STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
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GAVIN NEWSOM
Governor

NICOLAS MADUROS
Secretary, Government Operations Agency

TRISTA GONZALEZ
Director

September 1, 2026

Dear Interested Party:

Enclosed is the Discussion Paper on the proposed emergency rulemaking action to clarify the application of tax to the sale and use of digital products. We invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

September 10, 2026
Room SE 245 from 10:00 a.m. – 12:00 p.m.
May Lee State Office Complex
651 Bannon Street, Sacramento, CA

You may also join us on your computer or mobile app through Microsoft Teams (Meeting ID: 262 066 325 671 630, Passcode: FB2kD2BW) or by calling 1-916-535-0987 and then entering the phone conference identification number 377 043 685#. You are also welcome to submit your written suggestions or comments, including any proposed regulatory language, to me at the address or fax number in this letterhead or via email at PPDD-BTC.InformationRequests@cdtfa.ca.gov by September 24, 2026. Copies of the materials you submit may be provided to other interested parties; therefore, please ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others who may be interested in the meeting.

If you are interested in other Business Taxes Committee topics, refer to the CDTFA webpage at (http://www.cdtfa.ca.gov/taxes-and-fees/business-taxes-committee.htm) for copies of discussion papers and calendars of current and prior issues.

We appreciate your consideration and look forward to your participation. Should you have any questions, please contact Business Taxes Committee team member Robert Wilke at 1-916-309-5302.

Sincerely,

Sandy Barrow

Sandy Barrow, Chief
Tax Policy Bureau
Processing, Policy, and Data Division

SB:rsw

Enclosures
Discussion Paper - Application of Sales and Use Tax to Digital Products

DISCUSSION PAPER
Application of Sales and Use Tax to Digital Products

Issue

Whether the California Department of Tax and Fee Administration (Department) should adopt amendments to Sales and Use Tax Regulations 1502, Computers, Programs, and Data Processing; 1507, Technology Transfer Agreements; and 1699.6, Use Tax Direct Payment Permits, and new Sales and Use Tax Regulations 1502.2, Custom Computer Software; 1600, Application of Sales and Use Tax to Digital Products; 1600.1, Tax Liability Threshold for Digital Products; 1600.2, Digital Products Purchased for Multiple Points of Use; and 1600.3, Digital Products Purchased Solely for Use Outside this State or in Interstate or Foreign Commerce, through the emergency rulemaking process. The amendments and new regulations implement, interpret, and make specific the Revenue and Taxation Code (RTC) sections,[1] as added or amended by Senate Bill No. (SB) 122 (Stats. 2026, ch. 23), regarding the application of sales and use tax to digital products.

Background

<u>General</u>

California imposes sales tax on retailers, and sales tax applies to a retailer's gross receipts from the retail sale of tangible personal property (TPP) in this state, unless specifically exempted or excluded from tax. (RTC section 6051.) While the sales tax is imposed upon the retailer for the privilege of selling TPP at retail in California, the retailer may collect sales tax reimbursement from the customer if the contract of sale so provides. (Reg. 1700, Reimbursement for Sales Tax.) It is presumed that all gross receipts are subject to tax until the contrary is established, and the burden of proving that a sale of TPP is not a sale at retail is upon the person who makes the sale unless they accept a resale certificate from the purchaser. (RTC section 6091; Reg. 1668, Sales for Resale.)

When sales tax does not apply, use tax applies to the sales price of TPP purchased from a retailer for storage, use, or other consumption in California, unless specifically exempted or excluded from tax. (RTC sections 6201, 6401.) Consumers are generally required to report and pay use tax to the state on their taxable purchases. (RTC sections 6452, 6452.1.) However, every "retailer engaged in business in this state" as defined in RTC section 6203 that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the Department, and such retailers are liable for use tax that they fail to collect from their customers and remit to the Department. (RTC sections 6203, 6204; Reg. 1684, Collection of Use Tax by Retailers.)

A sale includes any transfer of title or possession, in any manner or by any means whatsoever, of TPP for consideration. (RTC section 6006.) In general, a "retail sale" or "sale at retail" means a sale of TPP for a purpose other than resale in the regular course of business. (RTC section 6007.) In general, gross receipts and sales price mean the total amount for which TPP is sold, without any

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[1] Amended RTC sections 6006, 6009, 6010, 6010.5, 6010.9, 6016, 6406, and 7051.3 and added RTC sections 6009.5, 6010.5.1, 6016.1, 6016.2, 6052, 6054, 6201.55, 6362.4, 6372, 6372.1, 7202.1, and 7254.

deduction for, among other things, the cost of the property sold and the cost of any services that are a part of the sale. (RTC sections 6011, 6012.) TPP includes personal property that may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. (RTC section 6016.)

Senate Bill 122 (Stats. 2026, ch. 23)

On June 29, 2026, SB 122 was adopted, which amended Government Code (GC) section 53084.5, and added or amended several provisions of the RTC to define TPP to additionally mean a digital product and any copyright or patent interests associated therewith for the purposes of the application of the sales and use tax, as prescribed. The RTC provisions added and amended by SB 122 also define "digital product" to mean, except as provided, prewritten computer software transferred on tangible storage media, transferred electronically, or accessed remotely.

Government Code Section 53084.5

Local Revenue Sharing Agreements

As added by SB 122, subdivision (c) of Government Code section 53084.5, prohibits a local agency from entering into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion, or rebate of any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 [commencing with Section 7200] of Division 2 of the RTC) imposed on the sale or purchase of a digital product that is transferred electronically or accessed remotely.

A payment, transfer, diversion, or rebate of any tax revenue pursuant to such an agreement may be subject to redistribution by the Department pursuant to RTC section 7209.

These amendments were operative immediately upon enactment.

RTC sections as added or amended by SB 122, Operative January 1, 2027

Sale and Purchase

As amended by SB 122, subdivisions (h) and (i) of RTC section 6006, and subdivisions (f) and (g) of RTC section 6010, provide that the terms "sale" and "purchase" mean and include any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of a digital product transferred on tangible storage media for a consideration. And, any permanent or temporary transfer of the right, in any manner or by any means whatsoever, to open, view, access, download, copy, update, possess, store, manipulate, or otherwise use a digital product transferred electronically or accessed remotely for a consideration.

Use

RTC section 6009 states that "use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, and also includes the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease, except that it does not include the sale of that property in the regular course of business.

As amended by SB 122, subdivision (b) of RTC section 6009 provides that the exercise of any right or power over tangible personal property incident to the ownership of that property includes opening, viewing, accessing, downloading, copying, updating, possessing, storing, or manipulating a digital product transferred electronically or accessed remotely.

Storage and Use Exclusion for Digital Products

As added by SB 122, RTC section 6009.5 provides that for purposes of the use tax liability imposed pursuant to RTC sections 6052 and 6201.55, "storage" and "use" do not include the keeping, retaining, or exercising of any right or power over a digital product for the purpose of installing or deploying the digital product for use thereafter solely outside the state.

Place of Sale or Purchase of Digital Product

RTC section 6010.5 specifies where the place of the sale or purchase of a digital product is deemed to occur. SB 122 amended RTC 6010.5, adding the following provisions:

Subdivision (b)(1) provides that for a digital product transferred on tangible storage media, the place of the sale or purchase of that digital product shall be the place where the tangible storage media is physically located at the time the act constituting the sale or purchase takes place.

Subdivision (b)(2) provides that if the sale or purchase of a digital product that is not transferred on tangible storage media is an in-person sale or purchase at a location of the seller for which the seller is required to hold a seller's permit, the place of the sale or purchase of the digital product transferred electronically or accessed remotely shall be the seller's place of business in this state where the in-person sale or purchase occurred.

Subdivision (b)(3)(A) provides that if the sale or purchase of a digital product that is not transferred on tangible storage media is not an in-person sale or purchase, the place of the sale or purchase of a digital product transferred electronically or accessed remotely shall be deemed to be the purchaser's known address in this state shown in the seller's records maintained in good faith in the ordinary course of business.

Subdivision (b)(3)(B) provides that if the purchaser provided more than one address to the seller during the consummation of the sale or purchase, the purchaser's known address shall be determined from those addresses in this state in the following order of priority:

(i) The purchaser's billing address.

(ii) The purchaser's shipping or delivery address.

(iii) The mailing address associated with the purchaser's payment instrument.

(iv) The purchaser's mailing address.

Subdivision (b)(3)(C) provides that if a purchaser does not provide an address to the seller during the consummation of the sale or purchase, the purchaser's known address in this state shall be determined from the addresses in this state the purchaser previously provided to the seller in the following order of priority:

(i) The purchaser's most recent billing address.

(ii) The purchaser's most recent shipping or delivery address.

(iii) The purchaser's most recent mailing address associated with the purchaser's payment instrument.

(iv) The purchaser's most recent mailing address.

If subdivisions (b)(2) or (3) do not apply, subdivision (b)(4) specifies that the place of the sale or purchase of a digital product transferred electronically or accessed remotely shall be deemed to be outside of this state.

Place of Use of a Digital Product

As added by SB 122, RTC section 6010.5.1 provides that the place of use of a digital product shall be the place where any right or power is exercised over the digital product. The right or power to remotely access a digital product is exercised at the place where the person accessing the digital product is located.

Subdivision (b) provides that it shall be presumed that a digital product that was purchased outside of this state, as determined pursuant to RTC section 6010.5, and used in this state within 90 days from the date of sale or purchase was purchased for storage, use, or other consumption in this state.

Sale and Purchase Exclude Custom Computer Software

RTC section 6010.9, as amended by SB 122, provides that "sale" and "purchase" do not include the design, development, writing, translation, fabrication, lease, or transfer for a consideration of title or possession, of custom computer software, other than a basic operational program, either in the form of written procedures or in the form of tangible storage media on which, or in which, the custom computer software is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer software so transferred.

RTC section 6010.9 specifies that the term "basic operational program" has the meaning defined in Section 995.2. SB 122 also revised the terms "Computer Program" and "Custom Computer Program" to "Computer Software" and "Custom Computer Software" and redefines those terms as follows. "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. "Custom computer software" means computer software prepared to the special order of a *single customer* and includes those services represented by separately stated charges for modifications to existing prewritten computer software that are prepared to the special order of the customer. "Custom computer software" does not include prewritten computer software that is held or existing for general or repeated sale or lease, even if the prewritten computer software was initially developed on a custom basis or for in-house use. Modification to existing prewritten computer software to meet the customer's needs is custom computer software only to the extent of the modification.

Defining Tangible Personal Property

RTC section 6016, as amended by SB 122, provides that the term "tangible personal property" means either of the following:

> (1) Personal property that can be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses.
>
> (2) A digital product and any copyright or patent interests associated therewith.

Defining Digital Products

SB 122 added RTC section 6016.1 which defines a digital product and also specifies and defines what is excluded from the definition of a digital product. Subdivision (a) provides that the term "digital product" means prewritten computer software transferred on tangible storage media, transferred electronically, or accessed remotely.

Subdivision (b) provides that a "digital product" does not include any of the following:

> (1) A digital asset.
>
> (2) A digital audio work.
>
> (3) A digital audiovisual work.
>
> (4) A digital book.
>
> (5) Digital infrastructure.
>
> (6) A digital video game product.
>
> (7) A digital visual work.

Subdivisions (c)(1)-(3) provide that the terms "computer," "computer software," and "custom software" shall have the same meaning as defined in RTC section 6010.9. Subdivisions (c)(4)-(11) provide definitions for the following key terms that are excluded from the definition of a digital product:

> (4) "Digital asset" means a digital representation of value that is recorded on a cryptographically secured distributed ledger or any similar technology, as specified by the Secretary of the Treasury of the United States.
>
> (5) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone or music, that is transferred electronically or accessed remotely.

(6) "Digital audiovisual work" means a series of related images that when shown in succession impart an impression of motion, together with accompanying sounds, if any, that is transferred electronically or accessed remotely.

(7) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically or accessed remotely.

(8) "Digital infrastructure" means a cloud-based service provided remotely that allows a user to create, deploy, scale, or run the user's own computer software on the service provider's digital platform without managing, operating, or maintaining the user's own infrastructure, including any hardware, software, networks, and facilities that are required to allow the user to create, deploy, scale, or run the user's own computer software, required to complete the task.

(9) "Digital video game product" means an electronic, interactive game played for entertainment purposes by manipulating an input device to produce visual feedback on a screen that is transferred electronically or accessed remotely.

(10) "Digital visual work" means artwork created by using computer hardware and software processes which results in artwork in a digital format that is transferred electronically or accessed remotely.

