

**Initial Statement of Reasons for the Proposed Amendments  
to California Code of Regulations, Title 18, Section 1685.5,  
Calculation of Estimated Use Tax - Use Tax Table**

**SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND  
ANTICIPATED BENEFITS**

Current Law

*Revenue and Taxation Code Section 6452.1*

Subdivision (d)(2) of Revenue and Taxation Code (RTC) section 6452.1 defines “qualified use tax” to mean either of the following for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000):

- The actual state, local, and district use taxes imposed under article XIII of the California Constitution and the Sales and Use Tax Law (RTC, § 6051 et seq.) and in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC, § 7200 et seq.) and Transactions and Use Tax Law (RTC, § 7251 et seq.); or
- The estimated amount of use tax as calculated by the State Board of Equalization (Board).

Subdivision (d)(2) of RTC section 6452.1 also requires the Board to annually calculate the estimated amount of use tax due according to a person’s adjusted gross income (AGI) and by July 30 of each calendar year make available to the Franchise Tax Board (FTB) those amounts in the form of a use tax table for inclusion in the instructions to FTB income tax returns.

Subdivisions (a), (d), and (e) of RTC section 6452.1 give eligible consumers the option to elect to satisfy their use tax obligations for qualified use tax by reporting their estimated amount of use tax as calculated by the Board on their California income tax returns. Also, subdivision (g) of RTC section 6452.1 includes a “safe harbor” provision that prohibits the Board from assessing the difference between a consumer’s reported use tax liability based on the Board’s use tax table and the consumer’s actual use tax liability for eligible nonbusiness purchases, provided the consumer used the table in accordance with the accompanying instructions.

*Regulation 1685.5*

The Board adopted California Code of Regulations, title 18, section (Regulation) 1685.5, Calculation of Estimated Use Tax -- Use Tax Table, pursuant to RTC section 7051, in 2011 to implement, interpret, and make specific RTC section 6452.1. Regulation 1685.5 prescribes the methodology for estimating the amount of use tax due according to a person’s AGI on June 1 of each year and making those estimates available to the FTB in the form of a use tax table by July 30 of each year for inclusion in the instructions to FTB income tax returns. Also, the 2012 amendments to Regulation 1685.5 updated the form of the use tax table and the 2012, 2013, 2015, 2019, 2020, and 2021 amendments to Regulation 1685.5 updated the methodology for estimating the amount of use tax due according to a person’s AGI.

## *California Department of Tax and Fee Administration*

Assembly Bill No. (AB) 102 (Stats. 2017, ch. 16) established the California Department of Tax and Fee Administration (Department) and transferred the Board's duties, powers, and responsibilities to administer and enforce numerous tax and fee laws to the Department effective July 1, 2017, including the Sales and Use Tax Law (RTC, § 6001 et seq.). (Gov. Code (GC), §§ 15570, 15570.22.) AB 102 also deemed the references to the Board in the Sales and Use Tax Law and sales and use tax regulations, including Regulation 1685.5, to refer to the Department on and after July 1, 2017. (GC, § 15570.24.) Also, the Department's 2019 amendments to Regulation 1685.5 replaced the regulation's references to the Board with references to the Department. The Department's 2021 amendments to Regulation 1685.5 added GC sections 15570.22 and 15570.24 to the regulation's authority note to clarify that the references to the Board in RTC section 7051 mean the Department.

In addition, subdivision (b)(2) of Regulation 1685.5 currently requires the Department to annually calculate a "use tax liability factor or use tax table percentage" on June 1 of each year that the Department can use to complete its use tax table as provided in subdivision (c). To do that, Regulation 1685.5 currently requires the Department to use federal data to calculate "total personal income," "total spending on electronic shopping and mail order houses," and "total spending on taxable purchases" to calculate "the percentage of income spent on taxable purchases." It requires the Department to multiply the percentage of income spent on taxable purchases by 0.03 (or 3%), which represents the percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax. Then it requires the Department to multiply the product by the average state, local, and district tax rate to arrive at the use tax liability factor or use tax table percentage.

