California Department of Tax and Fee Administration
Notice of Proposed Emergency Action and Finding of Emergency

California Code of Regulations, Title 18,
Section 1502, Computers, Programs, and Data Processing,
Section 1502.2, Custom Computer Software,
Section 1507, Technology Transfer Agreements,
Section 1600, Application of Sales and Use Tax to Digital Products,
Section 1600.1, Tax Liability Threshold for Digital Products,
Section 1600.2, Digital Products Purchased for Multiple Points of Use,
Section 1600.3, Digital Products Purchased Solely for Use Outside this State or in Interstate or Foreign Commerce,
Section 1699.6, Use Tax Direct Payment Permits,
Section 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to Section 34 of Senate Bill No. (SB) 122 (Statutes 2026, chapter 23) (Section 34), proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations or Regs.) 1502, Computers, Programs, and Data Processing; 1507, Technology Transfer Agreements; 1699.6, Use Tax Direct Payment Permits; 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes, and new 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 in accordance with the Administrative Procedure Act (APA) (Gov. Code (GC), § 11340 et seq.).

FINDING OF EMERGENCY

Section 48 Statement

Subdivision (a) of GC section 11346.1 requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the Department provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the Department. After submission of the proposed emergency action to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation.

Statement of Emergency

Section 34 provides that the Department may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties under Sections 1 to 20 of SB 122. It also provides that any emergency regulation prescribed, adopted, or enforced by the

Department pursuant to Section 34 shall be adopted in accordance with the APA, and, for purposes of the APA, including GC section 11349.6, the adoption of the regulation is an emergency and shall be considered by OAL as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, the emergency regulations adopted by the Department may remain in effect for two years from adoption and may be readopted in accordance with subdivision (h) of GC section 11346.1.

AUTHORITY

Section 34; GC sections 15770.22, 15570.24; and Revenue and Taxation Code (RTC) section 7051

REFERENCE

Regulation

1502: RTC sections 6006, 6007, 6010, 6010.9, 6011, 6012, 6015, 6016, and 6016.1

1502.2: RTC sections 995.2, 6006, 6007, 6010, 6010.9, 6011, 6012, 6015, and 6016.1

1507: RTC sections 6011, 6012 and 6016; *Preston v. State Board of Equalization* (2001) 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407

1600: RTC sections 6006, 6009, 6009.5, 6010, 6010.5, 6010.5.1, 6010.9, 6016, 6016.1, 6016.2, 6054, 6362.4, 6372, and 6372.1

1600.1: RTC sections 6005, 6009, 6052, 6201.55, and 7051.3

1600.2: RTC sections 6372 and 6406

1600.3: RTC sections 6016 and 6372

1699.6: RTC sections 6007, 6009, 6052, 6070, 6201.55, and 7051.3

1802: RTC sections 6012.6, 6015, 6359, 6359.45, 7202, 7203, 7203.1, 7204.03 and 7205

INFORMATIVE DIGEST

Summary of Existing Laws and Regulations Related Directly to the Proposed Action

Sales and Use Tax – General

The Sales and Use Tax Law (commencing with Rev. & Tax. Code, § 6001) (SUTL) 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, § 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.)

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, §§ 6201, 6401.) Consumers are generally required to report and pay the use tax on their taxable purchases to the state. (RTC, §§ 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, §§ 6203, 6204; Reg. 1684.)

SB 122

Before January 1, 2027, TPP is defined only to mean personal property that may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. (RTC, § 6016.)

On June 29, 2026, SB 122 was adopted, which made significant changes to the SUTL, including amending RTC section 6016 to, on and after January 1, 2027, 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.

Below follows a summary of the provisions of the SUTL that were amended or added by SB 122 and that are related to the proposed action.

Defining Digital Products and Related Terms

SB 122 added new RTC section 6016.1, which at subdivision (a) defines "digital product" to mean prewritten computer software transferred on tangible storage media, transferred electronically, or accessed remotely.

Subdivision (b) provides that a "digital product" does not include: (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, and (7) a digital visual work.

Subdivisions (c)(4)-(11) define the terms excluded from "digital product." Specifically, subdivision (c)(8) defines "digital infrastructure" to mean 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. In addition, subdivision (c)(9) defines "digital video game product" to mean 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.

Subdivisions (c)(1)-(3) of RTC 6016.1 also provide that the terms "computer," "computer software," and "custom software" shall have the same meaning as defined in RTC section 6010.9.

SB 122 also added new RTC section 6016.2 to define "accessed remotely," "tangible storage media," and "transferred electronically."

Sale and Purchase

RTC sections 6006 and 6010 define a sale and purchase, respectively, to mean and include any transfer of title or possession, in any manner or by any means whatsoever, of TPP for consideration.

As amended by SB 122, RTC sections 6006 and 6010, additionally provide that the terms "sale" and "purchase," respectively 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 consideration (RTC, §§ 6006, subd. (h) and 6010, subd. (f)); 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 consideration, beginning January 1, 2027. (RTC, §§ 6006, subd. (i) and 6010, subd. (g).)

Sale and Purchase Exclude Custom Computer Software

Prior to SB 122, RTC section 6010.9 provided that "sale" and "purchase" do not include the design, development, writing, translation, fabrication, lease, or transfer for consideration of title or possession, of a custom computer program, other than as specified.

As amended by SB 122, RTC section 6010.9 provides that "sale" and "purchase" do not include the design, development, writing, translation, fabrication, lease, or transfer for consideration of title or possession, of custom computer software, other than as specified, and updates terms and definitions used in that section, for "computer," "computer software," and "custom computer software."

Place of Sale or Purchase of a Digital Product

Prior to SB 122, RTC 6010.5 provided that the place of the sale or purchase of TPP is the place where the property is physically located at the time the act constituting the sale or purchase, as defined in the SUTL, takes place.

SB 122 amended RTC 6010.5, to add that: for a digital product transferred on tangible storage media, the place of the sale or purchase shall be where the tangible storage media is physically located at the time of the sale or purchase (RTC, § 6010.5, subd. (b)(1)); 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 (RTC, § 6010.5, subd. (b)(2)); and 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. (RTC, § 6010.5, subd. (b)(3)(A).)

Subdivision (b)(3)(B) of RTC section 6010.5 provides an order of priority when a purchaser provides more than one address to the seller during the consummation of the sale or purchase, and subdivision (b)(3)(C) provides an order of priority among addresses previously provided to the seller when a purchaser does not provide an address to the seller during the consummation of the sale or purchase. Subdivision (b)(4) specifies that if subdivisions (b)(2) or (3) do not 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.

Definition of Use

Prior to SB 122, RTC section 6009 states only that "use" includes the exercise of any right or power over TPP incident to the ownership of that property, and also includes the possession of, or the exercise of any right or power over, TPP by a lessee under a lease, except that it does not include the sale of that property in the regular course of business.

SB 122 added subdivision (b) to RTC section 6009, which provides that the exercise of any right or power over TPP 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.

Place of Use of a Digital Product

SB 122 added new RTC section 6010.5.1, which 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.

Exemption - Reproduction for Sales to Third Parties

RTC section 6362.4, as added by SB 122, provides an exemption from sales and use tax 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 - Service Provided in Electronic Form

RTC section 6372.1, as added by SB 122, provides an exemption from sales and use tax 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.

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

RTC section 6372, as added by SB 122, provides an exemption from sales and use tax 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) of RTC 6372 provides that the burden of proving that the exemption applies is on the seller of a 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 seller from sales tax and collecting the use tax only if taken in good faith.

Subdivision (c) of RTC 6372 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) of RTC 6372 provides that a purchaser that purchases a digital product for use in California and a digital product exempted by RTC 6372 in the same transaction may issue an exemption certificate for the eligible purchase, and report and pay use tax on the digital products used in California. 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. (RTC, § 6372, subd. (d)(2).)

Retailer Relieved from Tax Liability on Sales Outside California

SB 122 added new 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.

