Proposed Text of California Code of Regulations

Title 18. Public Revenues

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

Section 1600.1. Tax Liability Threshold for Digital Products

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

Regulation 1600.1. Tax Liability Threshold for Digital Products.

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

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

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

(b) Threshold Amount. During the 2027 calendar year through the 2031 calendar year, the threshold amount is five million dollars ($5,000,000) of gross receipts subject to sales tax or sales price subject to use tax, or both combined.

(1) For purposes of this subdivision, amounts subject to sales or use tax include transactions for which a purchaser issued a blanket multiple points of use certificate pursuant to subdivision (d)(2) of Regulation 1600.2 or a use tax direct payment exemption certificate pursuant to Regulation 1699.6.

(2) For purposes of this subdivision, amounts subject to sales or use tax do not include the calculated non-taxable measure identified in a multiple points of use certificate issued pursuant to subdivision (d)(1) of Regulation 1600.2 or the exempt purchases identified in an exemption certificate issued pursuant to subdivision (d) of Regulation 1600.3.

(c) Purchaser Liability.

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

(2) The purchaser shall obtain a use tax direct payment permit pursuant to the procedures provided in Revenue and Taxation Code section 7051.3 and Regulation 1699.6 to self-assess and pay directly to the Department the taxes due under part 1 (commencing with section 6001), part 1.5 (commencing with section 7200), and, if otherwise applicable, part 1.6 (commencing with section 7251) and part 1.7 (commencing with section 7280) of the Revenue and Taxation Code.

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

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

(4)(A) "Purchaser" means the "person" as defined in Revenue and Taxation Code section 6005, purchasing the digital products. Gross receipts from sales to, or the sales price of purchases by, separate persons are not aggregated for purposes of subdivision (a), regardless of common ownership or control.

(B) For purposes of the threshold amount in subdivision (b), each "state agency" as defined in Government Code section 11000 is a separate purchaser.

(d) Examples.

(1) On January 15, 2027, Retailer makes a four-million-dollar ($4,000,000) sale of digital products subject to sales tax that are transferred electronically to Purchaser A at its retail store in California. Retailer has not reached the threshold with respect to Purchaser A and must report and pay the applicable sales tax. On September 1, 2027, Retailer makes a two-million-dollar ($2,000,000) sale of digital products that are transferred electronically to Purchaser A at its retail store in California. Retailer is relieved from the liability to pay sales tax or collect and remit use tax on the two-million-dollar sale and on any subsequent sales of digital products transferred electronically to Purchaser A for the remainder of the 2027 calendar year and all of the 2028 calendar year. Purchaser A must obtain a Use Tax Direct Payment Permit, issue a use tax direct payment exemption certificate to Retailer, and report the applicable use tax on the two-million-dollar purchase and on any subsequent purchases from Retailer during the 2027 and 2028 calendar years for which Retailer is relieved of liability.

(2) On January 15, 2027, Retailer makes a five-million-and-one-dollar ($5,000,001) sale of digital products transferred electronically to Purchaser B at its retail store in California.

Retailer is relieved from the liability to pay sales tax or collect and remit use tax on the five-million-and-one-dollar ($5,000,001) sale and on any subsequent sales of digital products transferred electronically to Purchaser B for the remainder of the 2027 calendar year and all of the 2028 calendar year. Purchaser B must obtain a Use Tax Direct Payment Permit, issue a use tax direct payment exemption certificate to Retailer, and report the applicable use tax on the five-million-and-one-dollar purchase and on any subsequent purchases from Retailer during the 2027 and 2028 calendar years for which Retailer is relieved of liability.

(e) Waiver.

(1)(A) Upon written request, 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 Sales and Use Tax Law (commencing with Revenue and Taxation Code section 6001). Reasons that a waiver is necessary for efficient administration include, but are 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.

(B) The purchaser's request shall include the following:

(i) The name and address of the purchaser.

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

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

(iv) A description of the anticipated purchases of digital products subject to subdivision (a) within the period for which the waiver is being requested and the addresses of the place or places of business where the purchaser expects the first use of the digital products to occur.

(v) A statement as to the reason or reasons the waiver is necessary for the efficient administration of the Sales and Use Tax Law.

(vi) The name, title, signature, email address, and phone number of the person completing the waiver request and a statement that "My purchases of digital products transferred electronically or accessed remotely from the retailer described on this request will exceed the threshold amount as provided in Regulation 1600.1, Tax Liability Threshold for Digital Products. I am requesting a waiver from the requirement to self-assess and pay taxes due directly to the Department pursuant to Revenue and Taxation Code sections 6052 or 6201.55. I hereby certify that the

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

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

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

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

(F) The Department shall notify the purchaser in writing as to whether they are approved for a waiver. If they are approved, the Department shall provide a Waiver – Use Tax Direct Payment Permit.

(2) If the purchaser timely provides the retailer with a Waiver – Use Tax Direct Payment Permit with respect to the sale or purchase of digital products, the retailer shall be liable to pay the sales tax or collect the use tax due on the transaction.

(A) 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.

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

(C) The purchaser may provide the Waiver – Use Tax Direct Payment Permit to the retailer with respect to all of the purchases described in the waiver request made pursuant to subdivision (e)(1)(B)(iv).

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

NOTE: Authority cited: Sections 15570.22 and 15570.24, Government Code; Statutes 2026, chapter 23 (Sen. Bill No. 122), Section 34; and Section 7051, Revenue and Taxation Code. Reference: Sections 6005, 6009, 6052, 6201.55 and 7051.3, Revenue and Taxation Code.