

**Updated Statement of Reasons for
Proposed Amendments to California Code of Regulations
Title 18, Section 1590,
*Newspapers and Periodicals***

SPECIFIC PURPOSE, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

The California Department of Tax and Fee Administration (Department) proposes to amend California Code of Regulations, title 18, section (Regulation) 1590, *Newspapers and Periodicals*, to clarify the application of tax to mixed newspaper subscriptions. The proposed amendments include prescribing the methodology for calculating the measure of tax for a sale of a mixed newspaper subscription that includes charges for transportation and sales tax reimbursement. The proposed amendments are consistent with the accounting and reporting practices of the newspaper industry and will provide the necessary guidance to ensure compliance and accuracy with respect to reporting taxable sales.

General Background

California imposes a sales tax measured by a retailer's gross receipts from the retail sale of tangible personal property inside this state, unless specifically exempted or excluded from taxation by statute. While the sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in California, the retailer may collect tax reimbursement from the customer if the contract of sale so provides. When sales tax does not apply, use tax is imposed upon the consumer, measured by the sales price of property purchased from a retailer for the storage, use, or other consumption of the property in California, unless specifically exempted or excluded from taxation by statute.

A sale includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. In general, gross receipts and sales price mean the total amount of the sale, including, among other things, any services that are a part of the sale. Tangible personal property is personal property that may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. It is presumed that all gross receipts are subject to the tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless the person timely accepts in good faith a resale certificate from the purchaser.

When the true object of a contract is the sale of tangible personal property, sales and use tax generally applies to charges for services that are part of the sale, and tax generally applies to the entire amount charged in a bundled transaction involving goods and services that are inextricably intertwined in a single sale. While tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges for the provision of services that are not part of the sale of tangible personal property. Further, when the true object of a contract is a service per se, the transaction is not subject to tax, even though some tangible personal property is incidentally transferred.

A “mixed transaction,” in contrast to a bundled transaction, is a transaction in which the goods and services are distinct, and each is a significant object of the transaction. If a transaction is a “mixed transaction,” each element of the transaction is analyzed as a separate transaction; tax is applied to the tangible personal property portion, and the service portion is not taxed. When a lump-sum amount is charged for goods and services sold in a mixed transaction, the taxpayer is required to make a reasonable and fair allocation of the lump-sum amount to the taxable and nontaxable portions of the transaction based on their relative values.

Overview

Historically, newspaper publishers have sold printed newspapers, which were physically distributed to their customers. However, as technology and reader preferences evolved, newspaper publishers began offering other types of products, including access to digital online editions of newspapers. Often, the digital online editions include material that is not provided with a printed publication, such as expanded articles, additional photographs, and mobile applications. The access to digital content may be offered as a stand-alone product or offered in a mixed subscription with printed newspaper delivery. The price of a mixed subscription that includes both printed newspaper delivery and access to digital content is often less than the sum of the prices of the two items when sold individually (if those options are offered). Furthermore, subscription packages may vary in the content and frequency of delivery (for example, daily print only, daily print and access to digital content, or Sunday print only and access to digital content).

2016 Amendments to Regulation 1590

Based on past inquiries from the newspaper industry, the Department recognized that the relative value of each part of a mixed subscription tended to vary from publisher to publisher, customer to customer, and over time as subscriptions were renewed or new offers or promotions were made available. This variance made it difficult for newspaper publishers to allocate the lump-sum price for a mixed subscription between taxable and nontaxable amounts in a fair, reasonable, and consistent manner.

With the understanding that there was great variance within the newspaper industry with respect to pricing models and product offerings, the Department and interested parties worked together to amend Regulation 1590 to provide a bright-line approach for determining the taxable and nontaxable charges included in lump-sum charges for mixed newspaper subscriptions. The objective was to establish percentages that accurately reflected a fair and reasonable means for the industry to generally allocate lump-sum charges for mixed newspaper subscriptions between the taxable and nontaxable portions of the subscriptions based on their relative values. The Department and interested parties agreed that specified percentages would be administered more efficiently, allowing for greater clarity for newspaper publishers and their customers. However, the Department also recognized that some newspaper publishers will have higher nontaxable percentages based on their actual subscription prices. Accordingly, a rebuttable presumption was added so that newspaper publishers may document and use higher nontaxable allocation percentages based on the specific facts for their businesses.