Digital Products Purchased for Multiple Points of Use

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. (RTC, § 6372, subd. (f).)

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.

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

SB 122 added new RTC section 6052, which 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, unless the purchaser is an insurer, as defined in Section 28 of Article XIII of the California Constitution, if 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. (RTC, §§ 6052, subd. (a)(1)(A) and 6201.55, subd. (a)(1)(A).)

SB 122 also added new RTC section 6201.55, which provides the same relief to retailers with an obligation to collect use tax, stating notwithstanding RTC section 6010.5, and except as provided in subdivision (c), that a retailer is relieved from liability to collect use tax on the sale or purchase of a digital product that is transferred electronically or accessed remotely, if the sales price of the digital products purchased by a purchaser from a retailer 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.

Both sections, at subdivision (a)(1)(B) provide that the purchaser shall become liable for the use tax on the transaction that caused the retailer to exceed the threshold specified.

Both sections, at subdivision (a)(2)(A), provide that on or before October 1, 2031, and every five years thereafter, the Department shall multiply the amount specified in subdivision (a)(1)(A) of each section 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 subdivision (a)(1)(A) of each section. (RTC, §§ 6052, subd. (a)(2)(B) and 6201.55, subd. (a)(2)(B).)

Section 6052, at subdivision (b), provides that 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. Similarly, Section 6201.55, at subdivision (b), provides that if a retailer is relieved from the obligation to collect use 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 purchaser to exceed the threshold specified.

Both sections, at subdivision (c)(1), provide that 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, and the retailer shall be liable to pay the sales tax or collect the use 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. 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 and the place of use for purposes of the use tax. (RTC, §§ 6052, subd. (c)(2) and 6201.55, subd. (c)(2).) 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 RTC section 7051.3. (RTC, §§ 6052, subd. (d) and 6201.55, subd. (d).)

Use Tax Direct Payment Permits

RTC section 7051.3 defines "use tax direct payment permit" and sets forth that every person seeking to pay use taxes directly to the Department shall file an application for a use tax direct payment permit, with the requirements specified.

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 any place of business in California 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, as required.

SB 122 also added subdivisions (d) and (e)(2), providing 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, and 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.

Existing Regulations Related to this Proposed Action

Regulation 1501, Service Enterprises Generally

Regulation 1501 sets forth the true object test, providing that the basic distinction in determining whether a particular transaction involves a sale of TPP or the transfer of TPP incidental to the performance of a service is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service.

Regulation 1502, Computers, Programs, and Data Processing

Regulation 1502 sets forth the application of sales and use tax to prewritten, or canned, computer programs, including mandatory and optional maintenance contracts sold in connection with a prewritten computer program. The regulation also sets forth the application of sales and use tax to custom computer programs, and specifies how tax applies when charges for custom modifications to prewritten computer programs are separately stated or sold. The regulation also provides guidance regarding the application of tax to charges for processing customer-furnished information, for data processing, and for charges made for the use of a computer access by remote telecommunication.

Regulation 1507, Technology Transfer Agreements

Regulation 1507 defines the term technology transfer agreement (TTA), explains the application of tax to amounts received for any TPP transferred in a TTA, and provides several examples illustrating transactions that do and do not constitute a TTA.

Regulation 1699.6, Use Tax Direct Payment Permits

Regulation 1699.6 sets forth the process to apply for a use tax direct payment permit, the requirements for a permit, reporting requirements for a permit holder, and guidance regarding the issuance of use tax direct payment permit exemption certificates.

Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes

Regulation 1802 sets forth the place of sale and place of use for purposes of the Bradley-Burns Local Sales and Use Tax Law, and includes guidance on the allocation of local sales tax and application of use tax for direct reporting by retailers and purchasers.

Transfer of Duties from State Board of Equalization to Department

The regulations described above were originally adopted by the State Board of Equalization (Board) to implement, interpret, and make specific provisions of the SUTL. The administration and enforcement of the SUTL was transferred from the Board to the Department by GC section 15570.22, operative July 1, 2017, and the references to the Board in the SUTL, including RTC section 7051, which grants the Department's regular rulemaking authority, and regulations implementing the SUTL, are deemed to refer to the Department by GC section 15570.24.

FINDING OF NECESSITY AND POLICY STATEMENT OVERVIEW - EFFECTS, OBJECTIVES, AND BENEFITS OF PROPOSED EMERGENCY REGULATIONS

Interested Parties Process

Digital Products Workshop on July 21, 2026

Following the enactment of SB 122 on June 29, 2026, the Department hosted a workshop on July 21, 2026, for interested parties to provide input to the Department regarding regulatory guidance

that interested parties needed on the application of the SUTL to digital products prior to January 1, 2027, the effective date of the amendments made by SB 122. The Department also requested written input from the public prior to the workshop, through August 4, 2026.

After considering the oral and written input from interested parties, the Department prepared drafts of five new proposed regulations and amendments to three existing regulations, for proposed adoption through the emergency rulemaking process. The Department distributed to interested parties drafts of proposed new emergency Regulations 1502.2, 1600, 1600.1, 1600.2, 1600.3, and of proposed amendments to Regulations 1502, 1507, and 1699.6, along with a Discussion Paper, on September 1, 2026.

Interested Parties Meeting on September 10, 2026

The Department conducted an interested parties meeting on September 10, 2026, to discuss and receive input regarding the draft emergency regulations. The Department also accepted written comments prior to the interested parties meeting, through September 24, 2026.

In response to the input received and issues raised at the interested parties meeting and in the written comments, the Department reconsidered its initial draft regulations and made significant changes and additions to the drafts of the proposed emergency regulations, resulting in the proposed text of the emergency regulations in this proposed action.

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

The Department determined that the following issues related to Regulation 1502 exist as result of amendments made to the SUTL by SB 122:

- 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, as amended by SB 122, and the reference to "electronic media" in subdivision (b)(6) is potentially confusing;
- Subdivision (c)(4) refers to custom computer programs based on the definition prior to SB 122;
- Subdivision (c)(5) refers to non-taxable charges that may be taxable on and after January 1, 2027, if they are sales of digital products;
- Subdivisions (c)(7) and (i) refer to charges made for use or rental of computers accessed by remote telecommunication, which may result in confusion to the extent the description overlaps with the definition of digital infrastructure in RTC section 6016.1, which was added by SB 122;
- The guidance in subdivision (f) regarding the application of tax to prewritten computer programs, is no longer consistent with RTC sections 6006, 6010, and 6016, as amended by SB 122;
- Due to technological advancements, guidance on the application of tax to prewritten computer software and custom computer software would be better served in separate regulations from this regulation addressing the application of tax to data processing; and

- The regulation contains other non-substantive typographical errors or unnecessary references to regulation titles.

Therefore, the Department determined that it is reasonably necessary to adopt amendments to Regulation 1502 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, the effective date of the amendments made by SB 122, as follows:

- Revise the title from "Computers, Programs, and Data Processing" to "Data Processing" to be consistent with the substance of the regulation with the proposed amendments, which includes removing guidance regarding prewritten computer software and custom computer software, which will be replaced with guidance in proposed Regulations 1502.2 and 1600;
- Update the terms and definitions to be consistent with RTC sections 6010.9, 6016, and 6016.1, as well as update references to those terms throughout the regulation; clarify subdivision (b)(6) by replacing "electronic storage media such as tape or compact disc" with "storage media," which is defined at subdivision (b)(13) of the regulation to include devices upon which information is recorded, such as a tape or compact disc;
- Add to subdivision (c)(4) a reference to proposed Regulation 1502.2 to make clear that additional guidance regarding custom computer software is available;
- Clarify in subdivision (c)(5) that if a charge for processing customer-furnished information is a sale of a digital product, the relevant guidance regarding the application of tax is in proposed Regulation 1600;
- Delete the guidance in subdivision (f) regarding the application of tax to prewritten programs and custom programs, which the Department proposes to replace with guidance regarding the application of tax to digital products in proposed Regulation 1600 and to custom computer software in proposed Regulation 1502.2;
- Delete subdivisions (c)(7) and (i) regarding the application of tax to charges for remotely accessing computers due to potential confusion with digital infrastructure, which is defined and clarified in proposed Regulation 1600;
- Renumber subdivisions and references to conform with proposed amendments, as well as make other non-substantive changes to delete unnecessary references to regulation titles; and
- Update the authority note to add citations to Section 34, as well as add GC code sections 15770.22 and 15570.24, to clarify the Department's authority to adopt amendments to Regulation 1502, which was originally adopted by the Board, and update the reference note to delete RTC section 995.2 and add RTC section 6016.1.