(11) "Prewritten computer software" means computer software that is held or existing for general or repeated sale or lease, even if the prewritten software was initially developed on a custom basis or for in-house use, including the combination of two or more prewritten programs.

Defining Accessed Remotely, Tangible Storage Media, and Transferred Electronically

As added by SB 122, RTC section 6016.2 provides that the following terms have the following meanings:

"Accessed remotely" means to have accessed for consideration by use of a digital code, password, or other means prewritten computer software that resides on the vendor's server or the server of a third party.

"Tangible storage media" means any tangible device or material capable of storing a digital product, including, but not limited to, any internal or external drive, disk, memory card, or other item capable of storing a digital product.

"Transferred electronically" means obtained by the purchaser, by means other than tangible storage media, in a manner that allows the purchaser to open, view, access, download, copy, possess, store, manipulate, update, or otherwise use the digital product.

Retailer Relief from Liability for Sales or Use Tax Due on Sales Exceeding Threshold

As added by SB 122, subdivision (a) of RTC section 6052 provides that notwithstanding RTC section 6010.5, and except as provided in subdivision (c), a retailer is relieved from liability to pay sales tax on the sale or purchase of a digital product that is transferred electronically or accessed remotely if the following applies, unless the purchaser is an insurer, as defined in Section 28 of Article XIII of the California Constitution:

> (1) (A) The gross receipts from the sale of digital products by a retailer to a purchaser that are transferred electronically or accessed remotely exceed five million dollars ($5,000,000) in the aggregate in the current calendar year, or, beginning January 1, 2028, in the current or the preceding calendar year.
>
> (B) The purchaser shall become liable for the use tax pursuant to subdivision (b) on the transaction that caused the retailer to exceed the threshold specified in subparagraph (A) and any adjustments made pursuant to paragraph (2).

Paragraph (2)(A) specifies that on or before October 1, 2031, and every five years thereafter, the Department shall multiply the amount specified in subparagraph (A) of paragraph (1) by the percentage increase in the California Consumer Price Index for All Urban Consumers between October 1, 2026, and the date of the calculation required by this subparagraph, and the result shall be rounded to the nearest one million dollars ($1,000,000) and shall be the applicable amount for the succeeding calendar year. The applicable amount computed shall be operative beginning January 1 of the succeeding calendar year, and four years thereafter, as an adjustment of the amount specified in subparagraph (A) of paragraph (1).

Pursuant to subdivision (b) of RTC section 6052, if a retailer is relieved from liability to pay sales tax pursuant to subdivision (a), the purchaser is liable for the use tax and shall self-assess and pay directly to the Department taxes due on the transaction that caused the retailer to exceed the threshold specified in subparagraph (A) of paragraph (1) of subdivision (a) and any adjustments made pursuant to paragraph (2) of subdivision (a).

As provided in subdivision (c)(1) of RTC section 6052, if the Department determines that it is necessary for the efficient administration of this part, the Department may waive the requirement for the purchaser to self-assess and pay taxes due directly to the Department under subdivision (b), and the retailer shall be liable to pay the sales tax if the purchaser submits to the Department a request for waiver in a form and manner prescribed by the Department that includes all the places of business where the applicant expects to be a place of first use for purchases of digital products subject to subdivision (a). Additionally, a purchaser that submits a request for waiver to the Department shall also submit to the retailer all places of business where the purchaser expects to be a place of first use, which shall be considered the place of sale for purposes of the sales tax.

A purchaser that is required to pay use taxes to the Department under subdivision (b) shall obtain a use tax direct payment permit pursuant to the procedures provided in Section 7051.3.

SB 122 also added RTC section 6201.55 to provide corresponding provisions with respect to use tax.

Retailer Relieved from Tax Liability on Sales Outside California

SB 122 added RTC section 6054, which provides that a retailer is relieved from liability to pay sales tax or collect use tax on the sale or purchase of a digital product transferred electronically or accessed remotely if the place of the sale or purchase of the digital product was deemed to be outside of this state pursuant to RTC section 6010.5, and the retailer demonstrates to the satisfaction of the Department that the retailer made a reasonable effort to obtain accurate and complete address information from the purchaser.

Exemption - Reproduction for Sales to Third Parties

RTC section 6362.4, as added by SB 122, provides an exemption from the imposition of sales and use tax on the gross receipts from the sale or lease of, and the storage, use, or other consumption in this state of, the right to reproduce or copy a digital product in order for copies of the digital product to be distributed for consideration to third parties, even if a copy of the digital product is transferred concurrently with the granting of that right. Any tangible storage media on which the digital product is transferred is merely incidental.

Exemption - Sales for Use Outside California or Interstate and Foreign Commerce Exemption

RTC section 6372, as added by SB 122, provides that there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption of, a digital product purchased solely for use outside of this state or in interstate or foreign commerce.

Subdivision (b) provides that the burden of proving that the exemption applies is on the seller of the digital product, unless the seller takes from the purchaser a certificate to the effect that the property is purchased solely for use outside of this state or in interstate or foreign commerce in the form and manner prescribed by the Department. The certificate relieves the person selling the digital product from the duty of paying sales tax and collecting the use tax only if taken in good faith.

Subdivision (c) provides that if a purchaser certifies in writing to a seller that a purchase of a digital product is exempted by RTC section 6372 and uses the digital product in this state, the purchaser shall be liable for payment of sales tax as if the purchaser were a retailer making a retail sale of the property at the time of that use, and the cost of the property to the purchaser shall be deemed the gross receipts from that retail sale.

Subdivision (d) provides that if a purchaser buys both a digital product for use in this state and a digital product solely for use outside of this state or in interstate or foreign commerce in the same transaction may issue an exemption certificate for the purchase of any of those digital products eligible for the exemption and report and pay use tax on any of those digital products used in this state. A purchaser that issues such an exemption certificate shall report and pay use tax in a manner that reflects the use tax due on any of those digital products used in this state.

Alternate Methods for Determining the Sales and Use Tax Due

Subdivision (e) of RTC section 6372 provides that the Department may set forth, authorize, or require alternative methods to calculate the sales or use tax due in this state that fairly reflects the sales or use tax due on any digital product sold or purchased for use in this state, including on licenses of digital products concurrently available for use in multiple locations. If an alternative method is used to calculate the sales or use tax due, RTC section 6406 shall not apply.

Subdivision (e)(3) provides that the Department may prescribe any forms or exemption certificates, as necessary to administer this subdivision. The exemption created by RTC section 6372 does not apply to the sale or purchase of a digital product transferred on tangible storage media.

Exemption - Service Provided in Electronic Form/SaaS Exception

RTC section 6372.1, as added by SB 122, provides that there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption of, a digital product that represents a service provided in electronic form in which both of the following apply:

(1) The service primarily involves the application of human effort by the service provider.

(2) The human effort originated after the customer requested the service.

Subdivision (b) of RTC section 6372.1 provides that the exemption does not apply to the sale or purchase of the right to use the provider's computer software running on a cloud infrastructure or the right to access that software from various client devices through either a thin client interface, including a web browser, or a program interface.

Credit for Taxes Paid to Another State

Subdivision (b) of RTC section 6406, as added by SB 122, provides that a credit shall be allowed against, but shall not exceed, the total sales taxes imposed on any retailer with respect to a retail sale in this state of a digital product transferred electronically or accessed remotely to the extent that the retailer has paid a retail sales tax imposed with respect to that digital product by any other state, political subdivision thereof, or the District of Columbia at the time of sale.

Use Tax Direct Payment Permits

As amended by SB 122, RTC section 7053.1 provides that a "use tax direct payment permit" means a permit issued by the Department that allows a taxpayer to self-assess and pay state and local use tax directly to the Department. Every person seeking to pay use taxes directly to the Department shall file an application for a use tax direct payment permit. An application for a use tax direct payment permit shall be made upon a form prescribed by the Department and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place or places of business where the applicant intends to make direct payment of use tax, and any other information that the Department may require.

As relevant here, SB 122 added subdivision (b)(1)(B)(ii) which provides that an applicant for a use tax direct payment permit who is required to pay use tax directly to the Department pursuant to RTC section 6052 or 6201.55 shall register as a place to make direct payment of use tax any of the places of business in this state that the applicant expects to be a place of first use for purchases of digital products transferred electronically or accessed remotely that are subject to use tax in accordance with the requirements of subdivision (e).

Subdivision (b)(2) provides that the application for a use tax direct payment permit shall be signed pursuant to the following:

> (A) If the owner of the taxpayer is a natural person, the owner shall sign the application.
>
> (B) If the taxpayer is an association or partnership, a member or partner shall sign the application.
>
> (C) If the taxpayer is a corporation, an executive officer or a person specifically authorized by the corporation shall sign the application.

Subdivision (c) provides that pursuant to an application, a use tax direct payment permit shall be issued to any person who meets both of the following conditions:

> (1) The applicant agrees to self-assess and pay directly to the Department any use tax liability incurred under this section.
>
> (2) The applicant certifies to the Department either of the following:
>
> (A) The applicant is the purchaser for its own use or is the lessee of tangible personal property at a cost of five hundred thousand dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit.
>
> (B) The applicant is a county, city, or city and county.

Subdivision (d) provides that a use tax direct payment permit shall be issued to any person required to pay use tax directly to the Department on purchases of digital products transferred electronically or accessed remotely pursuant to Section 6052 or 6201.55 for a period of 12 months.

As provided by subdivision (e) any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the Department use taxes due for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report on the tax return required to be filed by RTC section 6452, the amount of local use tax applicable to each county, city, or city and county in which the first "use" occurs.

Subdivision (e)(2) provides that a person required to pay use tax directly to the Department on purchases of digital products pursuant to RTC section 6052 or 6201.55 shall issue an exemption certificate to a retailer of digital products transferred electronically or accessed remotely.

Subdivision (f) provides that the Department shall allow any holder of a use tax direct payment permit to issue a use tax direct payment certificate to any registered retailer or seller subject to all of the following:

> (1) The use tax direct payment certificate shall be in a form prescribed by the Department and shall be signed by, and bear the name, address, and permit number of, the holder of the use tax direct payment permit.
>
> (2) Once a use tax direct payment certificate has been issued by a holder of a use tax direct payment permit, it shall remain effective until revised or withdrawn by the holder of the permit or until the retailer or seller has received actual notice that the permit has been revoked by the Department.
>
> (3) A use tax direct payment certificate relieves a person selling property from the duty of collecting use tax only if taken in good faith from a person who holds a use tax direct payment permit. A purchaser who issues a use tax direct payment certificate that is accepted in good faith by a seller or retailer of tangible personal property shall be the sole person liable for any sales tax and related interest and penalties with respect to any transaction that is subsequently determined by the Department to be subject to sales tax and not use tax.
>
> (4) Any person who holds a use tax direct payment permit and gives a use tax direct payment certificate to a seller or retailer shall, in addition to any applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

Subdivision (g) states that it is the intent of the Legislature that the Department administer these provisions in a manner that assures that local use tax will be received by the county, city, or city and county where the first use occurs.

Local and District Taxes

As added by SB 122, RTC sections 7202.1. and 7254 provide that for the purposes of a tax adopted under the Bradley-Burns Uniform Local Sales and Use Tax Law or Transactions and Use Tax Law any retail sale of a digital product transferred electronically or accessed remotely is subject to the sourcing rule established pursuant to subdivision (b) of RTC section 6010.5.

Emergency Rulemaking Authority

Section 34 of SB 122 provides that the Department may prescribe, adopt, and enforce any emergency regulations necessary to implement, administer, and enforce its duties under sections 1 through 20 of SB 122. Any emergency regulation prescribed, adopted, or enforced shall be adopted in accordance with chapter 3.5 (commencing with section 11340) of part 1 of division 3 of title 2 of the Government Code, and, for purposes of that chapter, including section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, an emergency regulation adopted by the Department may remain in effect for two years from adoption and may be readopted.

Reimbursement for Local Agencies or School Districts

Section 37 of SB 122 provides that no reimbursement is required by AB 122 pursuant to section 6 of article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because AB 122 creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, or changes the definition of a crime.

<u>Regulation 1502</u>

As relevant here, Regulation 1502 prescribes the application of tax to computer programs and implements, interprets, and makes specific RTC section 6010.9. Subdivision (b) of Regulation 1502 defines the terms "computer," "program," "custom computer program," "prewritten program," and "storage media."

