business is an Exempt Travel Agent/Tour Operator; and/or
- (2) The Business is a Public Body.

(q) "Exempt Business Location" means a Business Location meeting one or more of the following:

- (1) The Business Location derives less than one percent (1%) of its California Gross Receipts from Travel and Tourism Revenue within Industry Segment(s);
- (2) The Business Location derives California Gross Receipts from any of the following Industry Segments within the attractions and recreation Industry Category where the business does not charge an admission fee or gate: museums and art galleries, arts or science center, historical society, planetarium, botanical and zoological gardens, aquarium, animal and reptile exhibit and arboretum;
- (3) The Business Location derives Revenue from any Industry Segment(s) in the restaurants and retail Industry Category, where the business activity meets one or more of the following definitions:
 - (A) Contract feeders serving hospitals, schools, prisons, employee cafeterias and/or restaurants;
 - (B) Catering vendor trucks serving job sites and other employment locations; and/or
 - (C) Restaurants on university campuses and military bases; and/or
- (4) The Business Location has California Gross Receipts under one million dollars (\$1,000,000) for the accounting period listed in the Business' most recent income tax return. If the accounting period is less than twelve (12) months, California Gross Receipts shall be annualized using the formula described in section 5353(d)(2).

(r) "Exempt Revenues" means:

- (1) Within the attractions and recreation Industry Category, California Gross Revenue from rentals of the following for more than thirty (30) days: canoes, houseboats, pleasure boats, rowboats, sailboats, surfing equipment and spaces in marine basins and/or yacht basins.

(2) Within the travel and transportation Industry Category, California Gross Revenue from interstate transportation and/or sales of diesel fuel.

(3) Within the travel and transportation Industry Category, California Gross Revenue from regular route intrastate and interstate bus service; provided, however that Exempt Revenues shall not include California Gross Revenue derived from bus service which is of a type that requires authority (whether in the form of a certificate of public convenience and necessity or a permit) to operate as a charter-party carrier of passengers pursuant to Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code.

(s) "Exempt Travel Agent/Tour Operator" means a Business which meets both of the following requirements:

(1) It derives at least 51% of its California Gross Receipts from one or more of the following Industry Segments: travel agencies and/or tour operator/packager & wholesaler ("Travel Agent"); and

(2) It derives less than twenty percent (20%) of its Travel Agent California Gross Receipts from Travel and Tourism Revenue where the travel occurs within California.

(t) "Industry Category" means the following classifications within the tourism industry:

(1) Accommodations.

(2) Restaurants and retail.

(3) Attractions and recreation.

(4) Transportation and travel services.

(5) Passenger Car Rental Industry.

The definition of each Industry Category is the sum of all Industry Segments contained within that Industry Category. For example, the accommodations Industry Category is the sum of its Industry Segments, including motel, vacation lodges and ski lodges.

(u) "Industry Segment" means those subsets of Industry Categories contained in Section 5352.

(v) "Office" means the Office of Tourism, of the State of California Business, Transportation and Housing Agency that administers the California Travel and Tourism Assessment including processing of all payments. It is also located at 980 9th Street, Suite 480, Sacramento, CA 95814.

(w) "Paid in Full" means the Assessed Business has paid all past and current annual Assessments, late fees and/or penalties due.

(x) "Passenger Car Rental Industry Segment" is defined as those companies renting passenger vehicles at an Airport Location or Accommodation Location in California. Passenger Vehicle is as defined in Section 465 of the California Vehicle Code.

(y) "Public Body" means a public entity or a corporation where a majority of the corporation's board of directors is appointed by a public official or public entity, or serves on the corporation's board of directors by virtue of being elected to public office, or both. As used herein, a "public entity" is an agency, department or instrumentality of the United States, State of California, or any political subdivision thereof. As used herein, a "public official" is an employee of a public body or a person elected to the public body, who serves as a representative of that public body when making the appointment.

(z) "Referendum" means any vote by mailed ballot of measures recommended by the Commission and approved by the Secretary pursuant to Government Code Section 13995.60 and/or 13995.92.

- | (aa) "Referendum Request" means the method used by Assessed Businesses to place on a Referendum additional Commissioner candidates and/or a different assessment level pursuant to Government Code Section 13995.62 and section 5354.1 of this chapter except for the initial referendum, which shall consist of measures contained in the selection committee report, discussed in Section 13995.30.
- | (bb) "Revenue" is all paid time and/or mileage charges only, including upgrades, as shown on each concluded Rental Agreement, net of any discount at California Airport Locations and Accommodation Locations. Revenue shall not include "replacement rentals". A "replacement rental" is defined as any rental which is a temporary replacement of an individual's primary vehicle arising from loss of use due to maintenance, repairs, physical damage, or theft.
- | (cc) "Secretary" means the Secretary of the Business, Transportation and Housing Agency, or his/her designee.

- | (dd) "Tourism Assessment Form" means the form described in Section 5353.
- | (ee) "Travel and Tourism Revenue" means California Gross Receipts derived from expenditures to and/or within California by people who (1) travel at least fifty (50) miles from home, one way, for purposes other than commuting to work or school; or (2) have an overnight accommodation as part of the travel, regardless of the distance or purpose traveled. "Home" as used in this definition means the place where the person has resided for the most recent 31 consecutive days.
- | (ff) "Voluntary Participant" means a Business which participates in the Tourism Assessment Program pursuant to Government Code Sections 13995.49 or 13995.77.
- | (gg) "Weighted Vote" means a vote equal to the Assessment paid by the Assessed Business; used to determine issues on a Referendum pursuant to Government Code Section 13995.64.

Note: Authority cited: Section 13995.69, Government Code. Reference: Sections 13995.20, 13995.40, 13995.49, 13995.60, 13995.64, 13995.65.5, 13995.77 and 13995.92, Government Code.

§ 5357.1. Determination of Annual Assessment Rate for Passenger Car Rental Industry Assessment.

(a) The assessment for each business of the Passenger Car Rental Industry Segment shall be the rate set by the Commission and shall be no more than 3.5 percent and shall be set at a level that will generate no more than 60 percent of all Expenditures by the Commission as set forth in Government Code Section 13995.45. ~~the Assessment Rate multiplied by such business' Revenue.~~

(b) The rate shall be adjusted annually by the ~~Office~~ Commission and such adjustment shall not be subject to annual referendum.

(1) By March 31st of each year, each member of the Passenger Car Rental Industry Segment shall submit to the Office the Revenue data for the previous calendar year.

(2) The Office shall annually determine the percentage of Revenue to be collected from the Passenger Car Rental Industry Segment for the following fiscal year, based on the Revenue data received by the Industry as required in Section (b)(1). If the Office does not receive a complete report of Revenue for a given fiscal year, the Office may estimate the additional Revenue based on prior year's information, extrapolation from reported revenue or any other reasonable method.

~~(3) The assessment rate will be calculated by dividing the revenue required to be funded by statute for the upcoming fiscal year, by the Revenue reported in the previous calendar year.~~

(3) The Office shall notify the passenger car rental industry of the applicable assessment rate for the next fiscal year by May 1st of that year.

(4) At the end of each fiscal year, if the amount paid by the Passenger Car Rental Industry Segment provides an excess the 60 percent of all expenditures ~~or deficit in funding,~~ that excess ~~or deficit~~ shall be taken into account in setting the subsequent year's rate as set by the Commission. ~~as provided for in subsection (b)(3).~~

Authority cited: Section 13995.69, Government Code. Reference: Section 13995.92, Government Code.