The Department anticipates that the adoption of the proposed amendments to Regulation 1502 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of sales and use tax to digital products, ensuring that proper amounts of state and local sales and use tax are collected, and reducing errors in reporting and remitting taxes, which promotes fairness among taxpayers and transparency in government.

Proposed New Regulation 1502.2, Custom Computer Software

The Department determined the following issues exist, related to the proposed adoption of new Regulation 1502.2, as result of amendments made to the SUTL by SB 122:

- As noted above, the Department removed guidance regarding custom computer software from subdivision (f) of Regulation 1502, to be added to proposed new Regulation 1502.2, with updated definitions and new examples to clarify the application of tax to custom computer software, as provided by the SUTL as amended by SB 122;
- While SB 122 amended RTC section 6010.9 to define custom computer software and to provide that a sale or purchase does not include the design, development, writing, translation, fabrication, lease, or transfer for consideration of title or possession, of custom computer software, as specified, RTC section 6010.9 does not specify the application of tax to:
    - Custom computer software transferred in connection with the sale or lease of computer equipment;
    - Custom modifications made to prewritten computer software; and
    - Written documentation designed to facilitate the use of custom computer software, to computer software prepared to the special order of a customer who will use the software to produce and sell copies of the computer software.

Therefore, the Department determined that it is reasonably necessary to adopt new Regulation 1502.2 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- In subdivision (a), define the terms "basic operational program," "computer," "computer software," "custom computer software," and "prewritten computer software" by reference to RTC sections 6010.9 and 6016.1;
- In subdivision (b), add guidance concerning issues that the Department proposes to delete from Regulation 1502, subdivision (f), as explained above, that tax does not apply to custom computer software, regardless of the form in which the computer software is transferred, nor 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;
- Provide an example of custom computer software and an example of computer software that is not custom computer software;
- In subdivision (c), add guidance concerning issues that the Department proposes to delete from Regulation 1502, subdivision (f), as explained above, to clarify 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, as well as an example of when the charge is not separately stated;

- In subdivisions (e)-(g), incorporate guidance from subdivision (f)(2)(C)-(E) of Regulation 1502, with updated terms; and
- Add the authority note with citations to Section 34, RTC section 7051 and GC code sections 15770.22 and 15570.24, to establish and clarify the Department's authority to adopt new Regulation 1502.2, and the reference note with citations to RTC sections 995.2, 6006, 6007, 6010, 6010.9, 6011, 6012, 6015, and 6016.1.

The Department anticipates that the adoption of new Regulation 1502.2 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of sales and use tax to digital products, ensuring that proper amounts of state and local sales and use tax are collected, and reducing errors in reporting and remitting taxes, which promotes fairness among taxpayers and transparency in government.

Proposed Amendments to Regulation 1507, Technology Transfer Agreements

The Department determined that an issue exists because Regulation 1507, which provides guidance regarding technology transfer agreements (TTAs), could potentially be confusing and in conflict with the provisions added by SB 122, because while prewritten computer software may be transferred with copyright and patent interests, following the amendments to RTC section 6016 by SB 122, Regulation 1507 is not applicable to the sale or purchase of digital products, including the copyright and patent interests associated therewith.

Therefore, the Department determined that it is reasonably necessary to adopt amendments to Regulation 1507 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- In subdivision (b)(1), clarify that "except as provided in subdivision (b)(3)(B), tax does not apply to amounts received for the assignment or licensing of a patent or copyright interest as part of a [TTA]";
- Renumber subdivision (b)(3) regarding specific applications as subdivision (b)(3)(A) and to add a new subdivision (b)(3)(B) to clarify that tax applies to the sale or storage, use, or other consumption of digital products, including the copyright and patent interests associated therewith, as set forth in Regulation 1600;
- Delete an unnecessary reference to a regulation title in subdivision (b)(3)(A); and
- Update the authority note to add citations to Section 34, as well as add GC code sections 15770.22 and 15570.24, to clarify the Department's authority to adopt amendments to Regulation 1507, which was originally adopted by the Board, and update the reference note to add RTC section 6016.

The Department anticipates that the adoption of these proposed amendments to Regulation 1507 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of tax to TTAs and TPP, including digital products, as required in the SUTL as amended by SB 122, ensuring that proper amounts of state and local sales and use tax are collected, and reducing errors in reporting and remitting taxes, which promotes fairness among taxpayers and transparency in government.

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

The Department determined that there is confusion regarding the application of SUTL to digital products following SB 122, based on public inquiries received by the Department following the passage of SB 122 and based on public comments and input received by the Department through its interested parties process. Specifically, the Department determined the following issues related to the proposed adoption of new Regulation 1600:

- RTC section 6016.1, added by SB 122, defines a "digital product" to mean prewritten computer software and excludes certain digital items from being digital products, such as digital infrastructure and digital video games, but there is confusion regarding what is considered prewritten computer software and the scope of the exclusions, particularly whether certain products qualify as digital video game products and whether certain prewritten computer software is considered separate from or part of digital infrastructure;
- RTC section 6016, as amended by SB 122, added digital products to the definition of TPP on and after January 1, 2027, to expand the SUTL to digital products, but there is confusion regarding how certain laws governing the application of tax to TPP should apply to digital products;
- There is confusion regarding the application of tax when a digital product is sold or transferred incidental to a service, such as when digital infrastructure is transferred with prewritten computer software, and whether the true object test in Regulation 1501 is applicable to such transactions;
- As noted above, guidance regarding mandatory and optional maintenance contracts sold in connection with the sale or lease of prewritten computer programs is proposed to be deleted from subdivision (f) of Regulation 1502; however, there is confusion about the application of tax to maintenance contracts sold in connection with digital products, and in particular, to optional maintenance contracts involving both taxable charges for digital products and nontaxable charges for services;
- RTC sections 6006 and 6009, as amended by SB 122, define "sale" and "use," but there is confusion because those sections do not specify what activity must take place in California in order to determine that a sale of a digital product that is transferred electronically or accessed remotely occurred in this state and is subject to sales tax;
- RTC section 6010.5, as amended by SB 122, sets forth how to determine the place of sale when a digital product is transferred on tangible storage media, when a digital product transferred electronically or accessed remotely is sold at an in-person location, and when a digital product transferred electronically or accessed remotely is not sold at an in-person location. When a digital product transferred electronically or accessed remotely is sold and there is no in-person location, the statute provides that the place of sale shall be the purchaser's "known address in this state" and sets forth an order of priority among in-state addresses if the purchaser provides more than one address or no address during the consummation of the sale or purchase. However, the statute is ambiguous as to how to determine the purchaser's known address when the purchaser provides one in-state address or one out-of-state address to the seller during the consummation of the sale or purchase. In addition, RTC section 6054 provides that a retailer is relieved of 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 sale is deemed to be outside California pursuant to RTC section 6010.5, if 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. However, due to the ambiguity in RTC section 6010.5, there is confusion regarding what constitutes a reasonable effort by the retailers under RTC section 6054;

- RTC section 6010.5.1, added by SB 122, 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 and specifies that the right or power to remotely access a digital product is exercised at the place where the person accessing the digital product is located; however, there is confusion because the statute does not specify how a seller with a use tax collection obligation should determine the purchaser's place of use for purposes of collecting and reporting use tax on sales or purchases of digital products transferred electronically or accessed remotely; additionally, there is confusion among sellers with a use tax collection obligation as to what the Department considers a reasonable effort to obtain accurate and complete information from the purchaser under RTC section 6054, as described above;
- RTC sections 6006 and 6010, as amended by SB 122, provide that "sale" and "purchase" mean and include 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 (right to use) a digital product transferred electronically or accessed remotely for consideration, beginning January 1, 2027; however, there is confusion because the statute does not specify which acts constitute a transfer of a right such that the sale or purchase occurs and tax can be imposed, especially when contracts or terms for sales of digital products can be structured in a multitude of ways such as transferring the rights as tiered partial access over a period of time, transferring the rights when specified conditions are met, transferring the rights on a subscription basis, or providing the renewal, extension, modification, or extension of rights; and
- RTC section 6372.1, added by SB 122, exempts from sales and use tax digital products that represent a service provided in electronic form in which the service primarily involves the application of human effort by the service provider, and if that human effort originated after the customer requested the service. Subdivision (b) of RTC section 6372.1 specifies 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; however, there is confusion as to what type of digital product represents a service in electronic form and what type of computer software is excluded from the exemption.