Subdivision (f)(1) of Regulation 1502 explains the application of tax to prewritten programs. As relevant here, subdivision (f)(1)(D) of Regulation 1502 clarifies that the sale or lease of a prewritten program is not a taxable transaction if the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer and the purchaser does not obtain possession of any TPP, such as storage media, in the transaction. Likewise, the sale of a prewritten program is not a taxable transaction if the program is installed by the seller on the customer's computer except when the seller transfers title to or possession of storage media or the installation of the program is a part of the sale of the computer (load-and-leave method). Subdivision (f)(2) clarifies that tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. It further provides that charges for custom modifications to prewritten programs are nontaxable only if the charges for the modifications are separately stated or the modifications to the prewritten program result in the creation of a new program that qualifies as a custom program. Subdivision (i) and subdivision (c)(7) provide for the application of tax to charges made for the use of a computer by means of remote telecommunication.

<u>Regulation 1507</u>

Subdivision (a)(1) of Regulation 1507 defines key terms including "technology transfer agreement, (TTA)" "copyright interest," and "patent interest." It also provides examples to clarify what is and is not a TTA. Subdivision (b)(1) of Regulation 1507 prescribes the general application of tax to TTAs. It also provides the process for determining the gross receipts or sales price attributable to any TPP transferred as part of a TTA. Subdivision (b)(2) of Regulation 1507 provides that tax applies to all amounts received from the sale or storage, use, or other consumption of TPP transferred with a patent or copyright interest, where the transfer is not pursuant to a TTA. Subdivision (b)(3) of Regulation 1507 provides that tax applies to the sale or storage, use, or other consumption of artwork and commercial photography pursuant to a TTA as set forth in Regulation 1540, Advertising Agencies, Commercial Artists and Designers.

<u>Regulation 1699.6, Use Tax Direct Payment Permits</u>

Regulation 1699.6 defines "use tax direct payment permit" and explains that persons seeking to pay use taxes directly to the Department shall file an application for a use tax direct payment permit. Subdivision (c) of Regulation 1699.6 provides that, pursuant to an application, a use tax direct payment permit shall be issued to any person who meets specified conditions. Subdivision (d) provides that any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the Department with each return the use taxes due for all purchases subject to use tax for which a use tax direct payment permit exemption certificate was issued, and shall report the local use tax component to the jurisdiction in which the property is located at the time the state imposed use tax must be reported. Temporary storage for the purpose of reporting local tax shall be disregarded. Any tax so reported may be redistributed in accordance with law.

Subdivision (f) of Regulation 1699.6 provides that a holder of a use tax direct payment permit is authorized to issue a use tax direct payment certificate to any registered retailer or seller under specified criteria, and explains who is responsible for reporting tax.

<u>Digital Products Workshop</u>

On July 21, 2026, the Department held a Digital Products Workshop to discuss and receive input on the application of sales and use tax to digital products. The workshop included an open discussion to identify what sections of the RTC, as added or amended by SB 122, need clarification by regulation. During the workshop, the Department requested that participants help identify which topics should be a priority for emergency rulemaking. There was a robust discussion and numerous questions raised regarding the timing and place of sale for digital products, multiple points of use of digital products, use tax direct payment permits, exclusions from the definition of digital products, and exemptions specified in SB 122 with regards to digital products.

The Department appreciates the input and questions it received at the workshop, as well as the written comments it received prior to and after the workshop (See Exhibit 9). The Department has considered the questions and written comments and will proceed with emergency rulemaking as discussed below. The Department acknowledges that not all of the questions or comments will be addressed through this initial emergency rulemaking but it will continue to provide clarification through an ongoing industry guide and future rulemaking.

Discussion

The Department is proceeding with the informal rulemaking (or interested parties) process to discuss draft regulatory language to help retailers and purchasers understand their responsibilities regarding the application of sales and use tax to the sale and purchase of digital products. The interested parties process provides a forum for informal discussion and allows the opportunity for participants to provide their oral and written comments and concerns, along with any recommendations they may have, including changes to any of the proposed regulatory language. The focus of the interested parties meeting will be to receive comments regarding the amended and new regulations discussed below.

Proposed Amendments to Regulation 1502, Computers, Programs, and Data Processing

The Department recognizes that the terms "computer," "custom computer program and programming," "prewritten program," and "program," as defined and used in Regulation 1502, are no longer consistent with RTC sections 6010.9 and 6016. The Department also determined that the application of tax to prewritten computer programs, as stated in subdivision (f)(1), is not consistent with RTC sections 6006, 6010, and 6016, as to the sale and purchase of tangible personal property. The Department also determined that with the advancement of technology, it would be clearer to have guidance regarding the application of tax to data processing services and custom computer programs provided in separate regulations. Therefore, the Department proposes to amend Regulation 1502 (See Exhibit 1) to:

- Revise the title from "Computers, Programs, and Data Processing" to "Data Processing;"
- Update the terms and definitions to be consistent with RTC sections 6010.9 and 6016;
- Delete the text regarding prewritten programs, including optional maintenance contracts, in subdivision (f)(1);
- Delete the text regarding custom computer software in subdivision (f)(2) and move to proposed new Regulation 1502.2; and
- Delete subdivisions (c)(7) and (i) regarding the application of tax to charges for remotely accessing computers due to potential confusion.

Proposed Regulation 1502.2, Custom Computer Software

As explained above, the Department proposes to have separate regulations address data processing and custom computer software. The Department also understands that examples would help clarify the application of tax to custom computer software. Therefore, the Department proposes Regulation 1502.2 (See Exhibit 2) to:

- Define the key terms "basic operational program," "computer," "computer software," "custom computer software," and "prewritten computer software" by reference to proposed new Regulation 1600;
- Incorporate subdivision (f)(2)(A) of former Regulation 1502 as subdivision (b) to explain that tax does not apply to custom computer software;
- Provide an example of what custom computer software is, and an example of what is not custom computer software;
- Incorporate subdivision (f)(2)(B) of former Regulation 1502 as subdivision (c) to specify that custom modifications to prewritten computer software are not taxable when the charges are separately stated;
- Provide an example illustrating the application of tax when the charge for custom modification is separately stated, and an example when the charge is not separately stated; and

- Incorporate subdivision (f)(2)(C)-(E) of former Regulation 1502 as subdivision (e)-(g).

Proposed Amendments to Regulation 1507, Technology Transfer Agreements

Prior to SB 122, the Department held several workshops to discuss software technology transfer agreements (TTAs), leading up to an Interested Parties meeting on July 24, 2025, to discuss proposed regulatory changes. Upon review and consideration of SB 122's amendments to RTC sections 6006, 6010, and 6016, which define sale, use, and tangible personal property, respectively, the Department determined that the application of tax to TTAs as explained in Regulation 1507 is not applicable to the sale or purchase of prewritten computer software, including any copyright or patent interests associated therewith. The Department determined that after these amendments, clarification is needed to conform with SB 122 as to prewritten computer software sold with copyright or patent interests. Therefore, the Department proposes to amend Regulation 1507 (See Exhibit 3) to:

- Add a reference in subdivision (b)(3), Specific Applications, to specify that proposed Regulation 1600 provides guidance regarding the application of tax to the sale or storage, use, or other consumption of prewritten computer software, including any copyright or patent interests associated therewith.

Proposed Regulation 1600, Application of Sales and Use Tax to Digital Products

The Department has determined the need for a new regulation which clarifies the application of tax as it applies to digital products. The Department proposes new Regulation 1600 (See Exhibit 4) to:

- Define terms including "digital products," "accessed remotely," "prewritten computer software," "custom software," "tangible storage media," and "transferred electronically" and provide examples of what is and is not a digital product;
- Clarify the application of tax to sales or purchases of digital products, whether transferred on tangible storage media, electronically, or accessed remotely;
- Clarify the determination of when the sale or purchase for digital products occurs, including examples describing when the sale or purchase occurs in various scenarios;
- Provide the rules to determine the place of sale or purchase of a digital product;
- Provide that the place of first use of a digital product is where the purchaser first exercises any right or power over the digital product; and
- Specify the exemptions applicable to the sale or purchase of a digital product.

Proposed Regulation 1600.1, Tax Liability Threshold for Digital Products

The Department proposes new Regulation 1600.1, Tax Liability Threshold for Digital Products (See Exhibit 5) to:

- Clarify when a retailer is relieved of the liability to pay sales tax or collect use tax on digital products transferred electronically or accessed remotely;
- Clarify the threshold amount provided by RTC sections 6052 and 6201.55;
- Clarify when a purchaser is liable for reporting and paying use tax;
- Provide that when the threshold amount is exceeded, a purchaser must either obtain a use tax direct payment permit or a waiver from the Department;
- Prescribe the process to request a waiver from the Department; and
- Clarify that if the purchaser provides the retailer with a waiver, the retailer is liable to pay the sales tax or collect the use tax due.

<u>Proposed Regulation 1600.2, Digital Products Purchased for Multiple Points of Use</u>

The Department may prescribe any forms or exemption certificates, as necessary to administer subdivision (e) of RTC section 6372 which provides that the Department may set forth, authorize, or require alternative methods to calculate the sales or use tax due in this state that fairly reflects the sales or use tax due on any digital product sold or purchased for use in this state, including on licenses of digital products concurrently available for use in multiple locations. The Department received several comments suggesting that the Department authorize the use of a multiple points of use (MPU) certificate like other states. The Department has considered the recommendations and proposes Regulation 1600.2 (See Exhibit 6) to:

- Define the terms "computer," "multiple points of use," and "user;"
- Specify the authority for the Department to set forth, authorize, or require alternative methods to calculate the sales or use tax due in this state for any digital product sold or purchased for use in this state;
- Provide an authorized alternate method for calculating the sales or use tax due on any digital product purchased for use in this state;
- Explain that a seller is relieved of the obligation to pay and remit tax on the non-taxable measure based on the use of a digital product outside this state when the seller timely obtains in good faith a written multiple-points-of-use certificate from the purchaser;
- Prescribe the essential elements required on an MPU certificate;
- Provide the requirements when a purchaser issues a use tax direct pay permit exemption certificate to the seller;
- Specify the record keeping requirements to substantiate any claim for digital products sold or purchased for multiple points of use;
- Provide a reference to Regulation 1600.3 for the application of tax to digital products purchased solely for use outside this state or in Interstate or Foreign Commerce; and

- Add an operative date of January 1, 2027, for the regulation.

<u>Proposed Regulation 1600.3, Digital Products Purchased Solely for Use Outside this State or in Interstate or Foreign Commerce</u>

As provided by RTC section 6372, the sale of a digital product purchased solely for use outside this state or in interstate or foreign commerce is exempt from sales and use tax. RTC section 6372 further provides that the Department may prescribe the form and manner for which an exemption certificate may be used. Therefore, the Department proposes Regulation 1600.3 (See Exhibit 7) to:

- Provide that a digital product transferred electronically or accessed remotely when purchased solely for use outside of this state or in interstate or foreign commerce is exempt from sales and use tax;
- Specify the exemption does not apply to a sale or purchase of a digital product transferred on tangible storage media;
- Explain that a seller is relieved of the burden of proving that a transaction is exempt from tax when the seller timely obtains in good faith an exemption certificate from the purchaser;
- Prescribe the essential elements required on the exemption certificate;
- Explain that a purchaser may issue an exemption certificate when purchasing multiple digital products in the same transaction;
- Provide that if a purchaser certifies in writing to a seller that a purchase of a digital product is exempt pursuant to Revenue and Taxation Code section 6372 and uses the digital product in this state, or in any manner other than in interstate or foreign commerce, the purchaser shall be liable for payment of tax;
- Specify the record keeping requirements to substantiate any claimed exemption; and
- Add an operative date of January 1, 2027, for the regulation.

<u>Proposed Amendments to Regulation 1699.6, Use Tax Direct Payment Permits</u>

The Department recognizes that clarification is needed to explain the requirements for obtaining a use tax direct payment permit. The Department also determined there may be confusion regarding when to issue and accept a use tax direct payment exemption certificate. Therefore, the Department proposes to amend Regulation 1699.6 (See Exhibit 8) to:

- Clarify the required elements of an application for a use tax direct payment permit and provide that an application may be submitted online or via email.
- Clarify that a use tax direct payment permit shall be issued to any person required to pay use tax directly to the Department on purchases of digital products transferred electronically or accessed remotely pursuant to RTC section 6052 and 6201.55;
- Clarify that a use tax direct payment permit exemption certificate should only be issued to a retailer of digital products transferred electronically or accessed remotely when the

gross receipts from the sale exceed the threshold amount as provided in Regulation 1600.1;

- Clarify the meaning of "good faith" for purposes of a use tax direct payment exemption certificate issued for purchases of digital products transferred electronically or accessed remotely;
- Change references to the "board" to the "Department"; and
- Make formatting changes for consistency.