### Proposed Amendments to Regulation 1685.5

After reviewing Regulation 1685.5, the Department determined that there were issues (or problems within the meaning of GC, § 11346.2, subd. (b)) because:

- The percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax decreased since the regulation was updated in 2021.
- The federal data the regulation requires the Department to use to calculate total spending on electronic shopping and mail order houses will soon be discontinued.
- The federal data the regulation requires the Department to use to calculate total spending on taxable purchases will soon be discontinued, and the Department has more accurate and reliable data that it can use to calculate total spending on taxable purchases.
- The regulation currently requires the Department to calculate the average state, local, and district sales and use tax rate based on the rates in effect for the first quarter, rather than the rates in effect for each quarter of a calendar year.
- The regulation contains some outdated provisions that are no longer operative.
- A few of the regulation's provisions could be revised to read more clearly.

The Department also determined that it is reasonably necessary to propose to amend Regulation 1685.5 to update the percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax, replace the federal data required to be used to calculate total spending on electronic shopping and mail order houses and the percentage of income spent on taxable purchases, delete the inoperative provisions, and make minor clarifications for the specific purposes of addressing those issues (or problems).

#### *Amendments to Subdivision (a)*

The Department determined that it is reasonably necessary to propose to amend subdivision (a) of Regulation 1685.5 to delete the title of subdivision (a)(1), reformat subdivision (a)(1) as subdivision (a), replace "The" with "Revenue and Taxation Code (RTC) section 6452.1 requires the" at the beginning of reformatted subdivision (a), and delete "is required" from after "(Department)." These amendments are grammatical in nature and the Department determined that they are reasonably necessary for the specific purposes of making the subdivision read more clearly and identifying the statute that requires the Department to annually calculate the estimated amount of use tax due according to a person's AGI at the beginning of the regulation.

#### *Renumbered Subdivisions (b), (c), (d), (e), and (f)*

The Department determined that it is reasonably necessary to propose to renumber subdivisions (a)(2), (a)(3), (b), (c), and (d) of Regulation 1685.5, as subdivisions (b), (c), (d), (e), and (f), respectively, for the specific purpose of making the format of the entire regulation consistent with the renumbering of subdivision (a)(1) as subdivision (a).

#### *Amendments to Renumbered Subdivision (b)*

The Department determined that it is reasonably necessary to propose to amend the title of renumbered subdivision (b) to replace "Department" with "the Department's." The Department determined that it is reasonably necessary to amend the first sentence in renumbered subdivision (b)(1) to insert "Department's" before "use tax tables." The Department determined that it is reasonably necessary to amend renumbered subdivision (b)(2) to replace "The use tax table may not be used to estimate use tax" with "Consumers may not use the Department's use tax tables to estimate their use tax" at the beginning of the subdivision. The Department determined that it is also reasonably necessary to separate renumbered subdivision (b)(2) into two sentences by replacing "including purchases made by" with a period, replacing "businesses" with "Businesses" and adding "may not use the Department's use tax tables." The amendments to renumbered subdivision (b) are grammatical in nature and the Department determined that they are reasonably necessary for the specific purpose of making the subdivision read more clearly.

#### *Amendments to Renumbered Subdivision (d)(1)*

The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (d)(1) to insert “Department’s” and replace “table” with “tables.” The amendments to renumbered subdivision (d)(1) are grammatical in nature and the Department determined that they are reasonably necessary for the specific purpose of making the subdivision read more clearly.

#### *Amendments to Renumbered Subdivision (d)(2)*

The Department determined that there is an issue (or problem) because Regulation 1685.5 uses the terms “use tax liability factor” and “use tax table percentage” to describe the same thing. Therefore, the Department determined that it is reasonably necessary to propose to amend the title of renumbered subdivision (d)(2) to delete “or Use Tax Table Percentage” and amend renumbered subdivisions (e)(1), (2), and (3) to delete “or use tax table percentage” for the specific purpose of addressing the issue (or problem) by eliminating the unnecessary redundancy from the regulation. The Department also determined that there is an issue (or problem) because the first five sentences in renumbered subdivision (d)(2) pertain to the use tax tables for 2011 through 2020, and they are now inoperative. Therefore, the Department determined that it is reasonably necessary to propose to amend renumbered subdivision (d)(2) to delete those sentences for the specific purposes of addressing that issue (or problem).