Therefore, the Department determined that it is reasonably necessary to adopt new Regulation 1600 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- In subdivision (a), add definitions of terms used in the regulation that may not be commonly understood, and add clarifying examples of digital products and of exclusions from "digital product";

- In subdivision (a)(4)(E), clarify that Infrastructure-as-a-Service (IaaS) is considered digital infrastructure if it meets the definition under RTC section 6016.1, subdivision (b)(8), and add subclauses (i)-(iii) to clarify the meaning of "user's own computer software" in the definition of digital infrastructure, to clarify that prewritten computer software is not digital infrastructure other than as specified in the definition, and to provide an example of digital infrastructure;
- In subdivision (a)(4)(F), clarify that a digital video game product created, developed, or designed with the intention of the product being used for primarily educational or training purposes is not considered a digital video game product for entertainment purposes;
- In subdivision (b)(1), clarify that the rules applicable to TPP as defined prior to SB 122's adoption also apply to digital products, other than the laws as specified in SB 122 and implementing regulations;
- In subdivision (b)(2), clarify that the exclusions from "digital product" do not apply when the product is transferred on tangible storage media;
- In subdivision (b)(3), clarify that the true object test set forth in Regulation 1501 applies in determining whether a particular transaction involves a sale of a digital product or the transfer of a digital product incidental to the performance of a service, including two examples illustrating the sale of digital infrastructure with prewritten computer software, one in which the true object of the contract is the digital infrastructure and one in which the true object is the prewritten computer software;
- In subdivision (b)(4)(A), clarify when the purchase of a maintenance contract with a digital product is considered mandatory, and that charges for mandatory maintenance contracts are taxable;
- In subdivision (b)(4)(B), clarify when the purchase of a maintenance contract with a digital product is optional, and clarify that if reasonable charges for services, such as repair, support, or consultation, are separately stated, those charges are not taxable; in addition, clarify that digital product updates or enhancements, such as those that add or improve functionalities in the digital product, are not considered services and are taxable;
- In subdivision (b)(4)(B), specify that if charges are not separately stated, and where the price of the optional maintenance contract does not exceed the price of the digital product, 25 percent of the lump sum charge is considered for the sale of TPP, which is taxable, and 75 percent is considered for the sale of services, which is not taxable (25/75 allocation). This change from the allocation of 50 percent taxable and 50 percent non-taxable in the guidance the Department is proposing to delete from Regulation 1502 is based on the Department's understanding from discussion with industry members and an examination of standard optional maintenance contracts, that optional maintenance contracts sold in connection with digital products generally consist proportionately more of services than sales of TPP. In addition, digital repairs and digital patches that do not enhance or add functionality to digital products, prior to SB 122, would have been considered taxable if transferred on TPP; following SB 122, such transfers are considered nontaxable repairs to TPP. Therefore, the Department determined that the 25/75 allocation was a reasonable allocation. Finally, the option to use the 25/75 allocation when there is a lump sum charge is limited to optional maintenance contracts where the

price does not exceed that of the digital product, because the Department determined that optional maintenance contracts generally do not exceed the price of the digital product to which they apply, and adding the limitation prevents potential tax avoidance where the sale of a digital product may be attributed to an optional maintenance contract solely in order to reduce tax liability;

- In subdivision (c)(1), clarify that sales tax applies to a sale 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; additionally, specify that participation in the sale must involve some genuine physical human interaction, and add examples to illustrate scenarios in which the sale of digital products transferred electronically occurs in California;
- In subdivision (c)(2), clarify that when sales tax does not apply, use tax applies, and include examples illustrating sales of digital products for use in California that are not subject to sales tax because the sales do not occur in California;
- In subdivisions (d)(1) and (2), provide, for completion and clarity, the statutory provisions regarding how to determine the place of sale when a digital product is transferred on tangible storage media and when a digital product transferred electronically or accessed remotely is sold at an in-person location;
- In subdivision (d)(3), clarify the ambiguity in RTC 6010.5, described above, regarding the place of sale when a digital product is not transferred on tangible storage media is not an in-person sale or purchase (thus transferred electronically or accessed remotely) when the purchaser provides one address to the seller during the consummation of the sale or purchase; specifically, in paragraph (3)(A), specify that when a purchaser provides one in-state address, that shall be the purchaser's known address; in paragraph (3)(B), specify that when a purchaser provides one out-of-state address, and if the seller's records do not show that the purchaser provided the seller with an in-state address within the last 12 months, the out-of-state address shall be the purchaser's known address; in paragraph (3)(C), specify that when a purchaser provides one out-of-state address, and if the seller's records show that the purchaser provided the seller with an in-state address within the last 12 months, then the seller shall obtain an exemption certificate as described in proposed new Regulation 1600.3 (with which a purchaser can certify that the digital products are purchased solely for use outside California), then the out-of-state address is the purchaser's known address; additionally, specify in paragraph (3)(C) that obtaining the exemption certificate shall be considered a reasonable effort by the seller to obtain accurate and complete information under RTC section 6054; additionally, specify in paragraph (3)(C) that if the purchaser does not provide the exemption certificate, the most recently provided in-state address within the last 12 months shall be the purchaser's known address;
- In subdivision (d)(3)(D) through (E), for completion and clarity, provide the order of priority to determine a purchaser's known address when the purchaser provides more than one address or no address during the consummation of the sale or purchase; in paragraph (3)(F), provide that the place of sale or purchase of a digital product transferred electronically or accessed remotely is deemed to be outside of this state if none of the rules in paragraphs (3)(A) through (E) apply; additionally, in paragraph

(3)(G), provide examples illustrating the determination of the place of sale when a purchaser provides an out-of-state address and the place of sale is at a California address, and when a purchaser provides out-of-state addresses and the place of sale is deemed to be outside California;