Summary

We welcome any comments, suggestions, and input from interested parties regarding this proposed emergency rulemaking action. We also invite interested parties to participate in the September 10, 2026, interested parties meeting. The deadline for interested parties to provide their written submissions regarding this discussion paper will be September 24, 2026.

Prepared by the Tax Policy Bureau, Processing, Policy, and Data Division

Current as of 08/27/26

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1502. Computers, Programs, and Data Processing.

Regulation 1502. ~~Computers, Programs, and~~ Data Processing.

(a) In General. "Automatic data processing services" are those rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel, and computers.

Automatic data processing services may be provided by manufacturers of computers, data processing centers, systems designers, consultants, software companies, etc. In addition, there are banks and other businesses which own or lease computers and use them primarily for their own purposes but occasionally provide services to others. Businesses rendering automatic data processing services will be referred to herein as "data processing firms."

(b) Definition of Terms.

(1) Application. The specific job performance by an automatic data processing installation. For example, data processing for a payroll may be referred to as a payroll application.

(2) Coding. The list, in computer code, of the successive computer instructions representing successive computer operations for solving a specific problem.

(3) Computer. ~~A c~~Computer shall have the same meaning as set forth in Regulation 1600.~~is an electronic device (including word processing equipment and testing equipment) or combination of components, which is programmable and which includes a processor (central processing unit or microprocessor), internal memory, and input and output connections. Manufacturing equipment which incorporates a computer is a computer for purposes of this regulation. However, the term does not include manufacturing equipment which operates under the control of mechanical or electronic accessories, the attachment to the equipment of which is required for the machine to operate. An electronic device otherwise qualifying as a computer remains a computer even though it may be used for information processing, data acquisition, process control, or for the control of manufacturing machinery or equipment.~~

(4) Computer Software. Computer software shall have the same meaning as set forth in Regulation 1600.

(4~~5~~) Custom Computer Software~~Program and Programming~~. ~~A~~ Custom computer software shall have the same meaning as set forth in Regulation 1600.~~program prepared to the special order of the customer. A program prepared to the special order of the customer qualifies as a custom program even though it may incorporate preexisting routines, utilities or similar program components. It includes those services represented by separately stated charges for~~

~~modifications to an existing prewritten program which are prepared to the special order of the customer.~~

(~~5~~6) Data Entry (including Encoding). Recording information in or on storage media by punching holes or inserting magnetic bits to represent letters, digits, and special characters.

(~~6~~7) Digital Pre-Press Instruction. The creation of original information in electronic form by combining more than one computer software~~program~~ into specific instructions or information necessary to prepare and link files for electronic transmission for output, within the printing industry, to film, plate, or direct to press, which is then transferred on electronic media such as tape or compact disc.

(~~7~~8) Input. The information or data transferred, or to be transferred, from storage media into the internal storage of the computer.

(~~8~~9) Output. The information transferred from the internal storage of the computer to storage media or tabulated listing.

(~~9~~10) Prewritten Computer Software~~Program~~. Prewritten computer software shall have the same meaning as set forth in Regulation 1600.~~A program held or existing for general or repeated sale or lease. The term also includes a program developed for in-house use which is subsequently offered for sale or lease as a product.~~

~~(10) Program. "Program" is the complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions thereof. "Subdivision" includes, without limitation, assemblers, compilers, generators, procedures, functions, routines, and utility programs. "Problem" means and includes any problem that may be addressed or resolved by a program or subdivision; and the "problem" addressed need not constitute the full array of a purchaser's or user's problems, requirements, and desired features. "Problem" further includes, without limitation, any problem associated with: information processing; the manipulation or storage of data; the input or output of data; the transfer of data or programs, including subdivisions; the translation of programs, including subdivisions, into machine code; defining procedures, functions, or routines; executing programs or subdivisions that may be invoked within a program; and the control of equipment, mechanisms, or special purpose hardware.~~

(11) Proof Listing. A tabulated listing of input.

(12) Source Documents. A document supplied by a customer of a data processing firm from which basic data are extracted (e.g., sales invoice).

(13) Storage Media. Includes hard disks, floppy disks, diskettes, magnetic tape, cards, paper tape, drums and other devices upon which information is recorded.

(c) Basic Applications of Tax.

(1) The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated, is a sale subject to tax.

(2) Charges for producing, fabricating, processing, printing, imprinting or otherwise physically altering, modifying or treating consumer-furnished tangible personal property (cards, tapes, disks, etc.), including charges for recording or otherwise incorporating information on or into such tangible personal property, are generally subject to tax.

(3) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, including property on which or into which information has been recorded or incorporated, is generally a sale subject to tax. However, if the contract is for the service of researching and developing original information for a customer, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.

(4) Charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output. Examples include artwork, graphics, and designs. However, the transfer by the seller of the original information created by digital pre-press instruction is not subject to tax if the original information is ~~a~~ custom computer software~~program~~. ~~as explained in subdivision (f)(2)(F)~~ See Regulation 1502.2 for the application of tax to custom computer software.

(5) Charges for processing customer-furnished information (sales data, payroll data, etc.) are generally not subject to tax. (For explanation and specific application of tax, see subdivision (d).)

(6) Leases of tangible personal property may be subject to tax under certain conditions. (See Regulation 1660 for application of tax to leases.)

~~(7) Charges made for the use of a computer, on a time-sharing basis, where access to the computer is by means of remote telecommunication, are not subject to tax. (See subdivision (i).)~~

(7~~8~~) Generally, data processing firms are consumers of all tangible personal property, including cards and forms, which they use in providing nontaxable services unless a separate charge is made to customers for the materials, in which case tax applies to the charge made for the materials.

(d) Manipulation of Customer-Furnished Information as Sale or Service.

(1) General. Generally, tax applies to the conversion of customer-furnished data from one physical form of recordation to another physical form of recordation. However, if the contract is for the service of developing original information from customer-furnished data, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.

(2) Data Entry and Verification. This covers situations where a data processing firm's agreement provides only for data entry, data verification, and proof listing of data, or any combination of these operations. It does not include contracts under which these services are performed as steps in processing of customer-furnished information as discussed under subdivision (d)(5).

Agreements providing solely for data entry and verification, or data entry providing a proof list and/or verifying of data are regarded as contracts for the fabrication of storage media and sale of proof lists. Charges therefor are taxable, whether the storage media are furnished by the customer or by the data processing firm. Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax application is the same regardless of which type of storage media is used in the operation.

(3) Addressing (Including Labels) for Mailing. Where the data processing firm addresses, through the use of its computer or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for addressing. Similarly, where the data processing firm prepares, through the use of its computer or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for producing the labels, whether or not the data processing firm itself affixes the labels to the material to be mailed. (For the sale of a mailing list by the proprietor of such list as a sale of tangible personal property or as a nontaxable addressing, see Regulation 1504~~ "Mailing Services~~.~~"~~)

(4) Microfilming and Photorecording. Tax applies to charges for microfilming or photorecording except, as provided in subdivision (d)(5), where the microfilming or photorecording is done under a contract for the processing of customer-furnished information. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting and/or line drawings, and put on microfilm or photorecording paper.

(5) Processing of Customer-Furnished Information.

(A) "Processing of customer-furnished information" means the developing of original information from data furnished by the customer. Examples of automatic data processing processes which result in original information are summarizing, computing, extracting, sorting and sequencing. Such processes also include the updating of a continuous file of information maintained by the customer with the data processing firm.

(B) "Processing of customer-furnished information" does not include: (1) an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing, (2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters, (3) the mere converting of data from one medium to another, or (4) an agreement under which a person undertakes to prepare artwork, drawings, illustrations, or other graphic material unless the provisions ~~of subdivision (f)(2)(F) apply~~ regarding digital pre-press instruction and custom computer software apply~~programs~~. Additionally, graphic material furnished incidentally to the performance of a service is not subject to tax. For example, graphics furnished in connection with the performance of architectural, engineering, accounting, or similar professional services are not subject to tax. With respect to typography, clip art combined with text on the same page is considered composed type as explained in Regulation 1541.

(C) Contracts for the processing of customer-furnished information usually provide that the data processing firm will receive the customer's source documents, record data on storage media, make necessary corrections, process the information, and then record and transfer the output to the customer.

Where a data processing firm enters into a contract for the processing of customer-furnished information, the transfer of the original information to the customer is considered to be the rendering of a service. Except as described in subdivisions (c)(8) and (d)(5)(E), tax does not apply to the charges made under contracts providing for the transfer of the original information whether the original information is transferred on storage media, microfilm, microfiche, photorecording paper, input media for an optical character recognition system, punched cards, preprinted forms, or tabulated listing. The breakdown of the total charge into separate charges for each operation involved in processing the customer-furnished information will not change the application of tax.

(D) The furnishing of computer software~~programs~~ and data by the customer for processing under direction and control of the data processing firm will not alter the application of tax, notwithstanding that charges are based on computer time.

(E) Taxable Items. Where a data processing firm has entered into a contract which is regarded as a service contract under subdivision (d)(5)(C) and the data processing firm, pursuant to the contract, transfers to its customer tangible personal property other than property containing the original information, such as duplicate copies of storage media: inventory control cards for use by the customer; membership cards for distribution by the customer; labels (other than address labels); microfiche duplicates; or similar items for use, tax applies to the charges made for such items. If no separate charge is made, tax applies to that portion of the charge made by the data processing firm which the cost of the additional computer time (if any), cost of materials, and labor cost to produce the items bear to the total job cost.

(F) Additional Copies. When additional copies of records, reports, tabulation, etc., are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies (other than carbon copies), whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the data processing firm to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any), the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax.

(e) Training Services and Materials. Data processing firms provide a number of training services, such as data entry and verification, programming, and specialized training in systems design.

(1) Charges for training services are nontaxable, except as provided in subdivision (g) where the training services are provided as part of the sale of tangible personal property. The data processing firm is the consumer of tangible personal property which is used in training others, or provided to trainees without a separate charge as a part of the training services.

(2) Tax applies to charges for training materials, including books, furnished to trainees for a charge separate from the charge for training services.

(3) Where a person sells tangible personal property, such as computers or computer software~~programs~~, and provides training materials to the customer without making an additional charge for the training materials, this is a sale of the training materials. The selling price of the training materials is considered to be included in the sales price of the tangible personal property.

~~(f) Computer Programs.~~

~~(1) Prewritten (Canned) Programs. Prewritten programs may be transferred to the customer in the form of storage media or by listing the program instructions on coding sheets. In some cases they are usable as written; however, in other cases it is necessary that the program be modified, adapted, and tested to meet the customer's particular needs. Tax applies to the sale or lease of the storage media or coding sheets on which or into which such prewritten (canned) programs have been recorded, coded, or punched.~~

~~(A) Tax applies whether title to the storage media on which the program is recorded, coded, or punched passes to the customer, or the program is recorded, coded, or punched on storage media furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded or punched by the customer, or by the lessor on the customer's premises, is a lease of tangible personal property. The tax applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax with respect to the property.~~

~~(B) Tax applies to the entire amount charged to the customer. Where the consideration consists of license fees, all license fees, including site licensing and other end users fees, are includable in the measure of tax. Tax does not apply, however, to license fees or royalty payments that are made for the right to reproduce or copy a program to which a federal copyright attaches in order for the program to be published and distributed for a consideration to third parties, even if a tangible copy of the program is transferred concurrently with the granting of such right. Any storage media used to transmit the program is merely incidental.~~

~~(C) Maintenance contracts sold in connection with the sale or lease of a prewritten computer program generally provide that the purchaser will be entitled to receive, during the contract period, storage media on which prewritten program improvements or error corrections have been recorded. The maintenance contracts may provide that the purchaser is entitled to receive storage media on which a backup copy of the same or similar prewritten program is recorded, so that the purchaser may use the backup copy to restore the prewritten program. The maintenance contract also may provide that the purchaser will be entitled to receive, during the contract period, telephone or on-site consultation services.~~

~~If the purchase of the maintenance contract is not optional with the purchaser, that is, if the purchaser must purchase the maintenance contract in order to purchase or lease a prewritten computer program, then the charges for the maintenance contract are taxable as part of the sale or lease of the prewritten program. Tax applies to any charge for consultation services provided in connection with a maintenance contract except as provided below.~~

~~For reporting periods commencing on or after January 1, 2003, if the purchase of the maintenance contract is optional with the purchaser, that is, if the purchaser may purchase the prewritten software without also purchasing the maintenance contract, and there is a single lump sum charge for the maintenance contract, 50 percent of the lump sum charge for the maintenance contract is for the sale of tangible personal property and tax applies to that amount; the remaining 50 percent of the lump sum charge is nontaxable charges for repair.~~