In addition, the sixth sentence in renumbered subdivision (d)(2) currently requires the Department to multiply the percentage of income spent on taxable purchases “for the preceding calendar year” by 0.03, which represents the percentage of California consumers’ total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax. The Department determined that there are issues (or problems) with the sixth sentence because renumbered subdivisions (d)(3) and (4) require the Department to use the “most current” federal data to calculate total personal income and total spending on electronic shopping and mail order houses, so that data may not always be from the preceding calendar year and there may be instances where the Department’s calculation of total spending on taxable purchases pursuant to renumbered subdivision (d)(5) is not for the preceding calendar year, as a result. Also, the Department determined that there is an issue (or problem) with the sixth sentence because the percentage of California consumers’ total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax decreased from three percent (0.03) to 1.7 percent (0.017) since Regulation 1685.5 was updated in 2021. Therefore, the Department determined that it is reasonably necessary to propose to amend renumbered subdivision (d)(2) to replace the sixth sentence with a new sentence that restates the regulation’s current formula for calculating the use tax liability factor for purposes of the Department’s calculations on June 1, 2026, and each June 1 thereafter and requires the Department to multiply “the percentage of income spent on taxable purchase by 0.017” for the specific purpose of addressing those issues (or problems).

#### *Amendments to Renumbered Subdivision (d)(3)*

Renumbered subdivision (d)(3) currently requires the Department to determine total personal income by reference to the most current personal income data published by the United States Bureau of Economic Analysis (Bureau of Economic Analysis), and the Department historically calculates total personal income using personal income data for an entire calendar year.

Therefore, the Department determined that it is reasonably necessary to propose to amend renumbered subdivision (d)(3) for the specific purpose of clarifying that total personal income shall be determined by reference to the most current federal data published by the Bureau of Economic Analysis “for an entire calendar year.”

#### *Amendments to Renumbered Subdivision (d)(4)*

The United States Census Bureau (Census Bureau) reports data for North American Industrial Classification System (NAICS) code 4541, electronic shopping and mail order houses. The Department historically sums the monthly sales made by electronic shopping and mail order houses for an entire calendar year, as reported in the *Monthly Retail Trade Survey* published by the Census Bureau, to calculate total spending at electronic shopping and mail order houses under renumbered subdivision (d)(4). Also, the Department determined that there is an issue (or problem) because the Census Bureau will soon discontinue reporting data for NAICS code 4541. However, the Census Bureau will continue to publish quarterly retail e-commerce sales data for electronic shopping that the Department can use to replace the data reported for NAICS code 4541 in the calculation of total spending on taxable purchases. Therefore, the Department determined that it is reasonably necessary to propose to amend renumbered subdivision (d)(4) for the specific purposes of addressing the issue (or problem) and clarifying the calculation required by the subdivision. The proposed amendments change renumbered subdivision (d)(4)’s title from “Total Spending at Electronic Shopping and Mail Order Houses” to “Total Spending on Electronic Shopping.” The proposed amendments require the Department to calculate “total spending on electronic shopping,” instead of “total spending at electronic shopping and mail order houses.” The proposed amendments also require total spending on electronic shopping to be determined by “summing the most current quarterly retail e-commerce sales data published by the United States Census Bureau for an entire calendar year,” instead of by “reference to the most current electronic shopping and mail order house spending data.”

In addition, the Department calculated that calendar year 2023 sales were \$1.257 trillion using the sales made by electronic shopping and mail order houses in the *Monthly Retail Trade Survey*. The Department also calculated that calendar year 2023 sales were \$1.119 trillion using the sum of the quarterly retail e-commerce sales data in the *Quarterly E-Commerce Report*. Therefore, the Department determined that using the sales data from the *Quarterly E-Commerce Report*, instead of the sales data from the *Monthly Retail Trade Survey*, should not have a material impact on the Department’s calculations of the amount of use tax due according to a person’s AGI.