- In subdivisions (e)(1) and (e)(3), for completion and clarity, state the provisions in RTC section 6010.5.1 regarding the place of use of a digital product; in subdivision (e)(2), clarify that a seller with an obligation to collect use tax shall, upon sale or purchase of a digital product, make a reasonable effort to obtain accurate and complete address information from the purchaser to determine the place of use; in paragraph (2)(A), specify that the seller is considered to have made a reasonable effort when the seller timely obtains from the purchaser written verification of the place or places where the purchaser expects the first use of digital products to occur, and collects use tax on any digital product sold for use in this state; in paragraph (2)(B), clarify that if the seller is unable to obtain that written verification, the seller shall collect use tax based on the purchaser's known address in California, as determined in subdivision (d)(3)(A) through (E) and if subdivision (d)(3)(A) through (E) do not apply, the place of use is deemed to be outside of this state; in paragraph (2)(C), clarify when the written verification is considered timely obtained;
- In subdivision (f)(1), clarify that the rules applicable to TPP as defined in RTC section 6016, subdivision (a)(1), apply to sales of digital products transferred on tangible storage media;
- In subdivision (f)(2), state in subparagraph (A), for completion and clarity, the provision in RTC section 6006, subdivision (i) that when a digital product is transferred electronically or accessed remotely, beginning January 1, 2027, 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 (right to use) a digital product, for consideration;
- In subdivision (f)(2)(B), clarify that each transfer of a right to use a digital product transferred electronically or accessed remotely for consideration is a separate sale; in subparagraph (C)(i), clarify that the transfer of a right occurs upon acceptance of a contract by the purchaser that grants an immediate right to use the digital product, unless another date specifies when the right is granted; additionally, specify in subparagraph (C)(i) that if the transfer of a right is subject to a condition, the transfer occurs upon satisfaction of the condition; in subparagraph (C)(ii), clarify that if subclause (i) does not apply, the right to use occurs upon completion of the electronic transfer; if the digital product is not transferred electronically, upon receipt of a digital code, password, or other means to access a digital product that resides on the vendor's server or the server of a third party; in subparagraph (D), clarify that if the initial grant of right to use a digital product is renewed, extended, or reinstated, a sale occurs on the date of the renewal, extension, or reinstatement; in subparagraph (E), clarify that the modification or expansion of a right to use a digital product beyond the scope initially granted is a sale; and in subparagraph (F), provide six examples illustrating clarifications provided in subdivision (f)(2) as applied to different factual scenarios;
- In subdivision (g), clarify the exemptions added by SB 122 for the sale or purchase of

digital products; specifically, in subdivision (g)(1) and (2), for completion and clarity, state the exemptions specified in RTC sections 6362.4 and 6372, for the right to reproduce or copy a digital product in order for the copies to be distributed to third parties, and for digital products purchased solely for use outside of California or in interstate or foreign commerce, respectively; in subdivision (g)(3), clarify the exemption specified in RTC section 6372.1 for digital products that represent a service in electronic form with the first example in paragraph (3)(C); in subdivision (g)(3)(B), add the provision in RTC section 6372.1, subdivision (b) 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 digital means, such as a thin client interface, including a web browser, or a program interface" to clarify that a thin client interface or program interface are examples of digital means through which software can be accessed; and in paragraph (3)(C), clarify the application of subdivision (g)(3)(B) in the second example; and

- Add the authority note with citations to Section 34, RTC section 7051 and GC code sections 15770.22 and 15570.24, to establish and clarify the Department's authority to adopt new Regulation 1600, and the reference note with citations to RTC sections 6006, 6009, 6009.5, 6010, 6010.5, 6010.5.1, 6010.9, 6016, 6016.1, 6016.2, 6054, 6362.4, 6372, and 6372.1.

The Department anticipates that the adoption of proposed new Regulation 1600 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of sales and use tax to digital products, ensuring that proper amounts of state and local sales and use tax are collected, and reducing errors in reporting and remitting taxes, which promotes fairness among taxpayers and transparency in government.

Proposed New Regulation 1600.1, Tax Liability Threshold for Digital Products

The Department determined that there is confusion regarding the tax liability threshold and waiver process set forth in RTC sections 6052 and 6201.55, based on public inquiries received by the Department following the passage of SB 122 and through public comments and input received by the Department in its interested parties process. Specifically, the Department determined the following issues related to the proposed adoption of new Regulation 1600.1:

- RTC section 6052, added by SB 122, provides that, unless waived by the Department, a retailer is relieved from sales tax liability on the sale or purchase of a digital product transferred electronically or accessed remotely, unless the purchaser is an insurer, as defined, when the gross receipts from such sales to a purchaser exceed a specified threshold amount in the aggregate, in the current calendar year, or beginning January 1, 2028, in the current or preceding calendar year. RTC section 6201.55, also added by SB 122, provides that unless waived by the Department, a retailer is relieved of the obligation to collect use tax on the sale or purchase of a digital product transferred electronically or accessed remotely, when the sales price of such digital products purchased by a purchaser from a retailer exceeds a specified threshold amount in the aggregate, in the current calendar year, or beginning January 1, 2028, in the current or preceding calendar year. However, both RTC sections 6052 and 6201.55, at subdivision

(a)(1)(B), provide that the purchaser shall become liable for use tax "on the transaction that caused the retailer to exceed the threshold." The Department determined that there is confusion because these provisions are ambiguous, as they can mean that the retailer relief applies to the entire transaction that caused the retailer to exceed the threshold or only to the part of that transaction that exceeds the threshold amount;

- In addition, there is confusion because RTC sections 6052 and 6201.55 do not specify whether amounts subject to sales and use tax for purposes of calculating the threshold include the gross receipts from the sale of, or the sale price subject to use tax on, digital products purchased for multiple points of use, purchased solely for use outside California or in interstate or foreign commerce, or for which a purchaser holds a use tax direct payment exemption certificate pursuant to Regulation 1699.6;
- RTC sections 6052 and 6201.55, at subdivision (b), provide that if a retailer is relieved from liability to pay sales tax or collect use tax, the purchaser is liable for the use tax and shall self-assess and pay use tax to the Department. Subdivision (d) of both statutes further provide that a purchaser required to pay use tax to the Department shall obtain a use tax direct payment permit as provided in RTC section 7051.3. However, the statutes do not specify the use tax direct payment permit application procedures, nor the procedure to inform retailers when the purchaser is liable for reporting and paying use tax on a sale or purchase of digital products transferred electronically or accessed remotely;
- In addition, RTC sections 6052 and 6201.55 do not define "purchaser" for purposes of those sections and there is confusion regarding whether business entities with common ownership or whether state entities are the same purchaser for purposes of calculating the threshold amount; and
- RTC sections 6052 and 6201.55, at subdivision (c), provide that if the Department determines that it is necessary for the efficient administration of the SUTL, 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 or collect the use tax if the purchaser submits to the Department a request for a 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). However, there is confusion because what is necessary for the efficient administration of the SUTL is unclear, and the statutes do not specify the form and manner of the waiver request.

Therefore, the Department determined that it is reasonably necessary to adopt new Regulation 1600.1 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- In subdivision (a), clarify that the retailer relief provided in RTC sections 6052 and 6201.55 begins with the transaction that causes the retailer to exceed the threshold, and the retailer is relieved with respect to the entire taxable amount of the transaction. The Department determined that this is a reasonable interpretation of the ambiguity in the statutes, described above, because it would be challenging for the retailer and purchaser to properly allocate the portions of the transaction, as well as administratively

challenging for the Department, if relief only applies to the part of the transaction that exceeds the threshold amount;

- In subdivision (b), specify that the threshold amount of five million dollars ($5,000,000) is applicable during the 2027 calendar year through the 2031 calendar year;
- In subdivision (b)(1), clarify that for purposes of calculating the threshold, amounts subject to sales or use tax include transactions for which a purchaser issued a blanket MPU certificate pursuant to proposed new Regulation 1600.2 or a use tax direct payment exemption certificate pursuant to Regulation 1699.6, as amended by this proposed action. The Department determined that this was a reasonable interpretation of RTC sections 6052 and 6201.55 because those are taxable transactions for which the purchaser, absent a waiver, would be liable to report and pay use tax;
- In subdivision (b)(2), clarify that for purposes of calculating the threshold, amounts subject to sales or use tax do not include the calculated non-taxable measure identified in an MPU certificate issued pursuant to proposed new Regulation 1600.2 or the exempt purchases identified in an exemption certificate issued pursuant to proposed new Regulation 1600.3. The Department determined that this is a reasonable interpretation of RTC sections 6052 and 6201.55 because those amounts are not subject to either sales or use tax, but if any digital product reported as exempt is subsequently used in California, the purchaser is the only party with the knowledge to report and pay tax on that taxable use;
- In subdivision (c)(1), clarify that a purchaser shall be liable for reporting and paying the use tax on any transaction for which the retailer is relieved as provided in subdivision (a), unless the purchaser obtains a waiver and provides it to the retailer as part of the transaction; in subdivision (c)(2), clarify and make specific that to self-assess and pay use tax directly to the Department, the purchaser shall obtain a use tax direct payment permit pursuant to the procedures provided in RTC section 7051.3 and Regulation 1699.6, as amended by the proposed action; in subdivision (c)(3), specify that 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);
- In subdivision (c)(4)(A), clarify that, except as provided in (c)(4)(B), “purchaser” means a “person” as defined in RTC section 6005 and that gross receipts from sales to, or the sales price of purchases by, separate persons are not aggregated for purposes of calculating the threshold, regardless of common ownership or control; in subdivision (c)(4)(B), clarify that for the purposes of this section, each individual state agency, as defined in Government Code section 11000, subdivision (a), is a “purchaser;”
- In subdivision (d), provide examples illustrating calculations of the threshold amount;
- In subdivision (e)(1), clarify that the Department will waive the requirement of a purchaser to obtain a use tax direct payment permit and to self-assess and pay taxes due directly to the Department if the Department determines it is necessary for the efficient administration of the SUTL, and provide reasons that a waiver is necessary for efficient administration including, but not limited to: the purchaser is not otherwise required to be registered with the Department, the purchaser does not anticipate additional purchases