~~If no tangible personal property whatsoever is transferred to the customer during the period of the maintenance contract, tax does not apply to any portion of the charge. Tax does not apply to a separately stated charge for consultation services if the purchaser is not required to purchase those services in order to purchase or lease any tangible personal property, such as a prewritten computer program or a maintenance contract.~~

~~(D) The sale or lease of a prewritten program is not a taxable transaction if the program is transferred by remote telecommunications to or through the purchaser's computer and the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. Likewise, the sale of a prewritten program is not a taxable transaction if the program is installed by the seller on the customer's computer except when the seller transfers title to or possession of storage media or the installation of the program is a part of the sale of the computer. Paragraph (C) applies to optional software maintenance contracts sold in connection with nontaxable transactions described in this paragraph.~~

~~If the transfer of a prewritten program is a nontaxable transaction, then the seller is the consumer of tangible personal property used to produce written documentation or manuals (including documentation or manuals in machine-readable form) designed to facilitate the use of the program and transferred to the purchaser for no additional charge.~~

~~If a separate charge is made for the documentation or manuals, then tax applies to the separate charge.~~

~~(E) The transfer of a prewritten program on storage media is not a sale for resale when the storage media, or an exact copy, will be used to produce additional copies of the program.~~

~~Charges for testing a prewritten program on the purchaser's computer to insure that such a program operates as required are installation charges and are nontaxable.~~

~~(2) Custom Programs.~~

~~(A) Tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. Nor does the tax apply to the transfer of a custom program, or custom programming services performed, in connection with the sale or lease of computer equipment, whether or not the charges for the custom program or programming are separately stated.~~

~~(B) However, charges for custom modifications to prewritten program are nontaxable only if the charges for the modifications are separately stated. Otherwise, the charges are taxable as part of the sale of the prewritten program.~~

~~When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program was previously marketed, the new program will qualify as a custom program, if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced in the records of the seller, is more than 50 percent of the contract price to the customer.~~

~~(C) Charges for any written documentation or manuals designed to facilitate the use of a custom computer program by the customer are nontaxable, whether separately stated or not. The vendor of the custom computer program is the consumer of the written documentation or manuals, or of any tangible personal property used by the vendor in producing the written documentation or manuals.~~

~~(D) A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program, and the charge for such custom computer program is not subject to tax. Sales or leases of the copies, however, are taxable as sales of prewritten computer programs.~~

~~(E) A computer program prepared to the special order of a customer to operate for the first time in connection with a particular basic operating system is a custom computer program even though a different version currently operates in connection with an incompatible basic operating system.~~

~~(F) Digital pre-press instruction is a custom computer program under section 6010.9 of the Revenue and Taxation Code, the sale of which is not subject to tax, provided the digital pre-press instruction is prepared to the special order of the purchaser. Digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a "canned" or prewritten computer program which is held or existing for general or repeated sale or lease, even if the digital pre-press instruction was initially developed on a custom basis or for in-house use. The sale of such canned or prewritten digital pre-press instruction in tangible form is a sale of tangible personal property, the retail sale of which is subject to tax.~~

(f~~g~~) Service Charges. The following activities are service activities. Charges for the performance of such services are nontaxable unless the services are performed as a part of the sale of tangible personal property.

(1) Designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized).

(2) Designing storage and data retrieval systems (e.g., determining what data communications and high-speed input-output terminals are required).

(3) Consulting services (e.g., study of all or part of a data processing system).

(4) Feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated).

(5) Evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).

(6) Providing technical help, analysts, and programmers, usually on an hourly basis.

(7) Training S~~s~~ervices.

(8) Maintenance of equipment. (See Regulation 1546 for application of tax to maintenance contracts.)

(9) Consultation as to use of equipment.

(g~~h~~) Pick-up and Delivery Charges. If the data processing firm's billing is for nontaxable processing of customer-furnished information, the tax will not apply to pick-up and delivery charges. If pick-up and delivery charges are made in conjunction with the sale of tangible personal property or the processing of customer-furnished tangible personal property, the tax will apply to the pick-up charges. Tax will apply to the delivery charges to the extent specified in ~~r~~Regulation 1628~~, "Transportation Charges~~.~~"~~

~~(i) Rental of Computers. A lease includes a contract by which a person secures for a consideration the use of a computer which is not on his or her premises, if the person or his or her employees, while on the premises where the computer is located operate the computer, or direct and control its operation. A lease does not include a contract whereby a person secures access by means of remote telecommunication to a computer which is not on his or her premises,~~

~~if the person or his or her employees operate the computer or direct and control its operation by means of remote telecommunication. (See Regulation 1660 for application of tax to leases.)~~

NOTE: Authority cited: Sections 15770.22 and 15570.24, Government Code; Statutes 2026, chapter 23 (Sen. Bill. No. 122), Section 34; and Section 7051, Revenue and Taxation Code. Reference: Sections 995.2, 6006, 6007, 6010, 6010.9, 6011, 6012, 6015 and 6016, Revenue and Taxation Code.

Text of Proposed California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1502.2. Custom Computer Software.

(*A new regulation to be added to the California Code of Regulations.*)

Regulation 1502.2. Custom Computer Software.

(a) Definitions. For purposes of this regulation, the definition of the terms "basic operational program," "computer," "computer software," "custom computer software," and "prewritten computer software" shall have the same meaning as set forth in Regulation 1600.

(b) Tax does not apply to the sale or lease of custom computer software, other than a basic operational program, regardless of the form in which the computer software is transferred. In addition, tax does not apply to the transfer of custom computer software in connection with the sale or lease of computer equipment, whether or not the charges for the custom computer software are separately stated.

Example 1.
Company A is a manufacturing company. Company B is a computer software company. Company A hires Company B to create new computer software that will interface between Company A's warehouse inventory database and its shipment software. The new computer software has been created for use by Company A only and cannot be operated by any other companies. Because the new computer software is sold to a single customer and is designed to meet that customer's unique internal processes, it qualifies as customer computer software.

Example 2.
Company X is a computer software vendor that offers an Artificial Intelligence (AI)-powered tax-analysis tool within its prewritten compliance platform. The AI tool automatically generates recommended filing categories based on patterns the model has learned. To improve its predictions, Company X trains the AI tool on California's sales and use tax statutes, regulations, and historical legal opinions. The result is a version of the tool that produces more accurate suggestions for California-based users.

Even though the AI tool produces outputs that appear tailored to California tax rules, these outputs are not the result of computer software prepared to the special order of a single customer. Instead, they are trained, automated outputs produced by a generalized machine-learning system that is sold or licensed to many customers. Therefore, such AI-generated adaptations do not qualify as custom computer software.

(c) Charges for custom modifications to prewritten computer software are nontaxable only if the charges for the modifications are separately stated. Otherwise, the charges are taxable as part of the sale of the prewritten computer software. (See Regulation 1600 for the application of tax to prewritten computer software.)

Example 3.
Company C is a transportation company. Company D is a computer software company that developed scheduling software which is held for general or repeated sale for $10,000. Company C purchases the scheduling software, and also requests that Company D rewrite major components of the software to perform route optimization unique to Company C's business. Company D charges $15,000 for the modified scheduling software, separately stating the charges as $10,000 for software and $5,000 for the modification. Because the additional modification is prepared to the special order of the customer, the scheduling software is custom computer software to the extent of the modification. Since the $5,000 charge for the custom modification is separately stated, that amount is not subject to tax. Tax applies to the $10,000 charge for the prewritten scheduling software.

Example 4.
Same as Example 3 but Company D charges a lump-sum price of $15,000. Because the charges for the modification to the prewritten scheduling software are not separately stated, tax applies to the entire $15,000.

(d) When charges for the custom modification of prewritten computer software are not separately stated, tax applies to the entire charge made to the customer for the modified computer software unless the modification is so significant that the new computer software qualifies as custom computer software. If the prewritten computer software was previously marketed, the new computer software will qualify as custom computer software, if the price of the prewritten computer software was 50 percent or less of the price of the new computer software. If the prewritten computer software was not previously marketed, the new computer software will qualify as custom computer software if the charge made to the customer for custom modification, as evidenced in the records of the seller, is more than 50 percent of the contract price to the customer.

(e) Charges for any written documentation or manuals designed to facilitate the use of custom computer software by the customer are nontaxable, whether separately stated or not. The vendor of the custom computer software is the consumer of the written documentation or manuals, or of any tangible personal property used by the vendor in producing the written documentation or manuals.

(f) Custom computer software includes computer software prepared to the special order of a customer who will use the computer software to produce and sell or lease copies of the computer software, and the charge for such custom computer software is not subject to tax. Sales or leases of the copies, however, are taxable as sales of prewritten computer software.

(g) Computer software prepared to the special order of a customer to operate for the first time in connection with a particular basic operating system is custom computer software even though a different version currently operates in connection with an incompatible basic operating system.

NOTE: Authority cited: Statutes 2026, chapter 23 (Sen. Bill. No. 122), Section 34; and Section 7051, Revenue and Taxation Code. Reference: Sections 995.2, 6006, 6007, 6010, 6010.9, 6011, 6012 and 6015, Revenue and Taxation Code.

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1507. Technology Transfer Agreements

Regulation 1507. Technology Transfer Agreements.

(a) Definitions.

(1) "Technology transfer agreement" means an agreement evidenced by a writing (e.g., invoice, purchase order, contract, etc.) that assigns or licenses a copyright interest in tangible personal property for the purpose of reproducing and selling other property subject to the copyright interest. A technology transfer agreement also means a written agreement that assigns or licenses a patent interest for the right to manufacture and sell property subject to the patent interest, or a written agreement that assigns or licenses the right to use a process subject to a patent interest.

A technology transfer agreement does not mean an agreement for the transfer of any tangible personal property manufactured pursuant to a technology transfer agreement, nor an agreement for the transfer of any property derived, created, manufactured, or otherwise processed by property manufactured pursuant to technology transfer agreement.

Example No. 1: Company X holds a copyright in certain tangible artwork. Company X transfers (temporarily or otherwise) its artwork to Company Y and, in writing, transfers (temporarily or otherwise) a copyright interest to Company Y authorizing it to reproduce and sell tangible personal property subject to Company X's copyright interest in the artwork. Company X's transfer of artwork and a copyright interest to Company Y constitutes a technology transfer agreement. Company Y's sales of tangible personal property containing reproductions of Company X's artwork do not constitute a technology transfer agreement.

Example No. 2: Company X holds patents for widgets and the process for manufacturing such widgets. Company X, in writing, transfers (temporarily or otherwise) its patent interests to sell widgets and the process used to manufacture such widgets to Company Y. Company X's transfer of its patent interests to Company Y constitutes a technology transfer agreement. Company Y's sale or storage, use, or other consumption of any widgets that it manufactures does not constitute a technology transfer agreement. Company Y's sale or storage, use, or other consumption of any tangible personal property used to manufacture widgets also does not constitute a technology transfer agreement.

Example No. 3: Company X manufactures and leases a patented medical device to Company Y. As part of the lease of the medical device, Company X also transfers to Company Y, in writing, a separate patent interest in a process external to the medical device that involves the use, application or manipulation of the medical device. Company X charges a monthly rentals payable for the equipment as well as a separate charge for each time the separate patented process external to the medical device is performed by Company Y. Company X's lease of the medical device to Company Y to perform the separately patented process is not a technology transfer agreement and tax applies to the entire rentals payable for the medical equipment. Company X's transfer of its separate patent interest for the right to perform the separate patented process external to the medical device is a technology transfer agreement. Company X's separate charges to Company Y for the right to perform the separate patented process external to the medical device are not subject to tax provided they relate to the right to perform the separate patented process, are not for the lease of the medical device, and represent a reasonable charge for the right to perform the separate patented process external to the medical device. Where the separate charges for the right to perform the separate patented process relate to the patented technology embedded in the internal design, assembly or operation of the medical device, Company X's separate charges for the right to perform the separate patented process are not pursuant to a technology transfer agreement and are instead part of the rentals payable from the lease of the medical device.

(2) "Copyright interest" means the exclusive right held by the author of an original work of authorship fixed in any tangible medium to do and to authorize any of the following: to reproduce a work in copies or phonorecords; to prepare derivative works based upon a work; to distribute copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending; to perform a work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; to display a copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission. For purposes of this regulation, an "original work of authorship" includes any literary, musical, and dramatic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings, including phonograph and tape recordings; and architectural works represented or contained in tangible personal property.