As a result of the 2016 amendments, Regulation 1590 currently provides guidance with respect to the application of tax to newspapers, including those sold under a mixed subscription. Subdivision

(a)(1) specifies that the term newspaper “conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers, and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest.” Subdivision (b)(1) specifies that the sale of newspapers is subject to tax, unless otherwise exempt.

Mixed Newspaper Subscriptions

Subdivision (a)(8) defines the term mixed newspaper subscription to mean “a subscription for a tangible newspaper combined with a subscription for the right to access digital content.” Digital content offered as a stand-alone product through remote telecommunications is not subject to tax. Also, when both printed newspapers and access to digital content are provided for a single price, the print and digital content are each a significant object of the transaction and have a significant value to the customer. Therefore, subdivision (b)(3)(B) specifies that, “in the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.” Subdivision (b)(3)(B)1 states that “[f]or sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.”

As further provided in subdivision (b)(3)(B)2, “[t]his presumption may be overcome by evidence demonstrating to the satisfaction of the [Department] that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.” Subdivision (a)(9) defines the digital-only subscription rate to mean “the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.” Subdivision (a)(10) defines the term print-only subscription rate to mean “the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.”

Reporting Subscription Sales

Subdivision (b)(3)(C) provides that each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sales transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

Property Sold for a Delivered Price

Pursuant to subdivision (b)(1) of Regulation 1628, *Transportation Charges*, “[p]roperty is sold for a delivered price when the price agreed upon in the contract for sale includes whatever cost or charge may be made for transportation of the property directly to the purchaser.” In general, when transportation is by facilities of the retailer or the property is sold for a delivered price, tax applies

to charges for transportation to the purchaser, unless (1) the transportation charges are separately stated, (2) are for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, and (3) the transportation occurs after the sale of the property is made to the purchaser. (Reg. 1628, subd. (b)(2).)

When the sale occurs before the transportation to the purchaser commences, tax does not apply to separately stated charges for the transportation. The amount that may be excluded from the measure of the tax cannot exceed a reasonable charge for transportation by facilities of the retailer or the cost of transportation by other than facilities of the retailer. (Reg. 1628, subd. (b)(2).)

Sales Tax Reimbursement

Pursuant to subdivision (a)(1) of Regulation 1700, *Reimbursement for Sales Tax*, "whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale." Subdivision (a)(2)(A) further provides that it shall be presumed that the parties agreed to the addition of sales tax reimbursement to the sales price of tangible personal property sold at retail to a purchaser if the agreement of sale expressly provides for such addition of sales tax reimbursement. Subdivision (a)(2)(C) provides that it shall be presumed that the property, the gross receipts from the sale of which is subject to the sales tax, is sold at a price which includes tax reimbursement if the retailer posts in his or her premises, or includes on a price tag or in an advertisement (whichever is applicable) one of the following notices: 1. "All prices of taxable items include sales tax reimbursement computed to the nearest mill." 2. "The price of this item includes sales tax reimbursement computed to the nearest mill."

Discussion of Initial Proposed Amendments to Regulation 1590

Initial Proposed Amendments

Sales Tax Reimbursement and Transportation Charges Included in Subscription Price

In California, many newspaper publishers sell their newspaper subscriptions for a price that includes delivery charges and sales tax reimbursement. Subdivision (b)(3)(B)1 of Regulation 1590 states "for sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount." From this provision alone, it may be unclear whether the taxable allocation percentage should be applied to the total charge for the mixed subscription, including delivery charges, or whether nontaxable amounts should be removed prior to applying the taxable allocation percentage. Upon review of the regulation, the Department noted that subdivision (b)(3)(B) specifies that tax is applied to the tangible personal property portion of the transaction unless otherwise exempt or excluded. Yet, the phrase "unless otherwise exempt or excluded" is not used in subdivision (b)(3)(B)1. Therefore, the Department proposed to amend subdivision (b)(3)(B)1 to add the phrase "unless otherwise exempt or excluded" to make it consistent with subdivision (b)(3)(B) and clarify that exempt or excluded charges are removed after applying the taxable allocation percentage.

