

**Addendum to the Initial Statement of Reasons for the Proposed  
Adoption of Amendments to California Code of Regulations, Title 18, Section 1620.1,  
Sales of Certain Vehicles and Trailers for Use in Interstate or Out-of-State Commerce,  
and New Section 1620.15, Sales of Vehicles for Use Exclusively Out-of-State or  
in Interstate or Foreign Commerce**

This addendum further clarifies the necessity for the proposed amendments to subdivisions (a)(4), (b)(3), and (c)(1) and (2) of California Code of Regulations (CCR), title 18, section (Regulation or Reg.) 1620.1, Sales of Certain Vehicles and Trailers for Use in Interstate or Out-of-State Commerce, provided in the initial statement of reasons (ISR). This addendum also further clarifies the necessity for the provisions included in subdivisions (a)(4), (6), and (10), (b)(3), and (c)(1) and (2) of proposed new Regulation 1620.15, Sales of Vehicles for Use Exclusively Out-of-State or in Interstate or Foreign Commerce, provided in the ISR.

**Subdivision (a)(4) of Regulation 1620.1 and Subdivision (a)(10)(B) of Regulation 1620.15**

“In general, the sale of tangible personal property to a lessor that will lease the property in the regular course of the lessor’s business is a non-taxable sale for resale. (Regs. 1660, 1668.) Also, tax applies to the rentals payable from the lease of the property unless the property is leased in substantially the same form as acquired and the lessor timely elects to pay tax on the purchase price. (Reg. 1660.) However, sales of mobile transportation equipment (MTE) to a lessor are treated differently.

“Regulation 1661, Leases of Mobile Transportation Equipment, clarifies that sales or use tax generally applies to the sale of MTE to a lessor measured by the sale or purchase price, unless the lessor makes a timely election to report their tax liability measured by the fair rental value of the MTE.” (ISR, p. 4.) Therefore, a lessor purchasing tangible personal property that it will lease in the regular course of business needs to know if the property is MTE to determine whether tax applies to the sale of the property to the lessor or the rental payments from the lease.

“Regulation 1661 also clarifies that the term MTE, as defined in RTC section 6023, generally ‘includes equipment such as railroad cars and locomotives, buses, trucks (except “one-way rental trucks”), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment.’” (ISR, p. 4.) However, Regulation 1661 contains exclusions from the definition of MTE that might apply to such vehicles. For example, MTE does not include “one-way rental trucks” or “items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area.” (Reg. 1660, subd. (a)(1) and (a)(1)(C).) “Therefore, a vehicle that is eligible for the exemption provided by [Revenue and Taxation Code (RTC)] section 6388 or 6388.5 is MTE subject to the provisions of Regulation 1661, unless excluded by Regulation 1661. Also, subdivision (d) of Regulation 1620.1 currently

clarifies that the sale of such a vehicle to a lessor can qualify for the exemptions provided by RTC section 6388 and 6388.5.” (ISR, p. 4.)

The “Department determined that there was an issue (or problem) with the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 because some [lessors] may not be aware that a vehicle that is eligible for the exemption provided by RTC section 6388 or 6388.5 is MTE subject to the provisions of Regulation 1661, unless excluded [from the definition of MTE] by Regulation 1661.” (ISR, p. 12.) So, those lessors may be mistaken about whether tax applies to the sale of such a vehicle to them or the rental payments from their leases, in the absence of the exemption provided by RTC section 6388 or 6388.5. For example, if a lessor purchases a truck that is MTE, but the lessor does not realize that the truck is MTE and does not make a timely election to pay tax on the rental payments from leasing the truck, tax will apply to the sale of the truck to the lessor, unless the exemption provided by RTC section 6388 or 6388.5 applies to that sale. However, the lessor will mistakenly believe that tax applies to the rental payments from leasing the truck under the default rule in Regulation 1660, unless the exemption provided by RTC section 6388 or 6388.5 applies to that lease. “Therefore, the Department determined that it is reasonably necessary to propose to revise renumbered subdivision (a)(4) of Regulation 1620.1 and add subdivision (a)(10)(B) to new Regulation 1620.15 to clarify that ‘A vehicle is mobile transportation equipment subject to the provisions of Regulation 1661, Leases of Mobile Transportation Equipment, unless excluded by Regulation 1661,’ for the specific purpose of addressing that issue (or problem).” (ISR, p. 12.)