from the retailer, or the transaction does not involve multiple places of use and the place or places of use are known at the time of the transaction;

- In subdivision (e)(1)(A)-(F), prescribe the form and manner of the waiver request by specifying the information that must be included in a request, the signature requirements, when and where the waiver must be submitted, and how the Department shall notify the purchaser as to whether the waiver is approved;
- In subdivision (e)(2), clarify that if the purchaser timely provides the retailer with a Waiver – Use Tax Direct Payment Permit with respect to the sale or purchase of a digital product, the retailer shall be liable to pay the sales tax or collect the use tax due on the transaction; in subdivision (e)(2)(A), clarify that 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. The place of sale or use of the digital products shall be the place or places of first use submitted by the purchaser to the retailer;
- In subdivision (e)(2)(B), clarify that a waiver will be considered timely if it is taken any time before the seller bills the purchaser for the digital products, within the seller's normal billing and payment cycle, or prior to the digital products being transferred electronically or accessed remotely by the purchaser; in subdivision (e)(2)(C), clarify that the purchaser may provide the Waiver – Use Tax Direct Payment Permit to the retailer with respect to all the purchases described in the waiver request made pursuant to subdivision (e)(1)(B)(iv);
- In subdivision (f), specify that the operative date of Regulation 1600.1 is January 1, 2027; and
- Add the authority note with citations to Section 34, RTC section 7051 and GC code sections 15770.22 and 15570.24, to establish and clarify the Department's authority to adopt new Regulation 1600.1, and the reference note with citations to RTC sections 6005, 6009, 6052, 6201.55 and 7051.3.

The Department anticipates that the adoption of proposed new Regulation 1600.1 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of sales and use tax to digital products, ensuring that proper amounts of state and local sales and use tax are collected, and reducing errors in reporting and remitting taxes, which promotes fairness among taxpayers and transparency in government.

Proposed New Regulation 1600.2, Digital Products Purchased for Multiple Points of Use

The Department determined that there is confusion regarding how sales and use tax applies, and how sellers and purchasers should calculate, report, and pay tax on digital products sold or purchased for use by users in locations within and outside California, including licenses of digital products concurrently available for use in multiple locations, based on public inquiries received by the Department following the passage of SB 122 and through public comments and input received by the Department in its interested parties process. Specifically, the Department determined the following issues related to the proposed adoption of new Regulation 1600.2:

- RTC 6372, added by SB 122, provides at subdivision (e)(1) 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. RTC 6372 specifies at subdivision (e)(2) that if an alternative method is set forth, authorized, or required by the Department, RTC section 6406, which allows a person who has paid sales or use tax in another state, political subdivision thereof, or District of Columbia, to receive a proportionate credit against the sales and use tax imposed by the SUTL, shall not apply. Based on input from the public, the Department determined that an issue exists because the credit process under RTC section 6406 is cumbersome for many individuals and businesses, and that an alternative method would be beneficial and clarifying to the public;
- RTC 6372, subdivision (e)(3) provides that the Department may prescribe any forms or exemption certificates, as necessary to administer subdivision (e); in considering whether any forms or exemptions certificates were necessary to administer subdivision (e), the Department determined that based on input from the public, an issue exists because a purchaser that is uncertain of the locations in which the digital products will be used at the time of the sale or purchase of digital products for multiple points of use, may be incentivized to overreport out-of-state use. This is because if the purchaser mistakenly overreports use in California, in order to receive a sales tax refund, the purchaser would generally need to claim a refund from the retailer, and that retailer would generally need to claim a refund from the Department, a process which may be cumbersome for both purchasers and retailers. However, if the purchaser overreports out-of-state use and subsequently uses the digital product in California more than reported, the purchaser can directly report and pay use tax to the Department without having to go through the retailer;
- Holders of use tax direct payment permits are already authorized or required to pay use tax directly to the Department, and thus, there may be confusion regarding whether such holders are required to deliver an MPU certificate or blanket MPU certificate when purchasing digital products for multiple points of use;
- There may be confusion regarding whether the purchaser or seller is required to maintain records to substantiate calculations of taxable and non-taxable measures when an MPU certificate or blanket MPU certificate is issued by a purchaser to a seller, and what records are necessary for substantiation; and
- There may be confusion regarding whether an MPU certificate or blanket MPU certificate may be issued for digital products purchased solely for use outside this state or in interstate or foreign commerce.

Therefore, the Department determined that it is reasonably necessary to adopt new Regulation 1600.2 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- In subdivision (a), define the terms “computer,” “Department,” “multiple points of use” or “MPU,” and “users”;

- In subdivision (b), clarify that tax applies to the calculated measure based on the sale or use of a digital product in California, and tax does not apply to the non-taxable measure based on the sale or use of a digital product outside of California;
- In subdivision (c), set forth methods for calculating sales or use tax on digital products sold or purchased for multiple points of use, and clarify that if such methods are used, RTC section 6406 shall not apply;
- In subdivision (c)(2), specify that 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 and outside California that is supported by the purchaser's available books and records at the time the transaction is reported for sales or use tax purposes; clarify in subparagraphs (A)-(C) that a reasonable method includes a method based on the number of users or computers inside and outside California, that such method shall be presumed reasonable, and that a method based on the location of servers where a digital product is installed is not considered reasonable;
- In subdivision (d)(1), specify that a seller of a digital product for multiple points of use that timely obtains in good faith from a purchaser an MPU certificate, as described in subdivision (e), 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; and clarify that 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;
- In subdivision (d)(2), specify that a seller of a digital product for multiple points of use that timely obtains in good faith from a purchaser registered with the Department a blanket MPU certificate, as described in subdivision (f), is relieved of the obligation to pay sales tax or collect and remit the use tax on any sales or purchases of digital products for multiple points of use from that individual purchaser; that a blanket MPU certificate is effective until revised or withdrawn by the purchaser who issued it; and that the purchaser shall bear the burden of establishing that a revised or withdrawn blanket MPU certificate was sent to and received by the seller within the seller's billing cycle or prior to the transfer of the digital products to the purchaser, whichever is later, or that the tax or tax reimbursement was paid to the seller;
- In subdivision (d)(2), further specify that if a purchaser who issued a blanket MPU certificate subsequently issues a purchase order indicating that the transaction covered by the purchase order is a purchase of digital products entirely for use in California, except as provided in Regulation 1600.1, the blanket MPU certificate does not apply to that transaction; specify that the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to the transfer of the digital products to the purchaser, whichever is later, or that the tax or tax reimbursement was paid to the seller;
- In subdivision (d)(3), clarify that an MPU certificate or blanket MPU certificate will be considered timely if 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;