(3) "Patent interest" means the exclusive right held by the owner of a patent issued by the United States Patent and Trademark Office to make, use, offer to sell, or sell a patented process, machine, manufacture, composition of matter, or material. "Process" means one or more acts or steps that produce a concrete, tangible and useful result that is patented by the United States Patent and Trademark Office, such as the means of manufacturing tangible personal property. Process may include a patented process performed with an item of tangible personal property, but does not mean or include the mere use of tangible personal property subject to a patent interest.

(4) "Assign or license" means to transfer in writing a patent or copyright interest to a person who is not the original holder of the patent or copyright interest where, absent the assignment

or license, the assignee or licensee would be prohibited from making any use of the copyright or patent provided in the technology transfer agreement.

(b) Application of Tax

(1) Tax applies to amounts received for any tangible personal property transferred in a technology transfer agreement. Tax does not apply to amounts received for the assignment or licensing of a patent or copyright interest as part of a technology transfer agreement. The gross receipts or sales price attributable to any tangible personal property transferred as part of a technology transfer agreement shall be:

(A) The separately stated price for the tangible personal property, provided the separately stated price represents a reasonable fair market value of the tangible personal property;

(B) Where there is no such separately stated price, the separate price at which the tangible personal property or like (similar) tangible personal property was previously sold, leased, or offered for sale or lease, to an unrelated third party; or,

(C) If there is no such separately stated price and the tangible personal property, or like (similar) tangible personal property, has not been previously sold or leased, or offered for sale or lease to an unrelated third party, 200 percent of the combined cost of materials and labor used to produce the tangible personal property. “Cost of materials” consists of those materials used or otherwise physically incorporated into any tangible personal property transferred as part of a technology transfer agreement. “Cost of labor” includes any charges or value of labor used to create the tangible personal property whether the transferor of the tangible personal property contributes such labor, a third party contributes the labor, or the labor is contributed through some combination thereof. The value of labor provided by the transferor of the tangible personal property shall equal the separately stated, reasonable charge for such labor. Where no separately stated charge for labor is made, the value of labor shall equal the lower of the taxpayer's normal and customary charges for labor made to third persons, or the fair market value of such labor performed.

(2) Tax applies to all amounts received from the sale or storage, use, or other consumption of tangible personal property transferred with a patent or copyright interest, where the transfer is not pursuant to a technology transfer agreement.

(3) Specific Applications.

<u>(A)</u> Tax applies to the sale or storage, use, or other consumption of artwork and commercial photography pursuant to a technology transfer agreement as set forth in Regulation 1540~~, *Advertising Agencies, Commercial Artists and Designers*~~.

<u>(B) Tax applies to the sale or storage, use, or other consumption of prewritten computer software, including any copyright or patent interests associated therewith, as set forth in Regulation 1600.</u>

NOTE: Authority cited: Sections 15570.22 and 15570.24, Government Code; Statutes 2026, chapter 23 (Sen. Bill No. 122), Section 34; and Section 7051, Revenue and Taxation Code. Reference: Sections 6011 and 6012, Revenue and Taxation Code; *Preston v. State Board of Equalization* (2001) 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407.

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1600. Application of Sales and Use Tax to Digital Products.

(*A new regulation to be added to the California Code of Regulations.*)

Regulation 1600. Application of Sales and Use Tax to Digital Products.

(a) Definitions.

(1) "Accessed remotely" has the same meaning as defined in Revenue and Taxation Code (RTC), section 6016.2.

(2). "Basic operational program" has the same meaning as defined in RTC section 995.2.

(3) "Computer" has the same meaning as defined in RTC section 6010.9.

(4) "Computer software" has the same meaning as defined in RTC section 6010.9.

(5) "Custom computer software" has the same meaning as defined in RTC section 6010.9, and as set forth in Regulation 1502.2.

(6) "Digital product" has the same meaning as defined in RTC section 6016.1. This includes, but is not limited to, prewritten software transferred to or accessed remotely by, Software as a Service (SaaS), a computer and other computer applications.

"Digital Product" excludes:

(A) A digital asset, as defined in RTC section 6016.1, such as cryptocurrency or other non-fungible digital assets as specified by the Secretary of the Treasury of the United States.

(B) A digital audio work, as defined in RTC section 6016.1, such as music, audio books, spoken recordings, or ringtones.

(C) A digital audiovisual work, as defined in RTC section 6016.1, such as movies and videos with sound.

(D) A digital book, as defined in RTC section 6016.1, such as electronic books.

(E) Digital infrastructure, as defined in RTC section 6016.1, such as cloud-based Infrastructure as a Service (IaaS) and Platform as a Service (PaaS) that allow customers to create, deploy, or run their own software application.

(F) (1) A digital video game product, as defined in RTC section 6016.1, such as a digitally downloadable game playable on a video game console or on a computer for entertainment purposes, or a digital in-game purchase.

(2) A digital video game product used for educational or training purposes is not considered used for entertainment purposes.

(G) A digital visual work, as defined in RTC section 6016.1, such as computer-generated artwork.

(7) “Prewritten computer software” has the same meaning as defined in RTC section 6016.1.

(8) “Purchase” has the same meaning as defined in RTC section 6010.

(9) “Sale” has the same meaning as defined in RTC section 6006.

(10) “Tangible personal property” has the same meaning as defined in RTC section 6016.

(11) “Tangible storage media” has the same meaning as defined in RTC section 6016.2.

(12) “Transferred electronically” has the same meaning as defined in RTC section 6016.2.

(13) “Use” has the same meaning as defined in RTC section 6009.

(b) Application of Tax. Except as otherwise provided, the rules applicable to sales and purchases of other tangible personal property also apply to the sale or purchase of a digital product.

(c) Determining Whether a Transfer of a Digital Product Is Subject to Sales Tax or Use Tax.

(1) Notwithstanding Regulation 1600.1, or unless an exemption otherwise applies, the sales tax applies to retail sales of digital products transferred on tangible storage media, transferred electronically, or accessed remotely when the sale occurs in California and there is participation in the sale by a California place of business of the retailer.

A sale occurs in California when the place of sale, as determined by subdivision (d), is in California. Participation in the sale must involve some genuine physical human interaction with the sale from a California place of business of the retailer.

Example 1. A salesperson working out of a retailer’s place of business in California visits a purchaser in California and negotiates the sale of a digital product that is transferred electronically. The purchaser provides a billing address in California. Sales tax applies to this transaction because the place of sale is in California and there is participation in the sale by a California place of business of the retailer.

Example 2. A purchaser goes to a retailer's store in California where the retailer is required to hold a seller's permit and purchases a digital product that is transferred electronically. Sales tax applies to this transaction because the place of sale is in California and there is participation in the sale by a California place of business of the retailer.

(2) When sales tax does not apply, use tax applies to the storage, use, or other consumption of digital products in this state transferred on tangible storage media, transferred electronically, or accessed remotely.

Example 1. A purchaser places an order for a digital product by phone or online to a retailer located out-of-state. Use tax applies to this transaction because there is no participation in the transaction by a California place of business of the retailer.

Example 2. A purchaser places an order for a digital product to a retailer's out-of-state location, and the product is delivered electronically from a server in California. Use tax applies to this transaction because there is no participation by a California place of business of the retailer.

(3) The exclusions provided in subdivision (a)(6) of this Regulation do not apply when the product is transferred to the purchaser on tangible storage media.

(4) Amounts charged by a retailer for license fees, mandatory maintenance contracts, or other non-optional charges, including consultation charges provided in connection with a mandatory maintenance contract, are included in the measure of tax.

The purchase of a maintenance contract is mandatory if the purchaser must purchase the maintenance contract in order to purchase, access, use, or lease a digital product.

(d) Place of Sale. The place of sale or purchase of a digital product shall be determined as follows:

(1) For a digital product transferred on tangible storage media, the place of sale or purchase is where the tangible storage media is physically located when the sale or purchase occurs.

(2) If the sale or purchase of a digital product that is not transferred on tangible storage media is an in-person sale or purchase at a location of the seller for which the seller is required to hold a seller's permit pursuant to RTC section 6066, the place of the sale or purchase of the digital product transferred electronically or accessed remotely shall be the seller's place of business in this state where the in-person sale or purchase occurs.

(3) If the sale or purchase of a digital product that is not transferred on tangible storage media is not an in-person sale or purchase, the place of the sale or purchase of a digital product transferred electronically or accessed remotely shall be deemed to be the purchaser's known address in this state shown in the seller's records maintained in good faith in the ordinary course of business.

(A) If the purchaser provided more than one address to the seller during the consummation of the sale or purchase, the purchaser's known address shall be determined from those addresses in this state in the following order of priority:

(1) The purchaser's billing address.

(2) The purchaser's shipping or delivery address.

(3) The mailing address associated with the purchaser's payment instrument.

(4) The purchaser's mailing address.

(B) If the purchaser does not provide an address to the seller during the consummation of the sale or purchase, the purchaser's known address in this state shall be determined from the addresses in this state the purchaser previously provided to the seller in the following order of priority:

(1) The purchaser's most recent billing address.

(2) The purchaser's most recent shipping or delivery address.

(3) The purchaser's most recent mailing address associated with the purchaser's payment instrument.

(4) The purchaser's most recent mailing address.

(C) If neither paragraph (A) or (B) apply, the place of the sale or purchase of a digital product transferred electronically or accessed remotely shall be deemed to be outside of this state.

(e) Place of Use.

(1) The place of use of a digital product shall be the place where any right or power is exercised over the digital product. The right or power to remotely access a digital product is exercised at the place where the person accessing the digital product is located.

(2) It shall be presumed that a digital product that was purchased outside of this state and used in this state within 90 days from the date of sale or purchase was purchased for storage, use, or other consumption in this state.

(f) Determination of When the Sale Occurs. The liability for tax accrues when the retail sale of the digital product occurs.

(1) With regards to sales of digital products transferred on tangible storage media, the rules applicable to sale and purchase of other tangible personal property apply to the determination of when the sale occurs.

(2) (A) When a digital product is transferred electronically or accessed remotely, the sale occurs upon any permanent or temporary transfer of the right, in any manner or by any means whatsoever, to open, view, access, download, copy, update, possess, store, manipulate, or otherwise use a digital product transferred electronically or accessed remotely for a consideration, beginning January 1, 2027, regardless of when the consideration is satisfied in full and regardless of when the purchaser actually uses the digital product.

(B) Periodic Subscription Commitments. A periodic subscription commitment to retain the right, to open, view, access, download, copy, update, possess, store, manipulate, or otherwise use a digital product is a continuing sale and purchase. Tax does not apply to payments received for subscription periods prior to January 1, 2027. Tax applies to payments received for subscription periods on or after January 1, 2027.

(C) Examples. For the examples in this subparagraph, it is presumed that the sale, purchase, or use occurs in California.

Example 1. On December 15, 2026, a purchaser pays for a one-time user license agreement to access a digital product that is to be transferred electronically. However, the purchaser does not have the right to access the digital product until January 1, 2027. The sale is subject to sales or use tax.

Example 2. On December 15, 2026, Company A enters into an agreement to purchase a digital product that is to be transferred electronically, payable in 2027. Company A obtains the right to access the digital product on January 1, 2027. The sale is subject to sales or use tax.

Example 3. On December 15, 2026, a digital product is transferred to a purchaser electronically, and the purchaser receives the right to access the digital product immediately; however, payment is not made to the retailer until January 1, 2027. The sale is not subject to sales or use tax.

Example 4. On December 15, 2026, a digital product that is to be transferred electronically is sold for a monthly subscription with a 12-month commitment. The contract specifies that the customer will pay $15.99 for the first 3 months of the subscription and then $29.99 per month for the remainder of the subscription. This is a continuing sale and purchase. Tax does not apply to the amounts charged for the continued right to access to the digital product in 2026. Tax applies to the amounts charged for the continued right to access the digital product on and after January 1, 2027.

Example 5. On December 15, 2026, a digital product is sold and transferred electronically, with access beginning on the date of sale. The contract specifies that the purchaser may pay $300.00 in full at the time of access or they may enter into a financing agreement and pay $29.99 per month for twelve months. The sale occurs on December 15, 2026, and is not subject to sales or use tax, regardless of the time payment is received.

(g) Exemptions. Tax does not apply to the sale or purchase of:

(1) The right to reproduce or copy a digital product in order for copies of the digital product to be distributed for consideration to third parties, even if a copy of the digital product is transferred concurrently with the granting of that right. Any tangible storage media on which the digital product is transferred is merely incidental.

