

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Sections 926-3, 926-4, and 926-5

TAXABLE VALUE OF MEALS AND LODGING

Final Statement of Reasons

INTRODUCTION:

This regulatory action amends California Code of Regulations (CCR), title 22, sections 926-3, 926-4, and 926-5, by increasing the taxable value of meals and lodging furnished to employees by employers for calendar year 2008. These increases are due to inflation.

NECESSITY:

CCR, title 22, sections 926-3, 926-4, and 926-5, provide the taxable value of meals and lodging furnished to employees by employers. In order to establish the equivalent amount of cash wages paid by employers who pay a portion of their employee's wages in the form of meals or lodging it is necessary to compute the reasonable cash value of such meals and lodging for unemployment insurance purposes. The Employment Development Department (Department) makes this computation each calendar year to reflect the upward or downward trend in the cost of living during the previous calendar year. This yearly computation ensures an accurate and up-to-date calculation of the taxable values of meals and lodging for purposes of "wages" within the meaning of Unemployment Insurance Code (UIC) section 926.

According to the United States Department of Labor, Bureau of Labor Statistics [<http://data.bls.gov/cgi-bin/srgate>], the average retail food price index for fiscal year 2006-2007 was 206.9, up 487.8 percent from the average of 35.2 for the base year 1968-69. The average residential rent index for the fiscal year 2006-2007 was 262.6. This is 490.1 percent above the average residential rent index of 44.5 for the base year ended June 30, 1973. The Department uses 1968-1969 as the base year for food and 1972-1973 as the base year for rent because these are the years used by the Bureau of Labor Statistics.

These regulations are being amended to reflect, in substantially the same ratio, the increases in the retail food price index and residential rent index which occurred during the fiscal year ended June 30, 2007.

Notwithstanding sections 926-3(a)(2), 926-4(a)(2), and 926-5(a)(2)(A) of CCR, title 22, which state in part: "For the calendar year 2008 and thereafter, except as modified herein . . .", the Department recognizes that the amendments made to these sections will not become effective until the regulations are approved by the Office of Administrative Law.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT OR SIMILAR DOCUMENT RELIED UPON:

The rulemaking file contains the following documents:

- (1) Computation of the meals and lodging valuations for 2008.
- (2) Table 2A: Third quarter payroll and number of businesses by size category, classified by North American Industry Classification System (NAICS) for California, third quarter, 2006. Table 2B: Number of employees by size category, classified by North American Industry Classification System (NAICS) for California, third quarter, 2006.
- (3) Unemployment Insurance (UI) Fund Forecast, May 2007.
- (4) Department memorandum dated August 31, 2007, which reports the cost of living indexes. Attached to this memorandum are Table 1 and Table 2 which were prepared by the Department which provides data pertaining to the estimates of the retail food price and residential rent indexes. The source of this data was taken from the Bureau of Labor Statistics, U. S. Department of Labor's (DOL) website <http://data.bls.gov/cgi-bin/srgate>. Also attached is the documentation from DOL's website which supports the Department's estimates shown in Table 1 and Table 2 pertaining to the retail food price and residential rent indexes.

PLAIN ENGLISH CONFORMING STATEMENT:

The Department has drafted the proposed amendments in plain English pursuant to section 11346.2(a)(1) of the Government Code.

PUBLIC NOTICE AND WRITTEN COMMENT PERIOD:

On December 7, 2007, the Office of Administrative Law printed a public notice for this regulatory action in the California Regulatory Notice Register, and the Department mailed a copy of the public notice, the text of the proposed amendments, and the initial statement of reasons to everyone known to be interested in the Department's regulations.

During the 45-day written public comment period which was held from December 7, 2007 through January 21, 2008, no one requested a public hearing and no one presented written comments regarding the proposed amendments.

ECONOMIC IMPACT STATEMENT:

Approximately 600,478 businesses and small businesses will be affected statewide by these regulations. The types of businesses affected include fisheries, apartment complex management, residential care facilities, restaurants, and domestic workers. The total statewide cost to businesses and small businesses is anticipated to be \$4.3 million; however, the cost to individual businesses is minimal. The regulation does not impose any new reporting requirements on businesses.

The Department has determined that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

SMALL BUSINESS IMPACT:

These proposed amendments will not have a significant impact on small businesses since the changes reflect small inflationary increases in the taxable value of meals and lodging for purposes of wages within the meaning of section 926 of the UIC. Essentially, the proposed amendments will only accelerate the point at which an employee reaches the maximum taxable wage limit for the calendar year.

LOCAL MANDATE DETERMINATION:

The Department has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES:

In accordance with section 11346.9(a)(4) of the Government Code, the Department has determined that no alternative considered would be more effective in carrying out the purpose for which this action was intended than the proposed regulatory amendments. The Department has also determined that no alternative would be as effective and less burdensome to affected private persons than the proposed regulatory amendments.