The Department also initially thought that the taxable allocation percentage should be applied to the mixed subscription rate, after adjusting for any sales tax reimbursement. Therefore, the Department proposed amending subdivision (b)(3)(B)1 to specify that forty-seven percent of the

charge for the mixed newspaper subscription, excluding any sales tax reimbursement, is presumed to be the measure from the sale of tangible personal property and tax applies to that amount, unless otherwise exempt or excluded.

The Department also proposed adding subdivision (b)(3)(B)3 to specify that in order to determine the taxable measure of a mixed newspaper subscription, the percentage that is either presumed or demonstrated to be the measure of the sale of tangible personal property (the taxable allocation percentage) applies to the mixed subscription price, excluding any sales tax reimbursement, prior to deducting exempt or excluded charges, such as nontaxable delivery charges. The Department further proposed a formula and an example to illustrate the calculation for determining the taxable measure of a mixed newspaper subscription when the subscription includes nontaxable delivery charges and sales tax reimbursement.

Rebuttable Presumption

A taxpayer may overcome the presumption established in subdivision (b)(3)(B)1 of Regulation 1590 by providing evidence demonstrating to the satisfaction of the Department that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. As previously explained, newspaper publishers generally charge different rates to different customers, or various rates to the same customer over time. In addition, a newspaper publisher may have different advertised rates posted in multiple platforms, such as those published on its website or in print editions of the newspaper. As such, it is not clear from the text of the regulation which specific digital-only rate or print-only rate a newspaper publisher should use to make the calculation to rebut the presumption. Therefore, the Department determined there is a need to amend the definitions of “digital-only subscription rate” and “print-only subscription rate” to clarify that those rates should reflect an average of the rates charged by a newspaper publisher to its customers. Accordingly, the Department drafted amendments to the definitions of digital-only subscription rate and print-only subscription rate. The Department welcomed input as to whether the proposed definitions are consistent or compatible with records that newspaper publishers regularly maintain. The Department further proposed to amend subdivision (b)(3)(B)2 to change the reference from “Board” to “Department” and add that records must be maintained in accordance with Regulation 1698, *Records*, to support any nontaxable allocation percentage greater than fifty-three (53) percent.

Promotional or Discount Subscriptions

The Department also recognized that the references to “promotions or discounts,” within Regulation 1590’s definitions of digital-only and print-only subscription rates, may be confusing. The Department understands that newspaper publishers use “dynamic pricing” which results in customers rarely paying the advertised rate for subscriptions. In those circumstances, when the customer is paying less than the advertised subscription rate, it may not be clear whether the price the customer is paying includes a discount. Since the digital-only and print-only subscription rates are used when rebutting the presumption, the intent of excluding any promotions or discounts was to eliminate pricing that is not representative of the relative values of the products and services for which the customers are paying, but not necessarily to exclude all subscription rates for which a customer actually pays less than the advertised rate.

For example, a newspaper publisher offers a four-week unlimited digital-only access subscription for a \$1.00 introductory rate. After the four-week introductory rate, the customer is then charged \$16.00 every four weeks. In this instance, the introductory rate the customer paid was approximately 94 percent less than the post-introductory rate and is not representative of the value of the subscription. Therefore, the introductory rate would be excluded from the publisher's digital-only subscription rate. To further illustrate, consider an example where the customer is now paying \$16.00 every four weeks. After paying \$16.00 every four weeks for three years, the customer requests to cancel the subscription. The newspaper publisher offers a 15 percent discount to retain the customer. Similar "retention" discounts are offered to other customers under the same or similar circumstances. The customer's discount subscription rate should not be excluded from the publisher's digital-only subscription rate because it is indicative of the value of the subscription.

To help clarify which "discount or promotional" subscription rates are to be excluded from a publisher's digital-only and print-only subscription rates, the Department proposed to change "discounted or promotional" to "promotional or introductory" to reflect that the intent was to exclude substantially discounted rates that are generally offered to new subscribers, and are increased after a specified time. The Department also proposed to define promotional or introductory subscriptions and to specify that promotional or introductory subscriptions include, but are not limited to, substantially discounted rates referred to as sales rates, limited-time rates, or seasonal rates. Furthermore, the Department proposed to include three examples to illustrate whether a discounted rate should or should not be excluded from a publisher's digital-only or print-only subscription rates.

