

THIRD MODIFICATION TO PROPOSED TEXT OF REGULATIONS

[Pursuant to California Code of Regulations, title 1, section 44, the following is a written description of the method used to illustrate accurately all changes made to the original proposed regulatory text:

- (a) Single underline: Indicates text that would constitute an addition to the California Code of Regulations. Was used in the original Proposed Text of Regulations that was subject to the 45-day comment period. Pertains to all proposed regulations unless modified as described below.
- (b) Double underline: Indicates text that was added as a result of comments received during the 45-day comment period. Pertains to proposed regulation sections 61201, 61212, 61213, 61214, 61215, and 61216.
- (c) ~~Single strikethrough~~: Indicates text that was deleted as a result of comments received during the 45-day comment period. Pertains to proposed regulation sections 61201, 61212, 61213, 61214, 61215, and 61216.
- (d) Wavy underline: Indicates text that was added as a result of comments received during the initial 15-day comment period. Pertains to proposed regulation section 61215.
- (e) ~~Double strikethrough~~: Indicates text that was deleted as a result of comments received during the initial 15-day comment period. Pertains to proposed regulation section 61215.]
- (f) Dotted underline: Indicates text that was added as a result of comments received during the second 15-day comment period. Pertains to proposed regulation sections 61201 and 61216.
- (g) ~~Dotted strikethrough~~: Indicates text that was deleted as a result of comments received during the second 15-day comment period. Pertains to proposed regulation sections 61201 and 61216.]

Chapter 4. California Healthcare, Research and Prevention Tobacco Tax Act of 2016

Subchapter 1. General Provisions and Definitions

§ 61200. Authority and Purpose.

This chapter is adopted to implement, interpret, and make specific the provisions of Revenue and Taxation Code sections 30130.56 and 30130.57, requiring the State Auditor to conduct at least biennially an independent financial audit of the state and local agencies receiving funds pursuant to the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 and to promulgate regulations required by Revenue and Taxation Code section 30130.57 defining administrative costs for purposes of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Section 8546.1, Government Code; and Sections 30130.56 and 30130.57, Revenue and Taxation Code.

§ 61201. Definitions

For purposes of this chapter:

(a) “Act” means the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 added as Article 2.5 (commencing with section 30130.50) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code as a result of the approval of initiative Proposition 56 by the voters on November 8, 2016 at the statewide general election.

(b) “Administrative costs” means the criteria set forth in subchapter 2 as it applies to each state agency or local agency receiving applicable funds.

(c) “Applicable funds” means any moneys received by any state agency or local agency pursuant to Revenue and Taxation Code sections 30130.55, 30130.56, or 30130.57. Applicable funds does not include any moneys ultimately received by a state agency or local agency pursuant to Revenue and Taxation Code section 30130.54.

(d) “Audit” pursuant to Revenue and Taxation Code section 30130.56, subdivisions (a) and (b) and Revenue and Taxation Code section 30130.57 (b) means an independent and systematic objective examination, evaluation, and verification of the appropriate and reasonable use of the applicable funds to provide public transparency and ensure that the revenues generated by the Act are used for healthcare, tobacco use prevention, and research. ~~conducted by the California State Auditor’s Office shall conduct any such audit undertaken pursuant to the Act in accordance with Government Code sections 8543 through to 8548.9, inclusive, by doing with a scope and objectives designed to accomplish any one or more of the following:~~

(1) Determining whether a state agency’s or local agency’s reported financial information is presented fairly in accordance with recognized criteria.

(2) Determining whether a state agency’s or local agency’s system of internal control is designed to provide reasonable assurance of achieving effective and efficient operations or reliable financial and performance reporting.

(3) Assessing compliance with criteria that could affect the acquisition, protection, use, and disposition of the state agency's or local agency's resources and the quantity, quality, timeliness, and cost of services the state agency or local agency produces and delivers.

(4) Assessing program effectiveness, economy, and efficiency of a state agency or local agency and making recommendations for improvements based on an evaluation of sufficient, appropriate evidence against criteria.

(5) Assessing the performance of a contract pursuant to Government Code section 8546.7.

(e) "Capital outlay" means expenditures of funds to acquire land, plan and construct new buildings, expand or modify existing buildings, and/or purchase equipment related to such construction.

(f) "Department central services costs" has the same meaning as "central services costs" as defined in section 8753 of the State Administrative Manual.

(g) "Department direct costs" has the same meaning as "department direct costs" as defined in section 8752.1 of the State Administrative Manual.

(h) "Department indirect costs" has the same meaning as "department indirect costs" as defined in section 8752.1 of the State Administrative Manual.

