

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 35049, *Authority to Grant Relief of Interest Due to Unreasonable Error or Delay and Contents of a Request for Such Relief*

A. Factual Basis

Assembly Concurrent Resolution No. (ACR) 260 (Stats. 2018, ch. 190) encourages state agencies to use gender-neutral pronouns and avoid the use of gendered pronouns in regulations. Therefore, in accordance with ACR 260, the California Department of Tax and Fee Administration (CDTFA) proposes to make a solely grammatical change to replace the gendered pronouns “his or her” with the gender-neutral pronoun “their” in subdivision (a)(1) of California Code of Regulations, title 18, section (Regulation) 35049, *Authority to Grant Relief of Interest Due to Unreasonable Error or Delay and Contents of a Request for Such Relief*.

Senate Bill No. (SB) 1496 (Stats. 2022, ch. 474) amended subdivision (a)(2) of Revenue and Taxation (RTC) section 6593.5 in the Sales and Use Tax Law (SUTL), effective January 1, 2023. Prior to the amendments, subdivision (a)(2) of RTC section 6593.5 authorized the CDTFA to relieve all or any part of the interest imposed on a person under the SUTL where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles (DMV) was the direct result of an error by the DMV in calculating the use tax. SB 1496 amended subdivision (a)(2) of RTC section 6593.5 to instead authorize the Department to relieve all or any part of the interest imposed on a person under the SUTL “[w]here failure to pay sales or use tax was the direct result of an error or delay by a state agency that collects the tax on behalf of the [CDTFA].”

Subdivision (b) of Regulation 35049 incorporates the pre-SB 1496 authorization to relieve interest under subdivision (a)(2) of RTC section 6593.5. It provides that “A taxpayer may be relieved of interest imposed under the [SUTL] where the taxpayer’s failure to pay the correct amount of use tax with respect to a vehicle or vessel registered with the [DMV] was the direct result of an error by an employee of the [DMV] in calculating the use tax due.” Therefore, to make Regulation 35049 consistent with the amendments SB 1496 made to subdivision (a)(2) of RTC section 6593.5, the CDTFA proposes to change subdivision (b) of Regulation 35049 to specify that “A taxpayer may be relieved of interest imposed under the [SUTL] where the taxpayer’s failure to pay the correct amount of sales or use tax was the direct result of an error or delay by a state agency that collects the tax on behalf of CDTFA.”

In addition, Regulation 35049’s authority note includes a citation to RTC section 42020 in the Prepaid Mobile Telephony Services Surcharge Collection Act (Act) (RTC, § 42001 et seq.), which imposed a surcharge that was administered and collected pursuant to the Fee Collection Procedures Law (RTC, § 55001), until the Act was repealed by operation of law, operative January 1, 2020, pursuant to RTC section 42024 (added by Stats. 2014, ch. 885). Accordingly,

the CDTFA proposes to delete the citation to RTC section 42020 from Regulation 35049's authority note to make the regulation consistent with the repeal of RTC section 42020.

The proposed changes to Regulation 35049 are appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because they make the regulation consistent with the amendments SB 1496 made to subdivision (a)(2) of RTC section 6593.5, as well as with the repeal of RTC section 42020, and they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

The following Rule 100 changes are proposed to title 18 of the California Code of Regulations:

TEXT OF PROPOSED CHANGES

Regulation 35049. Authority to Grant Relief of Interest Due to Unreasonable Error or Delay and Contents of a Request for Such Relief.

(a) . . . (unchanged):

(1) By CDTFA staff acting in ~~his or her~~their official capacity; and

(2) . . . (unchanged).

(b) A taxpayer may be relieved of interest imposed under the Sales and Use Tax Law where the taxpayer's failure to pay the correct amount of sales or use tax ~~with respect to a vehicle or vessel registered with the Department of Motor Vehicles~~ was the direct result of an error or delay by a state agency that collects the tax on behalf of CDTFA ~~an employee of the Department of Motor Vehicles in calculating the use tax due.~~

(c) . . . (unchanged).

(d) . . . (unchanged).

NOTE: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; and Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, ~~42020~~, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6593.5, 7658.1, 8878.5, 30283.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046 and 60212, Revenue and Taxation Code.