#### *Amendments to Renumbered Subdivision (d)(5)*

The current provisions of renumbered subdivision (d)(5)(A) require the Department to calculate the percentage of taxable sales included in total spending at electronic shopping and mail order

houses by determining the percentage of those sales that are not included in the six categories described in renumbered subdivisions (d)(5)(A)(i) through (vi) by reference to the most current retail trade product lines statistics by kind of business data published by the Census Bureau. This is because renumbered subdivisions (b)(5)(A)(i) through (vi) currently describe industries in NAICS Code 4541 whose sales are generally exempt from sales and use tax. Therefore, the Department determined that there is also an issue (or problem) with renumbered subdivision (b)(5)(A) because the Census Bureau will soon discontinue reporting the sales data for the industries in NAICS Code 4541 described in renumbered subdivisions (d)(5)(A)(i) through (vi).

In addition, the calculations currently required by renumbered subdivision (d)(5)(A) historically result in approximately two-thirds or 66 percent of total spending at electronic shopping and mail order houses being treated as taxable for purposes of calculating the amount of use tax due according to a person's AGI. However, the Department reviewed the 2022 quarterly sales data reported to the Department by retailers with NAICS Code 4541 accounts and determined that 80 percent of their reported sales were taxable sales subject to sales or use tax, not 66 percent. Therefore, the Department determined that there is another issue (or problem) with renumbered subdivision (b)(5)(A) because it would be more accurate to treat 80 percent of total spending on electronic shopping as taxable for purposes of calculating the amount of use tax due according to a person's AGI, rather than 66 percent.

Furthermore, the current provisions of renumbered subdivisions (d)(5)(B) and (C) require the Department to add \$10,000,000,000 to total spending at electronic shopping and mail order houses before multiplying it by the taxable percentage calculated under renumbered subdivision (d)(5)(A) so the result does not include spending on nontaxable purchases. However, the Department determined that it's unnecessary to add \$10,000,000,000 to total spending on electronic shopping to accurately calculate the amount of use tax due according to a person's AGI because total spending on electronic shopping captures all the material sales for purposes of the calculation. Therefore, the Department determined that there is an issue (or problem) with renumbered subdivisions (d)(5)(B) and (C) because it would be more accurate to calculate total spending on taxable purchases in the future without adding \$10,000,000,000 to total spending on electronic shopping. As a result, the Department determined that it is reasonably necessary to propose to replace the current provisions of renumbered subdivision (d)(5) with new provisions requiring the Department to determine total spending on taxable purchases by "multiplying total spending on electronic shopping by 80 percent (0.80), so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent" for the specific purpose of addressing the issues (or problems) with the current provisions of renumbered subdivision (d)(5).

#### *Amendments to Renumbered Subdivision (d)(6)*

The current provisions of renumbered subdivision (d)(6) require the Department to calculate the percentage of income spent on taxable purchase "during a calendar year" by dividing "the total spending on taxable purchases for that year by the total personal income for that year," multiplying the result by 100, and rounding the result. The Department determined that there is an issue (or problem) with renumbered subdivision (d)(6) because there may be instances where the most current "total spending" and "total personal income" data available are from different years. Therefore, the Department determined that it is reasonably necessary to propose to amend

renumbered subdivision (d)(6) to delete the references to specific years for the specific purpose of addressing that issue (or problem), and to delete “the” from before “total spending on taxable purchases” to make the subdivision read more clearly.

#### *Amendments to Renumbered Subdivisions (d)(7)*

The current provisions of renumbered subdivisions (d)(7), (d)(7)(A), and (d)(7)(B) require the Department to determine the average state, local, and district sales and use tax rate “for a calendar year” by using the rates of the statewide sales and use taxes and the statewide rate of local tax “in effect on January 1 of that year.” The Department determined that there is an issue (or problem) with renumbered subdivision (d)(7) because it would be more accurate to determine the average state, local, and district sales and use tax rate by using the average of the rates of statewide sales and use taxes and the average of the statewide rates of local tax in effect during each quarter of the most recent calendar year for which the rates are available, rather than only using the rates in effect for the first quarter, which begins on January 1.