(i) "Financial audit" for purposes of Revenue and Taxation Code section 30130.56, subdivision (a) has the same meaning as "audit" as defined herein.

(j) "Fund" has the same meaning as the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund defined in Revenue and Taxation Code section 30130.53.

(k) "Local agency" has the same meaning as "local government agency" as defined in California Code of Regulations, title 2, section 61106.

(l) "Local assistance" means expenditures made for the support of local government or other locally administered activities.

(m) "State agency" has the same meaning as "agency of the state" as defined in California Code of Regulations, title 2, section 61001.

(n) "State operations" means expenditures for the support of state government, exclusive of expenditures for capital outlay and expenditures for local assistance activities.

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Section 8546.1, Government Code; and Sections 30130.50 through 30130.58, Revenue and Taxation Code.

[Sections 61202 to 61209, inclusive, are reserved.]

Subchapter 2. State and Local Agency Administrative Costs

§ 61210. Administrative Costs: California Department of Education.

(a) Each of the California Department of Education's state operations expenditures and capital outlay expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Education from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (b)(2).

(b) None of the California Department of Education's local assistance expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Education from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (b)(2).

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Sections 30130.55 and 30130.57, Revenue and Taxation Code.

§ 61211. Administrative Costs: California Department of Health Care Services.

(a) Each of the California Department of Health Care Services' state operations expenditures and capital outlay expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Health Care Services from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (a).

(b) None of the California Department of Health Care Services' local assistance expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Health Care Services from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (a).

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Sections 30130.55 and 30130.57, Revenue and Taxation Code.

§ 61212. Administrative Costs: California Department of Justice.

(a) None of the California Department of Justice's local assistance expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Justice from the Fund pursuant to Revenue and Taxation Code section 30130.57, subdivision (e)(1).

(a) Each of the California Department of Justice's state operations expenditures and capital outlay expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Justice from the Fund pursuant to Revenue and Taxation Code section 30130.57, subdivision (e)(1).

(b) Each of the California Department of Justice's state operations expenditures or capital outlay expenditures that constitutes a department indirect cost or a department central service cost shall also constitute an administrative cost with respect to any funds transferred to the California Department of Justice from the Fund pursuant to Revenue and Taxation Code section 30130.57, subdivision (e)(4).

(c) Each of the California Department of Justice's state operations expenditures or capital outlay expenditures that constitutes a department direct cost shall not constitute an administrative cost with respect to any funds transferred to the California Department of Justice from the Fund pursuant to Revenue and Taxation Code section 30130.57, subdivision (e)(4).

(d) None of the California Department of Justice's local assistance expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Justice from the Fund pursuant to Revenue and Taxation Code section 30130.57, subdivision (e)(1) or Revenue and Taxation Code section 30130.57, subdivision (e)(4).

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 61213. Administrative Costs: California Department of Public Health.

(a) Each of the California Department of Public Health's state operations expenditures and capital outlay expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Public Health from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (b)(1) or Revenue and Taxation Code section 30130.57, subdivision (d).

(ab) Each of the California Department of Public Health's state operations expenditures or capital outlay expenditures that constitutes a department indirect cost or a department central service cost shall also constitute an administrative cost with respect to any funds transferred to the California Department of Public Health from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (b)(1), Revenue and Taxation Code section 30130.57, subdivision (d), or Revenue and Taxation Code section 30130.57, subdivision (e)(3).

(be) Each of the California Department of Public Health's state operations expenditures or capital outlay expenditures that constitutes a department direct cost shall not constitute an administrative cost with respect to any funds transferred to the California Department of Public Health from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (b)(1), Revenue and Taxation Code section 30130.57, subdivision (d), or Revenue and Taxation Code section 30130.57, subdivision (e)(3).

(cd) None of the California Department of Public Health's local assistance expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Public Health from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (b)(1), Revenue and Taxation Code section 30130.57, subdivision (d), or Revenue and Taxation Code section 30130.57, subdivision (e)(3).

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Sections 30130.55 and 30130.57, Revenue and Taxation Code.

§ 61214. Administrative Costs: California State Auditor’s Office.

Moneys from the Fund shall be used to reimburse the California State Auditor’s Office up to four hundred thousand dollars (\$400,000) annually for actual costs incurred to conduct each audit. For each audit that the California State Auditor’s Office conducts, actual costs incurred shall not constitute administrative costs. Actual costs incurred means the sum of the following with respect to each audit:

(a) The California State Auditor’s Office’s standard rate of reimbursement for that fiscal year multiplied by the number of personnel hours performed conducting the applicable audit. The standard rate of reimbursement shall be equal to the standard rate that the California State Auditor’s Office uses when it directly bills state agencies for audits costs pursuant to Government Code section 8544.5.