#### **Subdivision (a)(4) of New Regulation 1620.15**

“Section 28 of Senate Bill No. (SB) 1473 (Stats. 2020, ch. 371) replaced SSRS with ‘Unified Carrier Registration System’ (UCRS) in RTC section 6388.5 so that, in cases where a vehicle is subject to the permanent trailer identification plate program under Vehicle Code section 5014.1 and is used exclusively in interstate or foreign commerce, or both, written evidence of the purchaser’s or lessee’s UCRS filing may be substituted for written evidence of an out-of-state license and registration.” (ISR, p. 3.) Subdivision (a)(1) of Regulation 1620.1 currently defines “Permanent Trailer Identification (PTI) Program” as follows:

A registration program for commercial trailers as defined in Vehicle Code section 5014.1 administered by the Department of Motor Vehicles (DMV). Assessments made pursuant to the PTI program constitute a flat fee and are not based on the weight of a commercial trailer subject to the PTI program. In lieu of annual registration, DMV assesses a service fee every five (5) years.

The Department determined that it is reasonably necessary to propose to include a definition for the term “permanent trailer identification plate program” or “PTI plate program” in subdivision (a)(4) of Regulation 1620.15 because the term permanent trailer identification plate program is used in RTC section 6388.5. The Department determined that it is reasonably necessary to propose to define “permanent trailer identification plate program” or “PTI plate program” similar

to the first sentence in the current definition of “Permanent Trailer Identification (PTI) Program” in Regulation 1620.1 because the program is a registration program administered by the Department of Motor Vehicles for assigning permanent trailer identification certificates and permanent trailer identification plates to certain trailers, pursuant to Vehicle Code section 5014.1, but not a program for commercial trailers as defined in that section. The Department did not determine that it is necessary to include the second and third sentences in the current definition of “Permanent Trailer Identification (PTI) Program” in subdivision (a)(4) of Regulation 1620.15 because the information in those sentences is not relevant to the RTC section 6388.5 exemption.

### **Subdivision (a)(6) of New Regulation 1620.15**

RTC section 6388.5 refers to the purchaser’s agent, but RTC section 6388 does not refer to the purchaser’s agent. Therefore, the Department determined that it is reasonably necessary to propose to delete the definition of “purchaser’s agent” from Regulation 1620.1 (ISR, p. 5) and include the definition of “purchaser’s agent” in Regulation 1620.15, which includes and clarifies the provisions of RTC section 6388.5. (ISR, p. 9.)

Subdivision (a)(2) of Regulation 1620.1 currently defines the term “purchaser’s agent” as follows:

For purposes of this regulation, a purchaser's agent means a person authorized by the purchaser of a trailer to act on the purchaser's behalf in providing an exemption certificate from the sales or use tax to the seller of the trailer. To establish that a particular person is acting as the purchaser's agent, the purchaser must: 1) clearly disclose in writing to the seller the purchaser's intent to use an agent in the transaction, including the name of the purchaser's agent, and 2) obtain and retain, prior to the use of the agent, written evidence of the agent's status with the purchaser. An agent may include a registration service company engaged by either the purchaser or dealer who sells trailers. A dealer, manufacturer or remanufacturer may not act as the purchaser's agent with respect to a trailer that it sells or delivers to a purchaser.

Therefore, the Department determined that it is reasonably necessary to propose to define “purchaser’s agent” in subdivision (a)(6) of Regulation 1620.15 as follows “based upon the definition of ‘Purchaser’s Agent’ in current Regulation 1620.1” (ISR, p. 9):

“Purchaser’s agent” means a person authorized in writing by a purchaser to act on the purchaser's behalf with regard to the purchase of one or more vehicles and furnish the evidence and affidavit required by this regulation to the delivering manufacturer, remanufacturer, or dealer on the purchaser’s behalf.

(A) A purchaser must authorize a person to act as the person’s agent in writing prior to the use of the person as an agent to furnish the evidence and affidavit required by this regulation and retain the document as evidence of the person’s status as the purchaser’s agent.