Prospective Basis for Amendments

Under Revenue and Taxation Code section 7051, the Department may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect. In other words, when the Department wishes to limit the retroactive effect of a regulation, or amendments thereto, it is authorized to do so, and would accomplish it by specifying an operative date for the regulation or amendments. Since the proposed amendments to Regulation 1590 are clarifying in nature and are not providing a new methodology to determine the application of tax, the Department did not limit the retroactive effect of the proposed amendments.

Definitions

While conducting an overall review of Regulation 1590, the Department questioned whether the term newspaper still "conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960," as specified in subdivision (a)(1) and whether that reference is necessary. The Department determined that the definition of newspaper provided in the ruling is essentially identical to the definition provided in Regulation 1590, and the reference to the ruling was unnecessary because no one would obtain any further clarification or understanding of the term "newspaper" from reading the ruling. Therefore, the Department proposed to remove the reference to the ruling and amend the subdivision to state what the term newspaper means. This suggested amendment does not change the meaning of the term newspaper, rather it deletes an unnecessary reference.

The Department noted that the footnote at the end of the second sentence in the definition of the term "periodical" in subdivision (a)(2) specifies that the "definition is based upon *Business*

Statistics Organization, Inc. v. Joseph, 299 N.Y. 443, 87 N.E. 2d 505, and *Houghton v. Payne*, 194 U.S. 88, 48 L.Ed 888.” The Department proposed to delete the footnote and add the two court cases to the reference note at the conclusion of the regulation.

Exemption Certificates

As provided in subdivision (c) of Regulation 1590, any seller claiming a transaction as exempt from sales tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8 should timely obtain an exemption certificate in writing from the purchaser. Subdivision (c)(1) through (4) prescribes the type of exemption certificates to be used when purchasing tangible personal property that will be incorporated into or become an ingredient or component part of newspapers or periodicals that are sold or distributed under certain circumstances. Each of these exemption certificates contains a blank field for the purchaser to list the name and type of newspaper or periodical. Also, there is an asterisk at the end of the text before the blank which refers to a footnote at the bottom of the certificate that directs the purchaser to “Insert name and type of newspaper or periodical” in the blank field. In order to be consistent with the other fields in the exemption certificates and provide an easier point of reference, the Department proposed removing the asterisk and footnote text from each certificate, and adding the text “Name and Type of Newspaper or Periodical” directly under the blank field where the purchaser is required to input such information on each certificate.

Interested Parties Meeting and Comments

The Department distributed a discussion paper explaining the initial proposed amendments to Regulation 1590 on July 16, 2020, and held an interested parties meeting on July 30, 2020, to obtain public input. During the interested parties meeting, there seemed to be general support for the concept of clarifying the application of tax to mixed newspaper subscriptions. However, several interested parties expressed their concern that the methodology for determining or calculating the measure of tax for a sale of a mixed newspaper subscription that includes charges for transportation and sales tax reimbursement was not consistent with the process used by the newspaper industry.

Following the interested parties meeting, we received an August 13, 2020, letter submitted by Mr. James W. Ewert, on behalf of the California News Publishers Association (CNPA). CNPA stated that “when the rebuttable presumption was established as the standard for determining taxable and non-taxable charges, it was assumed that the sales tax [reimbursement] and transportation charges were to be included in the print allocation percentage because it reflected the [historic and current] practice of all major newspapers that sold print home delivery newspaper subscriptions for a tax included delivered price.”

CNPA also stated that despite the historic precedent of how these subscriptions are sold and how newspapers have been audited over the last four years, the Department’s proposal fails to recognize that the sales tax reimbursement is included in the taxable allocation portion of the rebuttable presumption. CNPA added that the Department’s proposal was counter to the purpose of creating the presumption to simplify this process and represented a fundamental shift in policy in CNPA’s opinion.

CNPA further explained that the Department’s proposed 10-step formula to replace the existing 3-step formula that newspaper publishers’ systems are currently designed to process was difficult to understand, more difficult to implement, and would require changes in the newspaper publishers’ accounting and reporting systems which would come at a huge cost and disproportionately burden publishers of small, mid-size, and ethnic publications in CNPA’s opinion. CNPA also urged the Department to update the regulation to properly reflect the inclusion of sales tax reimbursement in the 47 percent allocation and otherwise leave the existing 3-step formula unchanged.

