

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1684.5, *Marketplace Sales*

A. Factual Basis

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 their retail sales of tangible personal property made within California, unless specifically exempted or excluded from tax. (RTC, § 6051.) When sales tax does not apply, the SUTL generally imposes use tax on tangible personal property purchased from a retailer for storage, use, or other consumption in California and stored, used, or otherwise consumed in the state. (RTC, §§ 6201, 6401.) California consumers are generally required to report and pay the use tax on their taxable purchases to the state. (RTC, § 6202.) However, every "retailer engaged in business in this state," as defined in RTC section 6203, is required to collect the use tax on their taxable sales to California consumers and retailers are liable for use taxes they are required to collect. (RTC, §§ 6203, subd. (a), 6204.)

In addition, every person engaged in the business of selling tangible personal property in this state of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax is generally required to register with the California Department of Tax and Fee Administration (CDTFA) for a seller's permit for each of its places of business in this state under RTC section 6066 in chapter 2 of the SUTL. (See Reg. 1699, Permits, for more information regarding seller's permits.) Also, retailers that are engaged in business in this state and selling tangible personal property for storage, use, or other consumption in California are required to register with the Department to collect use tax under RTC section 6226 in chapter 3 of the SUTL and CDTFA requires such retailers to register for a Certificate of Registration – Use Tax, unless they are also required to hold a seller's permit. (Reg. 1684, Collection of Use Tax by Retailers.)

The Marketplace Facilitator Act (MFA) (RTC, § 6040 et. seq) in the SUTL defines the terms "marketplace," "marketplace facilitator," "marketplace seller," and "related person." (RTC, §§ 6041, 6041.2.) Under the MFA, a marketplace facilitator is considered the seller and retailer for each sale facilitated through its marketplace for a marketplace seller for purposes of determining whether that marketplace facilitator is required to register with CDTFA for a seller's permit or Certificate of Registration-Use Tax under the SUTL. (RTC, § 6042.) Under the MFA, any marketplace facilitator that is registered or required to register with CDTFA for a seller's permit or Certificate of Registration - Use Tax that facilitates a retail sale of tangible personal property on behalf of a marketplace seller is the retailer selling or making the sale of the tangible personal

property sold through its marketplace for purposes of the SUTL (RTC, § 6043), which generally makes the marketplace facilitator the retailer required to pay any sales tax and collect any use tax due on the sale. Also, California Code of Regulations (CCR), title 18, section (Regulation) 1684.5, *Marketplace Sales*, implements, interprets, and makes specific the MFA for sales and use tax purposes, including incorporating the statutory definitions for the terms “marketplace facilitator” and “related person.”

[Senate Bill No. \(SB\) 1312](#) (Stats. 2022, ch. 228) added RTC section 6041.6 to provide that “Notwithstanding Section 6041, a person that is a vehicle rental broker is not a marketplace facilitator with respect to the facilitation, for a commission, fee, or other consideration, of a passenger vehicle rental on behalf of a rental company that is not a related person for purposes of [the MFA].” Also, RTC section 6041.6, subdivision (b) provides that:

- “Optional accessory” includes, but is not limited to, a child seat, a GPS navigation system, snow chains or other traction device, and a ski rack”;
- “Passenger vehicle” has the same meaning as defined in Section 465 of the Vehicle Code”;
- “Passenger vehicle rental” means any lease of a passenger vehicle, including any optional accessory, which is classified as a “continuing sale” and a “continuing purchase” in accordance with Sections 6006.1 and 6010.1”;
- “Rental company” means a person or entity in the business of leasing passenger vehicles to the public and that is registered with CDTFA under Chapter 2 (commencing with Section 6051) or Chapter 3 (commencing with Section 6201)”;
- “Vehicle rental broker” means a person that facilitates, for a commission, fee, or other consideration, passenger vehicle rentals through an online marketplace owned, operated, or controlled by the person or a related person.”

Accordingly, CDTFA proposes to change Regulation 1684.5 to make it consistent with RTC section 6041.6. The proposed changes add the statutory definitions for the terms “optional accessory,” “passenger vehicle,” “passenger vehicle rental,” “rental company,” and “vehicle rental broker” to Regulation 1684.5 in alphabetical order as subdivisions (a)(12), (14), (15), (20), and (22), and renumber subdivisions (a)(13), (16), (17), (18), (19), (21), and (23), accordingly. The proposed changes add a sentence after the definition of “vehicle rental broker,” which provides that “A person that is a vehicle rental broker is not a marketplace facilitator with respect to the facilitation, for a commission, fee, or other consideration, of a passenger vehicle rental on behalf of a rental company that is not a related person.” The proposed changes also added a reference to RTC section 6041.6 to Regulation 1684.5’s reference note.