(B) To establish that a particular person is acting as the purchaser’s agent for purposes of a specific transaction, the purchaser must clearly disclose the purchaser’s intent to use an agent in the transaction and the name of the purchaser’s agent to the seller in writing.

(C) A registration service company engaged by the purchaser, dealer, manufacturer, or remanufacturer may act as the purchaser’s agent. A dealer, manufacturer, or remanufacturer may not act as the purchaser’s agent with respect to a vehicle that it sells or delivers to the purchaser.

The Department determined that it is necessary to use the phrase “evidence and affidavit required by this regulation,” instead of “exemption certificate,” in subdivision (a)(6) to make the definition of “purchaser’s agent” consistent with the rest of the regulation. The Department determined that it is necessary to clarify that a person may act as the purchaser’s agent with regard to the purchase of one or more vehicles to make the definition of “purchaser’s agent” consistent with subdivision (c)(3) of new Regulation 1620.15, which provides that for “transactions that include the purchase of more than one vehicle from the same location, the purchaser or purchaser’s agent [may] append a list of the vehicles included in the transaction to one affidavit.” The Department also determined that it is reasonably necessary to “clarify that a purchaser must authorize a person to act as its agent in writing prior to using the person as an agent to furnish the evidence and affidavit required for the RTC section 6388.5 exemption” (ISR, p. 9) because a person generally needs to be authorized to act as another person’s agent before that they can act as their agent. (See Civ. Code section 2307.)

**Subdivision (a)(10)(A) of New Regulation 1620.15**

“The Department determined that it is reasonably necessary to propose to include a new definition for the term vehicle in subdivision (a)(10) of Regulation 1620.15 that only includes the vehicles to which the RTC section 6388.5 exemption applies.” (ISR, p. 9.)

Revised subdivision (a)(10)(A) of new Regulation 1620.15 provides that “Vehicle” means:

- (i) A new, used, or remanufactured truck or a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more for purchases on January 1, 2020, through October 7, 2023.
- (ii) A new, used, or remanufactured truck or a new, used, or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more for purchases on October 8, 2023, through December 31, 2028.
- (iii) A new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more for purchases on and after January 1, 2029.

This is because the definition of vehicle in subdivision (a)(10)(A)(i) includes the vehicles to which the RTC section 6388.5 exemption applied after section “1 of [Assembly Bill No. (AB)] 321 (Stats. 2019, ch. 226) amended RTC section 6388.5 to expand its exemption so it also

applies to a new, used, or remanufactured truck with an unladen weight of 6,000 pounds or more” operative January 1, 2020 (ISR, p. 2), and before the amendments made by section 1 of AB 314 (Stats. 2023, ch. 427) became operative October 8, 2023. (ISR, p. 3.) This is because the definition of vehicle in subdivision (a)(10)(A)(ii) includes the vehicles to which the RTC section 6388.5 exemption applies after section “1 of AB 314 . . . amended RTC section 6388.5 to expand its exemption so it also applies to a ‘used’ trailer or semitrailer with an unladen weight of 6,000 pounds or more” operative October 8, 2023, and before that version of RTC section 6388.5 is repealed by its own terms on January 1, 2029. This is also because the definition of vehicle in subdivision (a)(10)(A)(iii) includes the vehicles to which the RTC section 6388.5 exemption will apply when new RTC section 6388.5, which was originally enacted by section 2 of AB 321, becomes “operative on January 1, 2029,” and “the law will revert to the pre-AB 321 exemption.” (ISR, p. 3.)

### **Subdivision (b)(3) of Both Regulations**

Subdivision (a) of Regulation 1668 provides that “The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale.” Subdivision (c) of Regulation 1668 clarifies the “good faith” requirement to avoid confusion and provides that “In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face.”