(2) A digital product purchased solely for use outside of this state or in interstate or foreign commerce, pursuant to Regulation 1600.3.

(3) A digital product that represents a service provided in electronic form in which both of the following apply:

(A) The service primarily involves the application of human effort by the service provider.

(B) The human effort described in paragraph (A) originated after the customer requested the service.

(h) Operative Date. This regulation is operative as of January 1, 2027.

NOTE: Authority cited: Statutes 2026, chapter 23 (Sen. Bill. No. 122), Section 34; and Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6009, 6009.5, 6010, 6010.5, 6010.5.1, 6010.9, 6011, 6012, 6015, 6016, 6016.1, 6016.2, 6054, 6362.4, 6372, 6372.1, 7202.1 and 7254 Revenue and Taxation Code.

Proposed Text of California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1600.1. Tax Liability Threshold for Digital Products

(*A new regulation to be added to the California Code of Regulations.*)

Regulation 1600.1. Tax Liability Threshold for Digital Products.

(a) Retailer Relief. Except as provided in subdivision (d), if the gross receipts from the sale of, or the sales price from the purchase of, digital products transferred electronically or accessed remotely by the retailer to a single purchaser exceed the threshold amount specified in subdivision (b) in the aggregate in the 2027 calendar year or, for each calendar year beginning with the 2028 calendar year, exceed the threshold amount specified in subdivision (b) in the aggregate either in that calendar year or the preceding calendar year:

(1) The retailer is relieved from liability to pay sales tax on the gross receipts from the sale of digital products to that single purchaser that are transferred electronically or accessed remotely beginning with the transaction that caused the retailer to exceed the threshold, unless the purchaser is an insurer, as defined in section 28 of article XIII of the California Constitution.

(2) The retailer is relieved of the obligation to collect use tax on the purchase by that single purchaser of digital products that are transferred electronically or accessed remotely beginning with the transaction that caused the retailer to exceed the threshold.

(b) Threshold Amount. During the 2027 calendar year through the 2031 calendar year, the threshold amount is five million dollars ($5,000,000).

(c) Purchaser Liability.

(1) The purchaser shall be liable for reporting and paying the use tax on any transaction for which the retailer is relieved of the liability to pay sales tax or collect the use tax as provided in subdivision (a), unless the purchaser obtains a waiver from the Department pursuant to subdivision (d) and provides it to the retailer as part of the transaction.

(2) The purchaser shall obtain a use tax direct payment permit pursuant to the procedures provided in RTC section 7051.3 and Regulation 1699.6 to self-assess and pay directly to the Department the taxes due under part 1 (commencing with RTC section 6001), part 1.5

(commencing with section 7200), and, if otherwise applicable, part 1.6 (commencing with section 7251) and part 1.7 (commencing with section 7280).

(3)(A) The purchaser shall timely provide the retailer with a use tax direct payment exemption certificate on any purchase of digital products transferred electronically or accessed remotely for which the purchaser is liable for reporting and paying the use tax pursuant to subdivision (c)(1).

(B) A use tax direct payment exemption certificate will be considered timely if it is taken any time before the seller bills the purchaser for the digital products, or any time within the seller's normal billing and payment cycle, or any time at or prior to the digital product being transferred electronically or remotely accessed by the purchaser.

(4) "Purchaser" means the "person" as defined in Revenue and Taxation Code (RTC) section 6005 purchasing the digital products.

(d) Waiver.

(1) The Department will waive the requirement on a purchaser to obtain a use tax direct payment permit and to self-assess and pay taxes due directly to the Department when the issuance of the waiver is to the mutual convenience of the Department, the retailer, and the purchaser, and the purchaser submits a request that shall include the following:

(A) The name and address of the purchaser.

(B) The number of the purchaser's seller's permit, Certification of Registration – Use Tax, or Consumer Use Tax account, if applicable, or other identifying number (e.g., social security number or federal employer identification number).

(C) The name, address, and seller's permit or Certification of Registration – Use Tax, (if known) of the retailer from which the digital products will be purchased.

(D) The addresses of the place or places of business where the purchaser expects the first use to occur for the purchases of digital products subject to subdivision (a).

(E) A statement as to why the waiver will be to the mutual convenience of the Department, the retailer, and the purchaser.

(F) The name, title, signature, email address, and phone number of the person completing the waiver request and a statement that "My purchases of digital products transferred electronically or accessed remotely from the retailer listed on this request will exceed the threshold amount as provided in Regulation 1600.1, Tax Liability Threshold for Digital Products. I am requesting a waiver from the requirement to self-assess and pay taxes due directly to the Department pursuant to Revenue and Taxation Code sections 6052 or

6201.55. I hereby certify that the information provided has been examined by me and to the best of my knowledge and belief is true and correct."

(2) The waiver request must be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; in the case of a governmental entity, by the procurement officer or other person responsible for entering into the contract on behalf of the entity; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the request.

(3) A waiver request must be submitted via email to PPDD-CSTS-CPUGroup@cdtfa.ca.gov. The purchaser may use a form provided by the Department to submit a waiver request.

(4) Requests for a waiver shall be submitted prior to any purchase of digital products subject to subdivision (a) to which the purchaser intends the waiver to apply.

(5) The Department shall notify the purchaser in writing as to whether they are approved for a waiver. If they are approved, the Department shall provide a Waiver – Use Tax Direct Payment Permit that the purchaser is required to timely provide to the retailer. The purchaser shall also submit to the retailer the addresses of the place or places of business where the purchaser expects to be a place of first use for the purchases of digital products subject to subdivision (a) along with clear identification of which digital products will be used at each place. A waiver will be considered timely if it is taken any time before the seller bills the purchaser for the digital products, or any time within the seller's normal billing and payment cycle, or any time at or prior to the digital product being transferred electronically or remotely accessed by the purchaser.

(6) If the purchaser provides the retailer with a Waiver – Use Tax Direct Payment Permit, the retailer shall be liable to pay the sales tax or collect the use tax due, and the place of sale or use shall be the place or places of first use submitted by the purchaser to the retailer pursuant to subdivision (d)(6).

(e) Operative Date. This regulation is operative as of January 1, 2027.

NOTE: Authority cited: Statutes 2026, chapter 23 (Sen. Bill. No. 122), Section 34; Section 7051, Revenue and Taxation Code. Reference: Sections 6009, 6052, 6201.55 and 7051.3, Revenue and Taxation Code.

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1600.2. Digital Products Purchased for Multiple-Points of Use.

(*A new regulation to be added to the California Code of Regulations.*)

Regulation 1600.2. Digital Products Purchased for Multiple Points of Use.

(a) Definitions.

(1) "Computer" has the same meaning as set forth in Regulation 1600.

(2) "Multiple points of use" means that users may use a digital product concurrently from one or more locations within this State and one or more locations outside this State.

(3) "User" means an employee or agent of the purchaser that is authorized by the purchaser to use the digital product in the performance of their duties as an employee or other agent of the purchaser.

(b) Application of Tax. Tax applies to the calculated measure of tax based on the use of a digital product in this State. Tax does not apply to the calculated non-taxable measure based on the use of a digital product outside of this State.

(c) Alternative Method to Calculate Sales or Use Tax. Pursuant to subdivision (e) of Revenue and Taxation Code section 6372, the Department may set forth, authorize, or require alternative methods to calculate the sales or use tax due in this State that fairly reflects the sales or use tax due on any digital product sold or purchased for use in this State, including on licenses of digital products concurrently available for use in multiple jurisdictions.

If an alternative method set forth, authorized, or required by the Department is used to calculate the sales or use tax due, the provisions under Revenue and Taxation Code section 6406 shall not apply.

(d) Alternative Methods for Calculating the Amount of Sales or Use Tax Due.

(1) A purchaser of a digital product for multiple points of use may use any reasonable method that is consistent and uniform to calculate the measure of tax that fairly reflects the use of the digital product, including non-optional charges (e.g., mandatory maintenance contracts), inside this State and outside this State that is supported by the purchaser's available books and records at the time the transaction is reported for sales or use tax purposes.

(2) A reasonable method to calculate the measure of tax that is consistent and uniform includes, but is not limited to, methods based on the number of users or computers inside this State and outside this State.

(3) It shall be presumed that calculating the measure of tax based on the number of users or computer inside this State and outside this State is a reasonable alternative method.

(4) A method of calculating the measure of tax based on the location of the servers where the software is installed is not considered reasonable.

(5) A purchaser of a digital product that knows at the time of its purchase that the digital product will be available for multiple points of use may issue a multiple points of use certificate (MPU certificate) to the seller in conjunction with its purchase.

(e) Seller Liability. A seller of a digital product for concurrent use inside and outside this State that timely obtains in good faith a written MPU certificate from the purchaser, is relieved of the obligation to pay sales tax or collect and remit the use tax on the calculated non-taxable measure based on the use of the digital product outside this State. A seller remains liable for the payment of the sales tax or collection and remittance of the use tax on the calculated measure of tax based on the use of the digital product in this State.

An MPU certificate will be considered timely if it is obtained by the seller at any time before the seller bills the purchaser for the digital product, any time within the seller's normal billing and payment cycle, or any time at or prior to the digital product being transferred electronically or remotely accessed by the purchaser.

A seller will be presumed to have taken an MPU certificate in good faith in the absence of evidence to the contrary. However, an MPU certificate cannot be accepted in good faith where the seller has knowledge that the digital product is not being purchased for multiple points of use.

(f) Form of an MPU Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as an MPU certificate with respect to the sale of a digital product for multiple points of use if it contains all of the following essential elements:

(1) The signature of the purchaser, the purchaser's agent, or the purchaser's authorized employee;

(2) Date of execution of document;

(3) The name, address, and telephone number of the purchaser;

(4) The number of the purchaser's seller's permit, Certificate of Registration-Use Tax, or Consumer Use Tax account. If the purchaser is not required to hold any of these, a notation to that effect and the reason;

(5) A description of the digital product purchased for multiple points of use under the certificate; and

(6) A clear identification of the calculated measure of tax based on the use of the digital product in this State and the calculated non-taxable measure based on the use of the digital product outside this State, and a statement describing the method of determining the calculated measure as supported by the purchaser's books and records.

(g) Use Tax Direct Payment Permit Holders. A holder of a use tax direct payment permit that issues a use tax direct payment permit exemption certificate to the seller, is not required to deliver an MPU certificate to the seller. A use tax direct payment permit holder may follow the provisions of subdivision (d) in calculating the measure of tax due on a digital product that will be available for multiple points of use and is responsible for reporting and paying the tax due on the use of the digital products in this State.

(h) Records. Adequate and complete records must be maintained in accordance with Regulation 1698 to substantiate any claim for digital products sold or purchased for multiple points of use. Such records must include, but are not limited to, MPU certificates completed with the information specified in subdivision (f). In addition, the invoices on sales or purchases of digital products for multiple points of use should specify the names of the purchasers in order to relate them to MPU certificates. Purchasers that issue an MPU certificate, as provided in this regulation, are responsible for maintaining records to substantiate the calculation used at the time of purchase.

(i) Digital Products Purchased Solely for Use Outside this State or in Interstate or Foreign Commerce. For the application of tax to digital products purchased solely for use outside this State or in Interstate or Foreign Commerce, see Regulation 1600.3.

(j) Operative Date. This regulation is operative as of January 1, 2027.

NOTE: Authority cited: Statutes 2026, chapter 23 (Sen. Bill No. 122), Section 34; Section 7051, Revenue and Taxation Code. Reference: Section 6372 and 6406, Revenue and Taxation Code.

Text of Proposed California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1600.3. Digital Products Purchased Solely for Use Outside of this State or in Interstate or Foreign Commerce.

(*A new regulation to be added to the California Code of Regulations.*)

Regulation 1600.3. Digital Products Purchased Solely for Use Outside of this State or in Interstate or Foreign Commerce.

(a) Application of Tax.

(1) In General. Tax applies to sale of, and the storage, use, or other consumption of digital products, unless otherwise exempt.

(2) Exemption. Tax does not apply to the gross receipts or sales price from the sale of, or the storage, use, or other consumption of, a digital product transferred electronically or accessed remotely when purchased solely for use outside of this State or in interstate or foreign commerce.

See Regulations 1620, 1620.1, and 1620.15 regarding tangible personal property purchased for use in interstate or foreign commerce.

(b) Burden of Proof. The burden of proving that a transaction is exempt from tax pursuant to Revenue and Taxation Code section 6372 is on the seller who makes the sale of a digital product, unless the seller timely obtains in good faith a written certificate from the purchaser in the form as set forth in subdivision (c).