- In subdivision (d)(4), clarify that in the absence of evidence to the contrary, a seller is presumed to have taken an MPU certificate or blanket MPU certificate in good faith if the certificate contains all of the elements, as described in subdivisions (e) or (f), and otherwise appears to be valid on its face; clarify that an MPU certificate or blanket MPU certificate cannot be accepted in good faith where the seller has knowledge that the digital product is being purchased solely for use in this state;
- In subdivision (e), prescribe the form of an MPU certificate and specify the elements that must be included for a document to be regarded as an MPU certificate;
- In subdivision (f), prescribe the form of a blanket MPU certificate and specify the elements that must be included for a document to be regarded as a blanket MPU certificate;
- In subdivision (g), clarify that 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 or blanket MPU certificate to the seller, because a use tax direct payment permit holder is already either authorized or required to report and remit use tax to the Department directly; and further clarify that a use tax direct payment permit holder may follow the provisions of subdivision (c) 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;
- In subdivision (h), clarify that 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, and specify certain required records; and clarify that purchasers that issue an MPU certificate or blanket MPU certificate are responsible for maintaining records to substantiate the calculation of the taxable and non-taxable measure used at the time of purchase;
- In subdivision (i), clarify that proposed new Regulation 1600.3 provides guidance regarding the application of tax to digital products purchased solely for use outside California or in interstate or foreign commerce;
- In subdivision (j), specify that the operative date of Regulation 1600.2 is January 1, 2027; and
- Add the authority note with citations to Section 34, RTC section 7051 and GC code sections 15770.22 and 15570.24, to establish and clarify the Department's authority to adopt new Regulation 1600.2, and the reference note with citations to RTC sections 6372 and 6406.

The Department anticipates that the adoption of proposed new Regulation 1600.2 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of sales and use tax to digital products purchased for multiple points of use in California and outside California, ensuring that proper amounts of state and local sales and use tax are collected, and reducing errors in reporting and remitting taxes, which promotes fairness among taxpayers and transparency in government.

Proposed New Regulation 1600.3, Digital Products Purchased Solely for Use Outside this State or in Interstate or Foreign Commerce

The Department determined the following issues related to the proposed adoption of new Regulation 1600.3:

- RTC section 6372, subdivision (a) provides that 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, and subdivision (b) provides that the burden of proving that the exemption applies is on the seller of a 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; therefore, the Department determined that there is an issue because no existing regulation prescribes such a certificate for digital products purchased solely for use outside this state or in interstate or foreign commerce;
- RTC 6372, subdivision (b) provides the certificate described by this subdivision 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, but does not specify what constitutes good faith;
- There may be confusion regarding whether an exemption certificate prescribed pursuant to RTC 6372 may be used when a purchaser that purchases a digital product for use in this state and a digital product solely for use outside this state or in interstate or foreign commerce in the same transaction; and
- There may be confusion regarding whether the purchaser or seller is required to maintain records to substantiate an exemption certificate, and what records are necessary for substantiation.

Therefore, the Department determined that it is reasonably necessary to adopt new Regulation 1600.3 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- In subdivision (a), for completion and clarity, provide that a digital product transferred electronically or accessed remotely when purchased solely for use outside this state or in interstate or foreign commerce is exempt from sales and use tax, and add references to other regulations regarding TPP, as defined in RTC 6016, subdivision (a)(1), purchased for use in interstate or foreign commerce;
- In subdivision (b)(1), for completion and clarity, state the provision in RTC section 6372, subdivision (b)(1), that a seller is relieved of the burden of proving that a transaction is exempt from tax if the seller timely obtains in good faith an exemption certificate from the purchaser; in subdivision (b)(2), clarify when a certificate is timely; and in subdivision (b)(3), clarify the meaning of good faith;
- In subdivision (c), prescribe the form of an exemption certificate and specify the elements that must be included for a document to be regarded as an exemption certificate;
- In subdivision (d), clarify that a purchaser that purchases a digital product or digital products for use in California and a digital product or digital products solely for use

outside 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;

- In subdivision (e), specify that if a purchaser certifies in writing to a seller that a purchase of a digital product is exempt pursuant to RTC section 6372 and uses the digital product in California, 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 California;
- In subdivision (f), clarify that adequate and complete records must be maintained in accordance with Regulation 1698 to substantiate any claim for digital products sold solely for use outside of California or in interstate or foreign commerce, and specify certain required records; and clarify that purchasers that issue an exemption certificate are responsible for maintaining records to substantiate that a digital product was used solely outside of California or in interstate or foreign commerce;
- In subdivision (g), specify that the operative date of Regulation 1600.3 is January 1, 2027; and
- Add the authority note with citations to Section 34, RTC section 7051 and GC code sections 15770.22 and 15570.24, to establish and clarify the Department's authority to adopt new Regulation 1600.3, and the reference note with citation to RTC section 6372.

The Department anticipates that the adoption of proposed new Regulation 1600.3 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of sales and use tax to digital products purchased solely for use outside California, or in interstate or foreign commerce, ensuring that proper amounts of state and local sales and use tax are collected, and reducing errors in reporting and remitting taxes, which promotes fairness among taxpayers and transparency in government.

Proposed Amendments to Regulation 1699.6, Use Tax Direct Payment Permits

The Department determined that there is confusion regarding the use tax direct payment process in relation to sales and purchases of digital products, based on public inquiries received by the Department following the passage of SB 122 and through public comments and input received by the Department in its interested parties process. Specifically, the Department determined the following issues related to the proposed amendments to Regulation 1699.6:

- Regulation 1699.6 was originally adopted by the Board of Equalization (Board), but as the administration and enforcement of the SUTL was transferred to the Department by GC section 15570.22, effective July 1, 2017, and the references to the "board" in the SUTL and any implementing regulation are deemed to refer to the Department by GC section 15570.24, an issue exists because the regulation refers to the Board throughout;
- The subheading of "Foreword" in subdivision (a) is not descriptive of the substance of that subdivision;
- RTC sections 6052 and 6201.55, at subdivision (d), added by SB 122, provide that a purchaser required to pay use taxes to the Department under subdivision (b) shall obtain a

use tax direct payment permit pursuant to procedures provided in RTC section 7051.3. RTC section 7051.3, at subdivision (b)(1)(A), as amended by SB 122, provides that every person seeking to pay use taxes directly to the Department shall file an application for a use tax direct payment permit (applicant), which shall be made upon a form prescribed by the Department, as specified. Subdivision (b)(1)(B)(i) further provides that except as provided in clause (ii), an applicant may 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 subject to use tax in accordance with the requirements of subdivision (e). Subdivision (b)(1)(B)(ii) provides that an applicant 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). Therefore, an issue exists because the application procedures prescribed in Regulation 1699.6 do not account for the new provisions of RTC section 7051.3 that relate to the application of sales and use tax to digital products transferred electronically or accessed remotely;

- Subdivision (d) of Regulation 1699.6 provides that the holder of a use tax direct payment permit 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; however, an issue exists because RTC section 6009, as amended by SB 122, provides that the exercise of any right or power over TPP 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, which may not occur at the place the digital product is "located";
- Subdivision (e) of Regulation 1699.6 specifies that holders of a use tax direct payment permit shall file a return with the Department, and the return shall show the aggregate sales price of TPP 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; however, an issue exists because the retailer may also be relieved of liability for sales tax under RTC section 6052;
- Subdivision (f) of Regulation 1699.6 specifies that the Department shall allow a holder of a use tax direct payment permit to issue a use tax direct payment exemption certificate subject to certain conditions; however, because subdivision (f)(1) specifies that the 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, an issue exists because the provision is ambiguous and potentially confusing as to whether the Department or the holder should add the name, address, and permit number, and additionally, for clarity, the certificate should also include the name of the retailer and a description of the property purchased;
- Subdivision (f)(3) of Regulation 1699.6 provides that a use tax direct payment 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. However, an issue exists and there may be confusion because subdivision (f)(3) does not specify whether a certificate is timely when provided prior to a digital product being transferred

electronically or accessed remotely by the purchaser and also does not specify the meaning of good faith;

- Subdivision (g) of Regulation 1699.6 references redevelopment agencies, which have been dissolved and to which the regulation therefore no longer applies;
- Subdivision (i) of Regulation 1699.6 provides that the regulation applies only to purchases that occur on or after January 1, 1998, which may cause confusion because the provisions related to the sale or purchase of digital products that implement the RTC sections added or amended by SB 122 are effective January 1, 2027; and
- The regulation contains other non-substantive typographical or formatting errors.