The Department determined that there was an issue (or problem) because subdivisions (b)(2)(A)3 and (b)(3)(A)3 of Regulation 1620.1 currently require that an affidavit be “accepted . . . in good faith” for a sale or purchase of a vehicle to qualify for the exemption provided by RTC section 6388 or 6388.5. However, Regulation 1620.1 does not further clarify the “good faith” requirement like Regulation 1668. Therefore, the “Department determined that it is reasonably necessary to propose to amend renumbered subdivision (b)(3) in Regulation 1620.1 to clarify that in the absence of evidence to the contrary, it is presumed that a manufacturer or remanufacturer accepted an affidavit in good faith if the affidavit contains the essential elements required . . . and otherwise appears to be valid on its face.” (ISR, p. 6.) The Department also “determined that it is reasonably necessary to propose that” subdivision (b)(3) of new Regulation 1620.15 continue to require an affidavit to be accepted in good faith and provide “a presumption that an affidavit was accepted in good faith if the affidavit contains the essential elements required . . . and appears to be valid on its face,” the same as revised renumbered subdivision (b)(3) of Regulation 1620.1. (ISR, p.10.)

### **Subdivision (c)(1) of Both Regulations**

Regulation 1620.1 “incorporates and clarifies the provisions of RTC sections 6388 and 6388.5,” including the requirements for a properly completed affidavit. (ISR, p. 3.) Subdivision (b)(2)(A)3

of Regulation 1620.1 currently requires a valid affidavit for the RTC section 6388 exemption to state:

- a. The name and location of the out-of-state dealer from whom the vehicle was purchased,
- b. The name and location of the in-state manufacturer or remanufacturer that delivered the vehicle to the purchaser and the date of delivery
- c. That the purchaser is not a resident of California,
- d. That the vehicle was purchased for use exclusively outside California,
- e. That the vehicle was removed from this state within 30 days of the delivery date, and
- f. The date of removal.

Subdivision (b)(3)(A)3 of Regulation 1620.1 currently requires a valid affidavit for the RTC section 6388.5 exemption to state:

- a. The name and location of the dealer from whom the trailer was purchased,
- b. The name and location of the California dealer, manufacturer or remanufacturer that delivered the trailer to the purchaser and the date of delivery,
- c. That the vehicle was purchased for use exclusively outside the state, or exclusively in interstate or foreign commerce, or both,
- d. That the vehicle was removed from the state within the appropriate time periods provided for in subdivision (b)(3)(A)(1), and
- e. The date of removal.

Also, the “affidavit for the providing of the information” required by subdivisions (b)(2)(A)3 and (b)(3)(A)3 set forth in Appendix A to Regulation 1620.1 currently requires<sup>1</sup> the following additional information:

- A description of the vehicle or trailer, including year, make and model, VIN or serial number, and unladen weight;
- The name of the manufacturer or remanufacturer of the vehicle or trailer and place of manufacture or remanufacture of the vehicle or trailer;
- Date of delivery of the vehicle or trailer;
- Purchaser name;
- Purchaser’s or agent’s signature, and name of the signator; and
- The name and telephone number of the purchaser.

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<sup>1</sup> Current subdivisions (b)(2)(A)3 and (b)(3)(A)3 of Regulation 1620.1 are awkwardly written, but those subdivisions and the text in Appendix A indicate that taxpayers are required to use the form affidavit in Appendix A to provide the information required by those subdivisions.

“The Department determined that it is reasonably necessary to propose to add text to the end of reformatted subdivision (c)(1) [of Regulation 1620.1] to prescribe and clarify the requirements for a properly completed affidavit for the RTC section 6388 exemption. This is because the Department determined that the amendments are reasonably necessary to ensure that Regulation 1620.1 only includes and clarifies the provisions of RTC section 6388.

“Amended subdivision (c)(1) requires a properly completed affidavit to be signed and dated by the purchaser and include:

- A description of the vehicle, including year, make and model, VIN or serial number, and unladen weight;
- The name, telephone number, and out-of-state address of the purchaser;
- The name of the dealer and the address of the dealer’s out-of-state location from which the vehicle was purchased;
- The name and address of the manufacturer or remanufacturer that delivered the vehicle to the purchaser;
- The date of delivery and date of removal of the vehicle from this state; and
- A statement that the purchaser is not a resident of California, the vehicle was purchased from the dealer’s specified out-of-state location for use outside this state, and was removed from this state within 30 days after the date of delivery of the vehicle to the purchaser.” (ISR, pp. 6-7.)