The Department also received written comments from Mr. Lyle Downey, of Downey, Smith & Fier, in a letter dated August 13, 2020; Mr. Steve Falk, on behalf of Sonoma Media Investments, LLC, in a letter dated August 7, 2020; and Mr. Chris Christian of C2 Media Consulting in an August 13, 2020, email. Their written comments also raised similar issues to CNPA’s issues. In addition, Mr. Christian expressed his support for the clarification regarding the rebuttable presumption and complimented the Department team members on their thoughtful and collaborative efforts.

Final Proposed Amendments

After considering the interested parties’ written comments, the Department understands that most newspaper publishers currently (and historically) sell newspaper subscriptions for amounts that are inclusive of transportation charges and sales tax reimbursement. In addition, the Department understands that the newspaper publishers’ accounting and reporting systems are designed to apply the tangible personal property allocation percentage to the subscription rate inclusive of any charges for transportation and sales tax reimbursement. With this understanding, the Department changed the proposed methodology for calculating the measure of tax for a sale of a mixed newspaper subscription which includes charges for transportation and sales tax reimbursement to be consistent with the accounting and reporting practices of the newspaper industry. The Department also made other changes to further clarify the original proposed amendments and the regulation’s current definition of “third-party retailer.”

The Department proposes amending Regulation 1590, as discussed above, to:

- Add the new definitions described below to subdivision (a) and renumber the remaining definitions so that they are all in alphabetical order. Specifically, renumbering current subdivisions (a)(9), (a)(5), (a)(3), (a)(8), (a)(1), (a)(6), (a)(2), (a)(10), (a)(4), and (a)(7), to subdivisions (a)(2), (a)(3), (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (a)(11), (a)(13), and (a)(15), respectively.
- Add new subdivision (a)(1) to define “digital-only subscription.”
- Amend the definition of digital-only subscription rate in renumbered subdivision (a)(2) so the term means the average of all the actual rates a newspaper publisher charges its customers for digital-only subscriptions, except the rates for promotional or introductory subscriptions as defined in subdivision (a)(12).
- Amend the definition of mixed newspaper subscription in renumbered subdivision (a)(5) so the term means a subscription to have the print edition of a newspaper delivered to a customer’s location and access to digital content from the newspaper publisher.
- Add new subdivision (a)(6) to define the term mixed newspaper subscription rate to mean

the total amount a newspaper publisher charges its customers for a mixed newspaper subscription, including any charges for transportation and sales tax reimbursement.

- Add new subdivision (a)(10) to define “print-only subscription.”
- Amend the definition of print-only subscription rate in renumbered subdivision (a)(11) so the term means the average of all the actual rates a newspaper publisher charges its customers for print-only subscriptions, inclusive of any charges for transportation and sales tax reimbursement, except the rates for promotional or introductory subscriptions as defined in subdivision (a)(12).
- Add subdivision (a)(12) to define “promotional or introductory subscriptions” to mean subscriptions that are sold for a substantially discounted rate, including subscriptions sold for substantially discounted rates referred to as sales rates, limited-time rates, or seasonal rates, and include three examples illustrating an introductory subscription, a promotional subscription, and a subscription rate that is discounted, but not substantially discounted.
- Delete the third sentence from the definition of “third-party retailer” in renumbered subdivision (a)(15), which includes unnecessary and outdated references to “persons commonly known as direct mail, school, paid during service, cash, catalog, and telephone agents” and may lead to confusion.
- Add new subdivision (a)(14) to define “tangible personal property allocation percentage” to mean the percentage of a mixed newspaper subscription rate that is for the sale of tangible personal property, inclusive of any charges for transportation and sales tax reimbursement.
- Amend subdivision (b)(3)(B) to clarify that “[w]hen a newspaper publisher sells a mixed newspaper subscription, tax applies to the sale of the print edition of the newspaper delivered to the location provided by the customer (unless otherwise exempt or excluded), not the access to digital content” and explain that a publisher must multiply a mixed newspaper subscription rate by its tangible personal property allocation percentage to determine the percentage of the rate that is for the print edition of a newspaper delivered to a customer’s location, inclusive of any charges for transportation and sales tax reimbursement.
- Amend subdivision (b)(3)(B)1 to clarify that a newspaper publisher’s tangible personal property allocation percentage is presumed to be forty-seven (47) percent. Fifty-three (53) percent of the mixed subscription rate is presumed to be for the nontaxable sale of access to digital content.
- Amend subdivision (b)(3)(B)2 to explain that a publisher can rebut the presumptions and establish a lower tangible personal property allocation percentage by demonstrating to the satisfaction of the Department that its print-only subscription rate divided by the sum of its print-only subscription rate and digital-only subscription rate is less than forty-seven (47) percent.
- Add subdivision (b)(3)(B)3 to provide a formula that may be used to determine the measure of tax when a mixed newspaper subscription rate includes nontaxable transportation charges and sales tax reimbursement and an example to illustrate the calculation.