The current provisions of subdivisions (d)(7) and (d)(7)(C) require the Department to determine the average state, local, and district sales and use tax rate “for a calendar year” by using the “weighted average rate” of the district taxes “in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made.” The Department determined that there is also an issue (or problem) with renumbered subdivision (d)(7) because it would be more accurate to determine the average state, local, and district sales and use tax rate by using the weighted average of the rates of the district taxes in effect in the various jurisdictions throughout the state during each quarter of the most recent calendar year for which the Department has the taxable sales data by jurisdiction that it needs to calculate the weighted average of the various jurisdictions’ rates.

In addition, the Department determined that on June 1 of each calendar year, the necessary rates of statewide sales and use taxes and local tax are available for the preceding calendar year. However, on June 1 of each year the necessary sales data may not be available to determine the weighted average of the rates of the district taxes for the preceding calendar year. Therefore, the Department determined that it is reasonably necessary to propose to amend renumbered subdivisions (d)(7), (d)(7)(A), (d)(7)(B), and (d)(7)(C) for the specific purpose of addressing the issues (or problems) with renumbered subdivision (d)(7) by requiring the Department to calculate the average state, local, and district sales and use tax rate using:

- The average of the rates of the statewide sales and use taxes imposed during each quarter of the preceding calendar year;
- The average of the statewide rates of local tax imposed during each quarter of the preceding calendar year; and
- The weighted average of the rates of the district taxes in effect in the various jurisdictions throughout the state during each quarter of the most recent calendar year for which the Department has taxable sales data by jurisdiction.

#### *Amendments to Renumbered Subdivision (e)*

The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (e) to add “consumers in” to renumbered subdivisions (e)(1) and (3), add “consumers in each of” to renumbered subdivision (e)(2), and replace “range member’s” with “consumer’s” in renumbered subdivision (e)(3). The amendments are grammatical in nature, they clarify that the estimated use tax liabilities for the AGI ranges in the Department’s use tax tables are for “consumers in” each AGI range, and the Department determined that they are necessary for the specific purpose of making the subdivision read more clearly.

#### *Amendments to Renumbered Subdivision (f)*

The Department determined that it is reasonably necessary to delete renumbered subdivision (f)(1) because it only prescribes the use tax table for calendar year 2011 and it’s no longer operative, reformat subdivision (f)(2) as subdivision (f), and update reformatted subdivision (f), so it prescribes the format of the Department’s use tax tables for calendar year 2026 and subsequent years, and no longer refers to 2012. The Department determined that the amendments are reasonably necessary for the specific purposes of deleting the inoperative provisions regarding the 2011 use tax table and the outdated reference to 2012, and updating the subdivision so it only refers to the Department’s future use tax tables.

#### *Determinations*

The Department has determined that the adoption of the proposed amendments to Regulation 1685.5 are reasonably necessary for the specific purposes of addressing the issues (or problems) discussed above by:

- Updating the percentage of California consumers’ total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax,
- Replacing the Census Bureau data required to be used to calculate total spending on electronic shopping and mail order houses with Census Bureau data the Department can use to calculate total spending on electronic shopping,
- Replacing the Census Bureau data required to be used to calculate the percentage of income spent on taxable purchases with a taxable percentage derived from reported sales data,
- Updating the calculation of the average state, local, and district sales and use tax rate so it’s based on the rates in effect for an entire calendar year,
- Deleting the inoperative provisions from the regulation. and
- Making minor clarifications to some of the remaining provisions to make them read more clearly.

The Department anticipates that the adoption of the amendments to Regulation 1685.5 will promote fairness and benefit the Department and taxpayers by clarifying how the Department estimates the amount of use tax due according to a person’s AGI and helping ensure that the Department’s estimates continue to be based on current and accurate data. In addition, the Department has determined that the adoption of the proposed amendments to Regulation 1685.5

is not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 1685.5.

#### DOCUMENTS RELIED UPON

The Department relied upon Department staff's understanding of the Sales and Use Tax Law, federal economic data, and reported sales data in proposing to adopt the amendments to Regulation 1685.5 discussed above. The Department did not rely upon any technical, theoretical, or empirical study, report, or similar document.

#### ALTERNATIVES CONSIDERED

The Department considered whether to begin the regular rulemaking process to adopt the proposed amendments to Regulation 1685.5 discussed above at this time or, alternatively, whether to take no action at this time. The Department decided to begin the regular rulemaking process to adopt the proposed amendments to Regulation 1685.5 discussed above because the Department determined that the proposed amendments to Regulation 1685.5 are reasonably necessary for the reasons set forth above.