Therefore, the Department determined that it is reasonably necessary to amend Regulation 1699.6 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- Clarify subdivision (a) by replacing "Foreword" with "Definitions," which describes the substance of the subdivision, and by adding the definition of "Department";
- In subdivision (a) and throughout the regulation, replace "board" with "Department";
- Add new subdivision (b), "Application," and clarify the provision regarding the application of Regulation 1699.6 to use tax transactions by numbering it as paragraph (1), as well as add paragraph (2) to clarify that 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, as provided in Regulation 1600.1;
- Reformat subdivision (b) as subdivision (c), delete the reference to the Board Form 400-DP as the application for a use tax direct payment permit and delete the direction regarding signature requirements, and replace it with the elements required for a use tax direct payment permit application, incorporating the deleted signature requirement guidance into new paragraph (1)(E). The Department determined that allowing applicants to submit an application with the specified elements while providing an optional Department-created form, rather than requiring a specific form, and allowing applicants to submit the application either through the Department's online services portal or by email is less burdensome to applicants;
- Delete existing subdivision (c), "Requirements for Permit," and incorporate the conditions listed in that subdivision as certification statements in new subdivision (c)(1)(F);
- In addition to incorporating guidance from sections proposed to be deleted into the proposed new subdivision (c), add requirements from RTC section 7051.3, subdivision (b)(1)(A), into Regulation 1699.6, subdivision (c)(1)(A) and (D), and further require in subparagraphs (B) and (C) the applicant's seller's permit or Use Tax Account number, and the business and mailing address, if different, which the Department requires to administer the use tax direct payment permit application process; add a certification statement option in subparagraph (F), for applicants required to pay use tax directly to the Department because the threshold amount set forth in Regulation 1600.1 will be

exceeded; and add subparagraph (G), to require applicants to certify that they agree to self-assess and pay directly to the Department any use tax liability incurred pursuant to their use of a use tax direct payment permit;

- Amend subdivision (d) to clarify that holders of a use tax direct payment permit shall report the local use tax component to the jurisdiction in which "first use of the property, as defined in Revenue and Taxation Code section 6009, occurs," and not "the jurisdiction in which the property is located at the time the state imposed use tax must be reported," for consistency with RTC section 6009, which defines use of a digital product to include, among other things, opening, viewing, accessing, and copying a digital product, which may not be "located" in the same jurisdiction;
- Amend subdivision (e) to add "or sales tax under Revenue and Taxation Code section 6052" as an additional reason that a retailer may be relieved of liability, following SB 122;
- Amend subdivision (f)(1) to clarify that the Department will provide a use tax direct payment exemption certificate to the holder of the use tax direct payment permit, and that the Department will include the name, address, and permit number of the holder, and require the holder of the use tax direct payment permit to sign and date the certificate, and include the retailer's name and a description of the property purchased;
- Amend subdivision (f)(3) to clarify that a use tax direct payment permit is also considered timely if taken at any time "prior to the digital product being transferred electronically or accessed remotely by the purchaser," to clarify what the Department considers "good faith," and to add three examples to illustrate applications of the good faith requirement;
- Amend subdivision (f)(4) to delete "or redevelopment agency";
- Delete subdivision (j) to avoid confusion regarding the effective date of the regulation with regards to sales or purchases of digital products;
- Make non-substantive changes throughout the regulation to correct formatting and typographical errors; and
- Update the authority note to add citations to Section 34, as well as add GC code sections 15770.22 and 15570.24, to clarify the Department's authority to adopt amendments to Regulation 1699.6, which was originally adopted by the Board, and update the reference note to add RTC sections 6009, 6052, 6201.55 and 7051.3.

The Department anticipates that the adoption of the proposed amendments to Regulation 1699.6 through an emergency action will benefit local agencies, the Department, and the public by clarifying the use tax direct payment process, which promotes fairness among taxpayers and transparency in government.

<u>Proposed Amendments to Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes</u>

The Department determined the following issues related to the proposed amendments to Regulation 1802:

- Subdivision (d)(1) provides that for transactions of $500,000 or more, except with respect to persons who register with the Department to collect use tax under Regulation 1684, subdivision (e), the seller shall report the local use tax revenues derived therefrom directly to the participating jurisdiction where the first functional use is made. However, this potentially conflicts with RTC sections 6052 and 6201.55, which provide that when a threshold amount of $5,000,000 is reached, unless the Department approves a waiver, the purchaser is required to report and remit use tax, even for transactions of $500,000 or more. In addition, RTC section 6372, as implemented by proposed Regulation 1600.2, provides that a purchaser may provide a seller with a multiple points of use certificate or a blanket multiple points of use certificate, which may require the purchaser to report and remit use tax, even for transactions of $500,000 or more;
- Regulation 1802 was originally adopted by the Board, but as the administration and enforcement of the SUTL was transferred to the Department by GC section 15570.22, effective July 1, 2017, and the references to the "board" in the SUTL and any implementing regulation are deemed to refer to the Department by GC section 15570.24, an issue exists because the regulation refers to the Board.

Therefore, the Department determined that it is reasonably necessary to amend Regulation 1802 in this proposed emergency action, to have the effect and accomplish the objective of addressing those issues prior to January 1, 2027, as follows:

- Add to subdivision (d)(1) "and to retailers reporting use tax on the purchase of digital products transferred electronically or accessed remotely" as an exception to the specified requirement, for clarity and consistency with RTC sections 6052, 6201.55, 6372, and the proposed implementing regulations;
- In subdivision (b)(3), replace Board with "California Department of Tax and Fee Administration (Department)" and throughout the regulation, replace "Board" with "Department"; and
- Update the authority note to add citations to Section 34, as well as add GC code sections 15770.22 and 15570.24, to clarify the Department's authority to adopt amendments to Regulation 1802.

The Department anticipates that the adoption of the proposed amendments to Regulation 1802 through an emergency action will benefit local agencies, the Department, and the public by clarifying the application of the Regulation 1802, subdivision (d)(1) to retailers reporting use tax on the purchase of digital products transferred electronically or accessed remotely, which promotes fairness among taxpayers and transparency in government.

REGULATORY COMPATABILITY

The Department has determined that the proposed emergency regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that relate to or affect this area, the Department has concluded that these are the only regulations in California concerning the issues presented. The Department has also determined that there are no comparable federal regulations or statutes.

DOCUMENTS RELIED UPON

The Department relied upon its staff's understanding of the SUTL in proposing to adopt the emergency regulations in this proposed action. The Department did not rely upon any technical, theoretical, or empirical study, report, or similar document.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the proposed action will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

ONE-TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Department has determined that the proposed action will result in an absorbable $574 one-time cost for the Department to update its website after the emergency rulemaking process is completed (assuming that average hourly compensation costs are $68.35 per hour and that it will take approximately eight hours). The Department has determined that the proposed action will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

EFFECTIVE PERIOD

Section 34 provides that the emergency regulations adopted by the Department to implement, administer, and enforce the amendments made by SB 122 may remain in effect for two years from adoption and may be readopted in accordance with subdivision (h) of GC section 11346.1. Therefore, Regulations 1502, 1507,1699.6, and 1802, as amended by this proposed action, and Regulations 1502.2, 1600, 1600.1, 1600.2, and 1600.3, as added by this proposed action, shall be effective January 1, 2027, and shall remain in effect for two years from that date, unless the Department amends or repeals the regulation before the expiration of the two-year period.

CONTACT PERSON

Questions about these emergency regulations should be directed to Robert Wilke, Business Taxes Specialist II, by telephone at 916-309-5302 or by email at PPDD-BTC.InformationRequests@cdtfa.ca.gov.