The Department further proposes the following amendments, as initially proposed:

- Delete the unnecessary reference to the ruling of the United States Treasury Department from the definition of newspaper in renumbered subdivision (a)(7).
- Amend subdivision (b)(3)(B)2 to change the reference from Board to Department and add that records must be maintained in accordance with Regulation 1698, *Records*.
- Remove the asterisk and footnote text from each of the exemption certificates and add the text “Name and Type of Newspaper or Periodical” directly under the blank field where the purchaser is required to input such information on each of the exemption certificates.

Finally, the Department decided not to delete the footnote in the definition of periodical or move the cases referred to in the footnote to the regulation’s reference note because the cases clarify the definition of “periodical” and there would be no way for readers to know that the cases relate to the definition of periodical if they were just cited in the regulation’s reference note. However, the Department is proposing to update the format of the citations to the cases in the footnote.

Economic and Fiscal Impact

The proposed amendments to Regulation 1590 impact California newspaper publishers, which may include small businesses, that sell mixed newspaper subscriptions. There are an estimated 500 newspapers in California. There are no comparable Federal regulations. In the absence of Federal regulation, state regulation is needed, and the Department is the state agency responsible for administering state, local, and district use taxes. The Department considered whether to begin the formal rulemaking process to adopt the proposed amendments at this time or, alternatively, whether to take no action at this time. No additional alternatives were considered.

The amendments are needed because there was confusion as to whether the taxable allocation percentage applies to the mixed subscription rate, inclusive of any charges for transportation or sales tax reimbursement. The benefits are the result of goals developed by the agency based on broad statutory authority. Although the statewide dollar costs and benefits from the amendments to the regulation are unknown, the amendments will provide a bright line approach for determining the measure of tax when a newspaper publisher sells a mixed newspaper subscription and will assist in ensuring compliance and accuracy with respect to reporting taxable sales. The proposed amendments are consistent with the accounting and reporting practices of the newspaper industry and do not impose additional reporting requirements or costs. As such, the Department anticipates that these proposed amendments will have little to no economic impact on businesses. The Department anticipates:

- The estimated economic impact of the regulation is below \$10 million.
- No businesses or jobs will be created or eliminated because of the regulatory change.
- The regulatory change will not affect the ability of California businesses to compete with other states by making it more costly to produce goods and services here.
- The regulatory change does not directly impact housing costs.
- There are no other benefits of the regulatory change, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state’s environment and quality of life, identified by the Department.

Additionally, there is no estimated change of investment in the state, no incentive for innovation in products, materials, or processes, and no fiscal impact. The regulation does not mandate specific technologies or equipment. This regulatory change does not affect any local entity or program and does not affect any federally funded state agency or program. The Department will update the version of Regulation 1590 on its website and incorporate the amendments into industry guidance. The workload associated with incorporating these changes is considered routine. Any corresponding cost would be absorbed within the Department's existing budget.

Update to the Statement of Reasons

The Department mailed, published, and posted its notice for the adoption of the proposed amendments to Regulation 1590 on September 17, 2021. The notice explained that November 8, 2021, was the deadline for written comments regarding the adoption of the proposed amendments to Regulation 1590. The notice also explained that the Department had not scheduled a public hearing to discuss the proposed regulatory action, but the Department would hold a public hearing if a written request for a public hearing was received no later than 15 days before the close of the written comment period. No public hearing was requested and no written public comments were received regarding the proposed regulatory action.