The Department did not reject any reasonable alternative to the proposed amendments to Regulation 1685.5, including any reasonable alternative that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative to the proposed amendments to Regulation 1685.5 has been identified and brought to the Department's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes 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.

#### INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting the proposed amendments to Regulation 1685.5 on California businesses and individuals. The Department determined that the proposed amendments do not impact businesses because Regulation 1685.5 clarifies that the Department's use tax tables may not be used to estimate use tax liabilities for business purchases. The Department also determined that the proposed amendments do not increase or decrease the cost for individuals that make non-business purchases to comply with Regulation 1685.5. This is because the proposed amendments do not change the format of the Department's use tax tables, or the way the Department's use tax tables may be used. Also, Regulation 1685.5 expressly clarifies that consumers can elect to use, but are not required to use, the Department's use tax tables to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000) on their FTB returns.

The Department also determined that the proposed amendments to renumbered subdivisions (d)(2) and (5) of Regulation 1685.5 materially change the Department's methodology for determining the amount of estimated use tax due according to a person's AGI on June 1 of each year. This is because the amendments to renumbered subdivision (d)(2) decrease the percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax from three percent (0.03) to 1.7 percent (0.017). Also, the amendments to renumbered subdivision (d)(5) essentially increase the percentage of spending on taxable purchases from approximately 66 percent to 80 percent. Therefore, the Department estimated how much estimated use tax would have been paid with FTB returns filed during fiscal year 2022-23 if the Department prepared the use tax tables for those returns in accordance with the proposed amendments to Regulation 1685.5. The Department also determined that the proposed amendments could have reduced the amount of estimated use tax paid with those returns by as much as \$2.948 million.

However, the Department determined that the proposed amendments would probably not have an annual \$2.948 million impact on total use tax revenue for two reasons. First, the use tax line on FTB returns can be used to report:

- Actual or estimated use tax liabilities for eligible nonbusiness purchases;
- Actual use tax liabilities for other nonbusiness purchases; and
- Actual use tax liabilities for business purchases unless those liabilities are required to be reported directly to the Department. (See the instructions to FTB Form 540.)

The Department had data showing how much use tax was paid with FTB returns filed during fiscal year 2022-23. However, the Department lacked the data to determine how much of that use tax was estimated use tax for eligible purchases that was determined in accordance with the Department's use tax tables because that information is not reported on FTB returns. Therefore, due to the lack of data, the Department assumed that all the use tax paid with FTB returns filed during fiscal year 2022-23 was estimated use tax for purposes of estimating the proposed amendments impact on estimated use tax revenue. So, the \$2.948 million estimate is probably overstated to the extent it's based on actual use tax paid with FTB returns filed during fiscal year 2022-23.

Second, the estimated \$2.948 million reduction in payments of estimated use tax is generally due to the proposed amendments to renumbered subdivision (d)(2) of Regulation 1685.5. However, those amendments reflect a decrease, from three percent to 1.7 percent, in the percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Department to collect use tax since Regulation 1685.5 was updated in 2021. So, they also reflect an offsetting increase in the percentage of California consumers' total purchases of tangible personal property for use in California that are made from registered retailers that collect and remit use tax to the Department. Therefore, the Department does not anticipate that there will be a substantial or material reduction in the total amount of use tax paid by consumers due to the proposed amendments, even though the Department's estimate indicates that there will probably be a reduction in the amount of estimated use tax paid by consumers with their FTB returns due to the amendments. The Department also anticipates that consumers will generally benefit from the

clarifications and updates made by the proposed amendments, but they are unlikely to pay less use tax or receive a monetary benefit from the proposed amendments.

As a result, the Department determined that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. The Department also prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and the Department determined in the economic impact assessment that the adoption of the proposed amendments to Regulation 1685.5 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, Regulation 1685.5 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Department determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Department's initial determination that the adoption of the proposed amendments to Regulation 1685.5 discussed above will not have a significant adverse economic impact on business.