(b) The costs of all travel expenses incurred by personnel and agents of the California State Auditor’s Office when they perform work on the applicable audit at locations other than their usual place of business.

(c) The costs of any agents hired to perform work on the applicable audit.

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Section 8546.1, Government Code; and Sections 30130.56 and 30130.57, Revenue and Taxation Code.

§ 61215. Administrative Costs: California Department of Tax and Fee Administration State Board of Equalization or Successor Entity.

(a) Each of the California Department of Tax and Fee Administration state operations, capital outlay, and local assistance expenditures constitutes an administrative cost with respect to any funds transferred to the California Department of Tax and Fee Administration from the Fund pursuant to Revenue and Taxation Code section 30130.57, subdivision (a).

(b) With respect to any funds transferred to the California Department of Tax and Fee Administration State Board of Equalization or any successor entity (“Board of Equalization”) from the Fund pursuant to ~~Revenue and Taxation Code section 30130.57, subdivision (a) or~~ Revenue and Taxation Code section 30130.57, subdivision (e)(2) (“BOE CDTFA Funds”), administrative costs shall be determined in the following manner:

(1~~a~~) First, the California Department of Tax and Fee Administration ~~Board of Equalization or successor entity~~ shall distribute expenditures from the BOE CDTFA Funds among the ~~Board of Equalization~~ California Department of Tax and Fee Administration’s payroll

units in accordance with the ~~Board of Equalization~~ California Department of Tax and Fee Administration's policies and procedures.

(2b) Second, any expenditure from the ~~BOE~~ CDTFA Funds allocated to a direct program unit or an indirect support unit shall not constitute an administrative cost. Direct program units are those units that work directly on programs. Indirect support units are those units without primary program responsibility but that have a specific way to allocate their costs to the various tax programs.

(3e) Third, any expenditure from the ~~BOE~~ CDTFA Funds allocated to a distributed administration (overhead) unit shall constitute an administrative cost. Distributed administration (overhead) units are those units that support the ~~California Department of Tax and Fee Administration Board of Equalization~~ and that do not have a distinct method for allocating their costs. Examples of these units include ~~the board members' offices,~~ the executive director's office, accounting, human resources, administrative support, external affairs, and outreach services.

NOTE: Authority cited: *Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code.* Reference: *Section 30130.57, Revenue and Taxation Code.*

§ 61216. Administrative Costs: University of California.

(a) With respect to any funds transferred to the University of California from the Fund pursuant to Revenue and Taxation Code section 30130.55, subdivision (c), administrative costs shall be determined in the following manner:

(1) Any amounts the University of California awards by contract or grant to a local agency pursuant to Health and Safety Code sections 104500 through 104545 shall not constitute an administrative cost for either the University of California nor shall any such amounts constitute an administrative cost for the state agency or the local agency in receipt of such funds.

(2) Amounts the University of California expends for research evaluation program activities or for research development and dissemination program activities shall not constitute an administrative cost.

(A) Research evaluation program activities means the activities related to the solicitation of contract and grant applications, the peer review of contract and grant applications, and the monitoring of contract and grant progress and award expenditures.

(B) Research development and dissemination program activities means the dissemination of research findings, the development of new strategic research initiatives, and the holding of conferences and legislative briefings.

(C) Research evaluation program activity expenditures and research development and dissemination program activity expenditures are limited to the personnel costs (salaries and benefits), expenses, and recharges directly associated with these activities. Recharges shall be

determined in accordance with the University of California's university-wide policies and procedures.

(3) All other amounts that the University of California expends shall constitute an administrative cost.

(b) With respect to any funds transferred to the University of California from the Fund pursuant to Revenue and Taxation Code section 30130.57, subdivision (c), administrative costs shall mean all indirect costs and recharges chargeable to these funds in accordance with the University of California's university-wide policies and procedures.

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Sections 30130.55 and 30130.57, Revenue and Taxation Code.

§ 61217. Administrative Costs: Local Agencies.

Except as otherwise provided in California Code of Regulations, title 2, section 61216, subdivision (a)(1), with respect to any applicable funds passing to a local agency from a state agency, administrative costs means the indirect costs allowed by the terms of the applicable grant or contract.

NOTE: Authority cited: Section 8546, Government Code; and Section 30130.57, Revenue and Taxation Code. Reference: Sections 30130.55, 30130.56, and 30130.57, Revenue and Taxation Code.

[Sections 61217 to 61240, inclusive, are reserved.]