The proposed changes to Regulation 1684.5 are appropriate for processing under CCR, title 1, section (Rule) 100 because they make the regulation consistent with the RTC 6041.6, they do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision, and CDTFA has no discretion to adopt a change which differs in substance from the one chosen.

B. Proposed Changes

The following Rule 100 changes are proposed to title 18 of the California Code of Regulations:

TEXT OF PROPOSED CHANGES

Regulation 1684.5, Marketplace Sales

(a) Definitions.

(1) through (11) Unchanged...

(12) "Optional accessory" includes, but is not limited to, a child seat, a GPS navigation system, snow chains or other traction device, and a ski rack.

(13) "Order taking" means the process of getting or obtaining a buyer's order for a marketplace seller's tangible personal property by telephone, fax, email or any other physical or electronic means, including, but not limited to, the customer including the items in a physical or virtual shopping cart at checkout.

(14) "Passenger vehicle" has the same meaning as defined in Section 465 of the Vehicle Code.

(15) "Passenger vehicle rental" means any lease of a passenger vehicle, including any optional accessory, which is classified as a "continuing sale" and a "continuing purchase" in accordance with Revenue and Taxation Code sections 6006.1 and 6010.1.

(16) "Payment order" means a written instruction or order to pay money signed by the person giving the instruction whether created in electronic or paper format.

(17) "Payment processing services" means any services related to charging a buyer the price to purchase a marketplace seller's tangible personal property, collecting, handling, or processing the payment, and transmitting any portion of the payment to the marketplace seller. Such services include, but are not limited to, providing a physical or virtual credit or debit card terminal, integrating payment processing with an online shopping cart at checkout, or otherwise directly or indirectly authorizing or providing the means for payment processing in any manner. Payment methods may include, but are not limited to, credit cards, debit cards, prepaid cards, stored value cards, Automated Clearing House (ACH) debits, and payment orders, whether accomplished through the use of software or otherwise.

(18) "Providing customer service or accepting or assisting with returns or exchanges" means providing any service related to a marketplace seller's tangible personal property to a potential buyer with or without the marketplace seller's authorization, including, but not limited to, answering a question about the property or the terms of its sale. It also means providing any service to a buyer related to their purchase of a marketplace seller's tangible personal property with or without the marketplace seller's authorization, including, but not limited to, answering a question about the property's use, assisting with fixing or trouble shooting a problem with the property, assisting the buyer with requesting a refund or credit for the property or requesting to

exchange the property for other property, or accepting the buyer's return of the property or exchanging the buyer's property for other property.

(1946) "Related person." For the purposes of this regulation, a person is related to another person if both persons are related to each other pursuant to section 267(b) of the Internal Revenue Code and the regulations thereunder.

(20) "Rental company" means a person or entity in the business of leasing passenger vehicles to the public and that is registered with the department under chapter 2 (commencing with section 6051) or chapter 3 (commencing with section 6201) of part 1 of division 2 of the Revenue and Taxation Code.

(2147) "Setting prices" means establishing a price or prices at which an item is offered for sale or sold to customers and includes establishing a price at which an item must be sold or a minimum or maximum price, below or above which an item cannot be sold.

(22) "Vehicle rental broker" means a person that facilitates, for a commission, fee, or other consideration, passenger vehicle rentals through an online marketplace owned, operated, or controlled by the person or a related person. A person that is a vehicle rental broker is not a marketplace facilitator with respect to the facilitation, for a commission, fee, or other consideration, of a passenger vehicle rental on behalf of a rental company that is not a related person.

(2348) "Virtual currency" is a digital representation of value that functions as a medium of exchange, a unit of account, or a store of value, but which does not have legal tender status in any jurisdiction. Virtual currency does not include retailer coupons or gift cards.

(b) through (e) Unchanged...

NOTE: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6041, 6041.1, 6041.5, 6041.6, 6042, 6043, 6044, 6045, 6046 and 6203, Revenue and Taxation Code.