A certificate will be considered timely if it is obtained by the seller at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to the digital product being transferred electronically or remotely accessed by the purchaser.

A seller will be presumed to have taken an exemption certificate in good faith if the certificate contains the essential elements as described in subdivision (c) and otherwise appears to be valid on its face. Except as provided in subdivision (d), an exemption certificate cannot be accepted in good faith where the seller has knowledge that the digital product is not being purchased for use solely outside of this State or in interstate or foreign commerce.

(c) Form of Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as an exemption certificate with respect to the sale of a digital product purchased solely for use outside of this State or in interstate or foreign commerce if it contains all of the following essential elements:

(1) The signature of the purchaser, the purchaser's agent, or the purchaser's authorized employee;

(2) Date of execution of document;

(3) The name, address, and telephone number of the purchaser;

(4) The number of the purchaser's seller's permit, Certificate of Registration-Use Tax, or Consumer Use Tax account. If the purchaser is not required to hold any of these, a notation to that effect and the reason;

(5) A description of the digital product(s) purchased under the exemption certificate, and if purchasing multiple digital products in the same transaction, as described in subdivision (d), a clear identification of those digital products for which the exemption applies; and

(6) A statement that the digital product(s) described in the exemption certificate is/are purchased for use solely outside of California or in interstate or foreign commerce.

(d) Purchases of Multiple Digital Products in the Same Transaction. A purchaser that purchases a digital product or digital products for use in this State and a digital product or digital products solely for use outside of this State or in interstate or foreign commerce in the same transaction may issue an exemption certificate for the purchase of any of those digital products eligible for the exemption.

(e) Liability of the Purchaser. If a purchaser certifies in writing to a seller that a purchase of a digital product is exempt pursuant to Revenue and Taxation Code section 6372 and uses the digital product in this State, or in any manner other than in interstate or foreign commerce, the purchaser shall report and pay use tax in a manner that reflects the use tax due on any of those digital products used in this State.

(f) Records. Adequate and complete records must be maintained in accordance with Regulation 1698 to substantiate any claim of exemption. Such records must include, but are not limited to, exemption certificates completed with the information specified in subdivision (c). In addition, the invoices on sales claimed as exempt should specify the names of the purchasers in order to relate them to exemption certificates. Purchasers who issue an exemption certificate, or otherwise claim their use is exempt pursuant to Revenue and Taxation Code section 6372, are responsible for maintaining records to substantiate that the digital product was used solely outside of this State or in interstate or foreign commerce.

(g) Operative Date. This regulation is operative as of January 1, 2027.

NOTE: Authority cited: Statutes 2026, chapter 23 (Sen. Bill. No. 122), Section 34; Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6007, 6010, 6011, 6012, 6015, and 6372, Revenue and Taxation Code.

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration-- Business Taxes

Section 1699.6. Use Tax Direct Payment Permits

Regulation 1699.6. Use Tax Direct Payment Permits.

(a) Foreward. "Use tax direct payment permit" means a permit issued by the ~~board~~California Department of Tax and Fee Administration (Department) that allows a use tax direct payment permit holder to self-assess and pay state, local, and district use taxes under ~~Part~~part 1 (commencing with Revenue and Taxation Code (RTC) ~~Section~~section 6001), ~~Part~~part 1.5 (commencing with RTC ~~Section~~section 7200), and, if applicable, ~~Part~~part 1.6 (commencing with RTC ~~Section~~section 7251) and part 1.7 (commencing with section 7280) directly to the ~~board~~Department. The provisions of this regulation apply only to transactions subject to use tax.

(b)~~(1)~~ Application for Permit.

(1)Persons seeking to pay use taxes directly to the ~~board~~Department shall file an application for a use tax direct payment permit. Every use tax direct payment permit application shall include:

(A) The name under which the applicant transacts or intends to transact business or the name of the government entity;

(B) The number of the applicant's seller's permit or Consumer Use Tax account;

(C) The business address and mailing address, if different;

(D) The location of the place or places of business, including addresses, where the applicant intends to make direct payment of use tax;

(E) The name, signature, title, telephone number, and email address of the person completing the application. The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; in the case of a governmental entity, by the procurement officer or other person responsible for entering into the contract on behalf of the entity; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application; and

(F) One of the following certification statements:

(i) I have purchased or leased for my own use tangible personal property subject to use tax at a cost of five hundred thousand dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding this application for the permit. Tangible personal property purchased for my own use included both property subject to use tax and property exempt from use tax except that it does not include property purchased for resale. I certify that this information is correct to the best of my knowledge and belief.

(ii) I am a county, city, or city and county. I certify that this information is correct to the best of my knowledge and belief.

(iii) I am required to hold a use tax direct payment permit under Revenue and Taxation (RTC) section 6052 or 6201.55 to pay use tax directly to the California Department of Tax and Fee Administration (CDTFA), because my purchases of digital products transferred electronically or accessed remotely will exceed the threshold amount as provided in Regulation 1600.1, Tax Liability Threshold for Digital Products. I certify that this information is correct to the best of my knowledge and belief.

(G) The following certification statement: I also agree to self-assess and pay directly to CDTFA any use tax liability incurred pursuant to my use of a use tax direct payment permit.

(2) The application may be filed through the Department's online services portal via its website at www.cdtfa.ca.gov or by submitting the required information via email to PPDD-CSTS-CPUGroup@cdtfa.ca.gov. The applicant may use a form provided by the Department for use as an application.

~~An application for a use tax direct payment permit shall be made on Board of Equalization Form BOE-400-DP (no revision date). The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.~~

(~~2~~3) Within 30 days of receipt of an application for a direct payment permit the ~~board~~Department shall inform the applicant in writing either that the application is complete and has been accepted or that the application is deficient and what additional specific information is required to make the application complete. Within 60 days of acceptance of a complete application the ~~board~~Department shall approve or deny the issuance of a direct payment permit and notify the applicant in writing of its decision.

~~(c) Requirements for Permit. Pursuant to an application, a use tax direct payment permit shall be issued to any person who meets all of the following conditions:~~

> ~~(1) The applicant agrees to self-assess and pay directly to the board any use tax liability incurred under this regulation.~~
>
> ~~(2) The applicant certifies to the board either of the following:~~
>
> > ~~(A) The applicant is the purchaser for its own use or is the lessee of tangible personal property subject to the use tax at a cost of five hundred thousand dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit. Tangible personal property purchased for own use includes both property subject to use tax and property exempt from use tax except that it does not include property purchased for resale; or~~
> >
> > ~~(B) The applicant is a county, city, city and county, or redevelopment agency.~~

(~~d~~c) Reporting of Local Use Tax.

> (1) Any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the ~~board~~Department with each return the use taxes due under ~~Division~~ division 2, ~~Part~~part 1 (commencing with RTC ~~Section~~section 6001), ~~Part~~part 1.5 (commencing with RTC ~~Section~~section 7200), and, if applicable, ~~Part~~part 1.6 (commencing with RTC ~~Section~~section 7251) and part 1.7 (commencing with section 7280), for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report the local use tax component to the jurisdiction in which first use of the property, as defined in RTC section 6009 occurs ~~is located at the time the state imposed use tax must be reported~~. Temporary storage for the purpose of reporting local tax shall be disregarded. Any tax so reported may be redistributed in accordance with law.

(~~e~~d) Returns. On or before the last day of the month following each quarterly period, a holder of a direct payment permit shall file a return with the ~~board~~Department. The person required to file the return shall deliver it together with a remittance for the amount of tax due to the ~~board~~Department. The return shall show the aggregate sales price of tangible personal property purchased during the reporting period with respect to which the person filing the return has issued a use tax direct payment exemption certificate relieving the retailer of liability for reporting and paying use tax, or sales tax under RTC section 6052, and such other information as the ~~board~~Department may require.

(~~f~~e) Exemption Certificates. The ~~board~~Department shall allow any holder of a use tax direct payment permit to issue a use tax direct payment exemption certificate to any registered retailer or seller subject to all of the following:

(1) The use tax direct payment exemption certificate shall be in a form prescribed by the ~~board~~Department, and shall be signed by, and bear the name, address, and permit number of, the holder of the use tax direct payment permit.

(2) Once a use tax direct payment exemption certificate has been issued by a holder of a use tax direct payment permit, it shall remain effective until revised or withdrawn by the holder of the permit or until the retailer or seller has received written notice that the permit has been revoked by the ~~board~~Department.

(3) A use tax direct payment exemption certificate relieves a person selling property from the duty of collecting use tax only if taken timely and in good faith from a person who holds a use tax direct payment permit. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser, or prior to the digital product being transferred electronically or remotely accessed by the purchaser.

A seller will be presumed to have taken a use tax direct payment exemption certificate in good faith in absence of evidence to the contrary. However, on and after January 1, 2027, a use tax direct payment exemption certificate issued for purchases of digital products transferred electronically or accessed remotely is not accepted in good faith if the retailer has knowledge that the sale or purchase of digital products transferred electronically or accessed remotely by the retailer to the purchaser has not exceeded the threshold amount as provided in Regulation 1600.1, subdivision (a)(1).

(A) Examples:

(i) Purchaser obtains a use tax direct payment permit because the sales price from its purchases of digital products transferred electronically from Retailer A exceeded the threshold amount as provided in Regulation 1600.1, subdivision (a)(1). Retailer B makes a sale of digital products transferred electronically to Purchaser that is subject to sales tax, but in the aggregate, the sale or purchase of such products from Retailer B to Purchaser has not exceeded the threshold amount. Retailer B may not accept a use tax direct payment exemption certificate from Purchaser in good faith and must report and pay the applicable sales tax.

(ii) Purchaser obtains a use tax direct payment permit because it made purchases for its own use of tangible personal property subject to the use tax at a cost of more than five hundred thousand dollars ($500,000) during the calendar year immediately preceding the application for the permit. Purchaser has not reached the threshold amount provided in Regulation 1600.1, subdivision (a)(1) with regard to the sale or purchase of digital products transferred electronically from any retailer. Retailer C makes a one million dollar ($1,000,000) sale of digital products transferred electronically to Purchaser that is subject to sales tax. Retailer C may not accept a use tax direct payment exemption certificate from Purchaser in good faith, and must report and pay the applicable sales tax.

(4) A purchaser who issues a use tax direct payment exemption certificate that is accepted in good faith by a seller or retailer of tangible personal property shall be the sole person liable for any sales tax and related interest and penalties with respect to any transaction that is subsequently determined by the ~~board~~Department to be subject to sales tax and not use tax. The local sales tax portion so determined shall be allocated to the city, county, or city and county~~, or redevelopment agency~~ to which the tax would have been allocated if it had been reported and paid by the retailer in accordance with ~~Part~~part 1.5 (commencing with RTC ~~Section~~section 7200). Such allocation shall be based on the place of sale as provided in Regulation 1802 and Regulation 1822.

(5) Any person who holds a use tax direct payment permit and gives a use tax direct payment exemption certificate to a seller or retailer shall, in addition to any applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

(~~g~~f) Resale Transactions. A use tax direct payment exemption certificate shall not be substituted for a resale certificate, because the tax consequences are different. Resale certificates shall only be issued with respect to property which the purchaser intends to resell, and use tax direct payment exemption certificates shall be issued only for property purchased for use or other consumption. If a retailer makes sales under both a use tax direct payment exemption certificate and a resale certificate to the same customer, an audit trail must be maintained to identify which property is sold pursuant to each certificate.

(~~h~~g) Revocation of Permit. The ~~board~~Department may revoke the use tax direct payment permit of any person who fails to purchase tangible personal property for own use of at least $500,000 per year. The permit shall remain valid for all transactions taking place prior to the date the permit is revoked.

(~~i~~h) Successor Entities. A successor entity to a use tax direct payment permit holder shall qualify to obtain a use tax direct payment permit if the predecessor entity so qualified in the calendar year in which the succession occurred but must obtain its own permit.

(i) Digital Products. On and after January 1, 2027, a person required to pay use tax directly to the Department on purchases of digital products shall issue a use tax direct payment exemption certificate to a retailer of digital products transferred electronically or accessed remotely when the gross receipts or sales price from the sale or purchase exceeds in the aggregate the threshold amount as provided in Regulation 1600.1.

~~(j) Operative Date. The provisions of this regulation apply only to purchases that occur on or after January 1, 1998.~~

NOTE: Authority cited: Sections 15570.22 and 15570.24, Government Code; Statutes 2026, chapter 23 (Sen. Bill. No. 122), Section 34; Section 7051, Revenue and Taxation Code. Reference: Sections 6007, 6009, 6052, 6070, 6201.55 and 7051.3, Revenue and Taxation Code.