This is because all the information is currently required by RTC section 6388, subdivision (b)(2)(A)3 of Regulation 1620.1, or Appendix A to Regulation 1620.1, except for the out-of-state address of the purchaser and the Department needs that information to contact the purchaser in some cases.

“The Department [also] determined that it is reasonably necessary to propose that subdivision (c)(1) of Regulation 1620.15 incorporate and clarify the requirements for a properly completed affidavit for the RTC section 6388.5 exemption. Therefore, subdivision (c)(1) requires a properly completed affidavit to be signed and dated by the purchaser or purchaser’s agent, provided to the manufacturer, remanufacturer, or dealer that delivered the vehicle to the purchaser after the vehicle is removed from this state, and include:

- A description of the vehicle, including year, make and model, VIN or serial number, and unladen weight;
- The name, telephone number, and address of the purchaser;
- The name and address of the dealer from which the vehicle was purchased, and the address of the specific location from which the vehicle was purchased if it was different from the dealer’s address;

- The name of the manufacturer or remanufacturer that manufactured or remanufactured the vehicle and the state where the vehicle was manufactured or remanufactured;
- The name and address of the dealer, manufacturer, or remanufacturer that delivered the vehicle to the purchaser in this state;
- The date of delivery and date of removal of the vehicle from this state; and
- A statement that the vehicle was purchased from the dealer at the specified location for use exclusively outside this state, or exclusively in interstate or foreign commerce, or both, and that the vehicle was removed from this state within 30 days after the date of delivery of the vehicle to the purchaser if the vehicle was manufactured or remanufactured outside this state or 75 days after the date of delivery to the purchaser if the vehicle was manufactured or remanufactured in this state.” (ISR p. 10.)

This is because all the information is currently required by RTC section 6388.5, subdivision (b)(3)(A)3 of Regulation 1620.1, or Appendix A to Regulation 1620.1, except the address of the purchaser and the Department needs that information to contact the purchaser.

### **Subdivision (c)(2) of Both Regulations**

“The Department determined that it is reasonably necessary to propose to delete current subdivision (b)(2)(C) [of Regulation 1620.1], which refers to the affidavit in the regulation’s appendix, because the proposed amendments also deleted the form affidavit in the appendix.” (ISR, p. 6.) This is because it’s not necessary to require purchasers to use a Department-prescribed form as an affidavit for the RTC section 6388 exemption. “The Department also determined that it is reasonably necessary to propose to delete current subdivision (b)(3) [of Regulation 1620.1] and include similar provisions in proposed Regulation 1620.15 . . . because current subdivision (b)(3) incorporates and clarifies provisions in RTC section 6388.5, but not RTC section 6388.” (ISR, p. 6.) However, the Department did not determine that it was necessary to include the provisions of subdivision (b)(3)(B) of current Regulation 1620.1, which refer to the affidavit in Regulation 1620.1’s appendix, in Regulation 1620.15 because it’s not necessary to require purchasers to use a Department-prescribed form as an affidavit for the RTC section 6388.5 exemption.

In addition, “the Department determined that it is reasonably necessary to propose to add new subdivision (c)(2) to Regulation 1620.1 to provide that a properly completed form provided by the Department for use as an affidavit for the RTC section 6388 exemption will satisfy the requirements of [subdivisions (c)(1) and (d)] to avoid confusion about the Department’s forms.” (ISR, p. 7.) “The Department [also] determined that it is reasonably necessary to propose that subdivision (c)(2) of Regulation 1620.15 provide that a properly completed form provided by the Department for use as an affidavit for the RTC section 6388.5 exemption will satisfy the requirements of [subdivisions (c)(1) and (d)] to avoid confusion about the Department’s forms.” (ISR, pp. 10-11.) This is because, after this rulemaking is completed, the Department intends to provide separate RTC section 6388 and RTC section 6388.5 affidavit forms that respectively

incorporate the separate affidavit requirements prescribed by Regulations 1620.1 and 1620.15, pursuant to the form exemption in subdivision (c) of Government Code section 11340.9, that purchasers may use for their convenience, but are not required to use.