Text of Proposed California Code of Regulations

Title 18. Public Revenues

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

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

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

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

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

See Regulations 1620, 1620.1, and 1620.15 regarding tangible personal property, as defined in subdivision (a)(1) of Revenue and Taxation Code section 6016, purchased for use in interstate or foreign commerce.

(b) Seller Liability.

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

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

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

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

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

(2) Date of execution of document;

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

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

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

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

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

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

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

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

NOTE: Authority cited: 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 6016 and 6372, Revenue and Taxation Code.