

Text of Proposed Amendments to

California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration –

Business Taxes

Chapter 4. Sales and Use Tax

Section 1685.5. Calculation of Estimated Use Tax -- Use Tax Table

Regulation 1685.5. Calculation of Estimated Use Tax -- Use Tax Table.

(a) In General.

~~(1) Estimated Use Tax and Use Tax Table. The~~ Revenue and Taxation Code (RTC) section 6452.1 requires the California Department of Tax and Fee Administration (Department) ~~is required~~ to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

~~(b2)~~ Who is Eligible to Use the Department's Use Tax Tables.

~~(1A)~~ Consumers may elect to use the Department's use tax tables included in the instructions to their FTB returns 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. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

~~(2B)~~ Consumers may not use the Department's ~~The use tax tables may not be used to estimate their use tax liabilities for business purchases, including purchases made by businesses~~ Businesses required to hold a seller's permit or to register with the Department under the Sales and Use Tax Law and report their use tax liabilities directly to the Department may not use the Department's use tax tables.

(c3) Safe Harbor. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the Department may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(db) Definitions and Data Sources.

(1) AGI Ranges. The Department's use tax tables shall be separated into fifteen (15) AGI ranges as follows:

- (A) AGI less than \$10,000;
- (B) AGI of \$10,000 to \$19,999;
- (C) AGI of \$20,000 to \$29,999;
- (D) AGI of \$30,000 to \$39,999;
- (E) AGI of \$40,000 to \$49,999;
- (F) AGI of \$50,000 to \$59,999;
- (G) AGI of \$60,000 to \$69,999;
- (H) AGI of \$70,000 to \$79,999;
- (I) AGI of \$80,000 to \$89,999;
- (J) AGI of \$90,000 to \$99,999;
- (K) AGI of \$100,000 to \$124,999;
- (L) AGI of \$125,000 to \$149,999;
- (M) AGI of \$150,000 to \$174,999;
- (N) AGI of \$175,000 to \$199,999;
- (O) AGI more than \$199,999.

(2) ~~Use Tax Liability Factor or Use Tax Table Percentage.~~ On June 1, 2026, and each June 1 thereafter, the use tax liability factor for the current calendar year shall be calculated by multiplying the percentage of income spent on taxable purchases by 0.017, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent. ~~For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On June 1, 2012, the use tax liability factor or use tax table percentage for the current calendar year shall be calculated by multiplying the percentage of income spent on taxable purchases for the preceding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent. On June 1, 2013, and each June 1 through June 1, 2018, the use tax liability factor or use tax table percentage for the current calendar year shall be calculated by multiplying the percentage of income spent on taxable purchases for the preceding calendar year by 0.23, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent. On June 1, 2019, the use tax liability factor or use tax table percentage for the current calendar year shall be calculated by multiplying the percentage of income spent on taxable purchases for the preceding calendar year by 0.10, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent. On June 1, 2020, the use tax liability factor or use tax table percentage for the current calendar year shall be calculated by multiplying the percentage of income spent on taxable purchases for the preceding calendar year by 0.036, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent. On June 1, 2021, and each June 1 thereafter, the use tax liability factor or use tax table percentage for the current calendar year shall be calculated by multiplying the percentage of income spent on taxable purchases for the preceding calendar year by 0.03, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.~~

(3) Total Personal Income. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis for an entire calendar year.

(4) Total Spending ~~on~~at Electronic Shopping and Mail Order Houses. Total spending ~~on~~at electronic shopping and mail order houses shall be determined by ~~summing~~reference to the most current quarterly retail e-commerce sales~~electronic shopping and mail order house spending~~ data published by the United States Census Bureau for an entire calendar year.

(5) Total Spending on Taxable Purchases. Total spending on taxable purchases shall be determined 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.

~~(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:~~

~~(i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;~~

~~(ii) Prescriptions;~~

~~(iii) Video content downloads;~~

~~(iv) Audio content downloads;~~

~~(v) Prepackaged computer software, including software downloads; and~~

~~(vi) All nonmerchandise receipts.~~

~~(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and~~

~~(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.~~

(6) Percentage of Income Spent on Taxable Purchases. The percentage of income spent on taxable purchases ~~during a calendar year~~ shall be calculated 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 to the nearest tenth of a percent.

(7) Average State, Local, and District Sales and Use Tax Rate. The average state, local, and district sales and use tax rate ~~for a calendar year~~ shall be the total of:

(A) The average of the rates of the statewide sales and use taxes imposed under article XIII of the California Constitution and the Sales and Use Tax Law (~~Rev. & Tax. Code, §RTC section 6001 et seq.~~) during each quarter of the preceding calendar~~in effect on January 1 of that year;~~

(B) The average of the statewide rates of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (~~Rev. & Tax. Code, §RTC section 7200 et seq.~~) during each quarter of the preceding calendar~~in effect on January 1 of that year;~~ and

(C) The weighted average of the rates~~rate~~ of the district taxes imposed under the Transactions and Use Tax Law (~~Rev. & Tax. Code, §RTC section 7251 et seq.~~) 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~~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 each quarter of that~~the fourth quarter of the calendar year, that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.~~

(~~ee~~) Calculation of the Estimated Use Tax Liability.

(1) The estimated use tax liability for consumers in the AGI range described in subdivision (~~db~~)(1)(A) shall be determined by multiplying \$5,000 by the use tax liability factor ~~or use tax table percentage~~ and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for consumers in each of the AGI ranges described in subdivision (~~db~~)(1)(B) through (N) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor ~~or use tax table percentage~~ and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for consumers in the AGI range described in subdivision (~~db~~)(1)(O) shall be determined by multiplying each consumer's~~range member's~~ actual AGI by the use tax liability factor ~~or use tax table percentage~~ and then rounding the result to the nearest whole dollar.

(f) Use Tax Table Format.

(1) The use tax table for calendar year 2011 shall provide as follows:

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than \$20,000	\$7
\$20,000 to \$39,999	\$21
\$40,000 to \$59,999	\$35
\$60,000 to \$79,999	\$49
\$80,000 to \$99,999	\$63
\$100,000 to \$149,999	\$88
\$150,000 to \$199,999	\$123
More than \$199,999	Multiply AGI by 0.070% (.0007)

(2) The use tax tables for calendar year ~~2026~~2012 and subsequent years shall utilize the same format as follows:

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than \$10,000	\$
\$10,000 to \$19,999	\$
\$20,000 to \$29,999	\$
\$30,000 to \$39,999	\$
\$40,000 to \$49,999	\$
\$50,000 to \$59,999	\$
\$60,000 to \$69,999	\$
\$70,000 to \$79,999	\$
\$80,000 to \$89,999	\$
\$90,000 to \$99,999	\$
\$100,000 to \$124,999	\$
\$125,000 to \$149,999	\$
\$150,000 to \$174,999	\$
\$175,000 to \$199,999	\$
More than \$199,999	Multiply AGI by % (.000)

Note: Authority cited: Section 7051, Revenue and Taxation Code; Sections 15570.22 and 15570.24, Government Code. Reference: Section 6452.1, Revenue and Taxation Code.