

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 18, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1621. *Sales to Common Carriers.*

The Sales and Use Tax Law (SUTL) (Rev. & Tax. Code (RTC), § 6001 et seq.) imposes sales tax on retailers and sales tax applies to retailers' gross receipts from the retail sale of tangible personal property in California, unless specifically exempted or excluded from tax. (RTC, §§ 6012, 6051.) Subdivision (a) of RTC section 6385, as amended by section 1 of chapter 293 of the Statutes of 2012 (Section 1), exempts from sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier. Subdivision (b) exempts from sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. Subdivision (c) exempts from the sales tax the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination.

California Code of Regulations (CCR), title 18, section (Regulation) 1621, Sales to Common Carriers, was adopted by the State Board of Equalization (Board) to implement, interpret, and make specific RTC section 6385. The administration and enforcement of the SUTL was transferred from the Board to the California Department of Tax and Fee Administration (Department) by Government Code (GC) section 15570.22, operative July 1, 2017, and the references to the Board in the SUTL, including RTC section 6385, and regulations implementing the SUTL, including Regulation 1621, are deemed to refer to the Department by GC section 15570.24.

Assembly Bill No. (AB) 543 (Stats. 2023, ch. 442) amended RTC section 6385, as amended by Section 1, to provide that it will remain effective only until January 1, 2029, instead of January 1, 2024, and be repealed as of that date. AB 543 amended RTC 6385, as amended by section 2 of chapter 293 of the Statutes of 2012 (Section 2), so it will become operative on January 1, 2029, instead of January 1, 2024. Also, the Section 2 version of RTC 6385 does not include the sales tax exemption included in subdivision (c) of the Section 1 version of RTC 6385, for the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state

for consumption in the conduct of its business as a common carrier after the first out-of-state destination. So, in the absence of further legislative action, that exemption will be repealed on January 1, 2029. AB 543 also replaced the references to the Board with references to the Department throughout both versions of RTC section 6385.

Accordingly, to make Regulation 1621 consistent with the amendments AB 543 made to RTC 6385, the Department proposes to change subdivision (b)(3)(C) of Regulation 1621 to specify that the exemption for the sale of fuel and petroleum products pursuant to RTC section 6385, subdivision (c), is effective through December 31, 2028, instead of December 31, 2023. The Department also proposes to replace any references to the “Board” with references to the “Department” throughout the regulation and the Appendix to the regulation. The Department also proposes to add GC sections 15570.22 and 15570.24 to the regulation’s authority note to make the regulation consistent with GC sections 15570.22 and 15570.24.

The proposed changes to Regulation 1621, including appendix, make the regulation consistent with RTC section 6385 and GC sections 15570.22 and 15570.24 and the Department has no discretion to adopt changes which differ in substance from the ones chosen. Therefore, the Department determined that the proposed changes are appropriate for processing under CCR, title 1, section (Rule) 100 because they do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision. In addition, the Department proposes to change the format of the reference to subdivision (c) of RTC section 6385 in subdivision (b)(3)(C) of Regulation 1621 to make it consistent with the format in the California Style Manual. The proposed change is also appropriate for processing under Rule 100 because it’s solely grammatical in nature.