Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

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

Section 1699.6. Use Tax Direct Payment Permits

Regulation 1699.6. Use Tax Direct Payment Permits.

~~(a) Foreward.~~(a) Definitions.

(1) "Department" means the California Department of Tax and Fee Administration.

(2) "Use tax direct payment permit" means a permit issued by the ~~board~~Department that allows a use tax direct payment permit holder to self-assess and pay state, local, and district use taxes under ~~Part~~part 1 (commencing with ~~Section~~section 6001), ~~Part~~part 1.5 (commencing with ~~Section~~section 7200), and, if applicable, ~~Part~~part 1.6 (commencing with ~~Section~~section 7251) and part 1.7 (commencing with section 7280) of the Revenue and Taxation Code directly to the ~~board~~Department.

(b) Application.

(1) The provisions of this regulation apply only to transactions subject to use tax.

(2) Digital Products. On and after January 1, 2027, a person required to pay use tax directly to the Department on purchases of digital products shall issue a use tax direct payment exemption certificate to a retailer of digital products transferred electronically or accessed remotely when the gross receipts or sales price from the sale or purchase exceeds, in the aggregate, the threshold amount as provided in Regulation 1600.1.

~~The provisions of this regulation apply only to transactions subject to use tax.~~

(~~b~~c)~~(1)~~ Application for Permit.

(1) Persons seeking to pay use taxes directly to the ~~board~~Department shall file an application for a use tax direct payment permit. Every use tax direct payment permit application shall include:

(A) The name under which the applicant transacts or intends to transact business or the name of the government entity;

(B) The number of the applicant's seller's permit or Use Tax Account;

(C) The business address and mailing address, if different;

(D) The location of the place or places of business, including addresses, where the applicant intends to make direct payment of use tax;

(E) The name, signature, title, telephone number, and email address of the person completing the application. The application shall 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 application; and

(F) One of the following certification statements:

(i) I have purchased or leased for my own use tangible personal property subject to use tax at a cost of five hundred thousand dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding this application for the permit. Tangible personal property purchased for my own use included both property subject to use tax and property exempt from use tax except that it does not include property purchased for resale. I certify that this information is correct to the best of my knowledge and belief.

(ii) I am a county, city, or city and county. I certify that this information is correct to the best of my knowledge and belief.

(iii) I will be required to hold a use tax direct payment permit under Revenue and Taxation Code section 6052 or 6201.55 to pay use tax directly to the California Department of Tax and Fee Administration because my purchases of digital products transferred electronically or accessed remotely will exceed the threshold amount as provided in Regulation 1600.1, Tax Liability Threshold for Digital Products. I certify that this information is correct to the best of my knowledge and belief.

(G) The following certification statement: I agree to self-assess and pay directly to the Department any use tax liability incurred pursuant to my use of a use tax direct payment permit.

(2) The application may be filed through the Department's online services portal via its website at www.cdtfa.ca.gov or by submitting the required information via email to PPDD-UTDPP-Requests@cdtfa.ca.gov. The applicant may use a form provided by the Department for use as an application.

~~An application for a use tax direct payment permit shall be made on Board of Equalization Form BOE-400-DP (no revision date). The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.~~

(~~2~~3) Within 30 days of receipt of an application for a use tax direct payment permit the ~~board~~Department shall inform the applicant in writing either that the application is complete and has been accepted or that the application is deficient and what additional specific information is required to make the application complete. Within 60 days of acceptance of a

complete application the ~~board~~Department shall approve or deny the issuance of a use tax direct payment permit and notify the applicant in writing of its decision.

~~(c) Requirements for Permit. Pursuant to an application, a use tax direct payment permit shall be issued to any person who meets all of the following conditions:~~

~~(1) The applicant agrees to self-assess and pay directly to the board any use tax liability incurred under this regulation.~~

~~(2) The applicant certifies to the board either of the following:~~

~~(A) The applicant is the purchaser for its own use or is the lessee of tangible personal property subject to the use tax at a cost of five hundred thousand dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit. Tangible personal property purchased for own use includes both property subject to use tax and property exempt from use tax except that it does not include property purchased for resale; or~~

~~(B) The applicant is a county, city, city and county, or redevelopment agency.~~

(d) Reporting of Local Use Tax. Any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the ~~board~~Department with each return the use taxes due under ~~Division~~division 2, ~~Part~~part 1 (commencing with ~~Section~~section 6001), ~~Part~~part 1.5 (commencing with ~~Section~~section 7200), and, if applicable, ~~Part~~part 1.6 (commencing with ~~Section~~section 7251) and part 1.7 (commencing with section 7280) of the Revenue and Taxation Code, for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report the local use tax component to the jurisdiction in which first use of the property, as defined in Revenue and Taxation Code section 6009, occurs ~~is located at the time the state imposed use tax must be reported~~. Temporary storage for the purpose of reporting local tax shall be disregarded. Any tax so reported may be redistributed in accordance with law.

(e) Returns. On or before the last day of the month following each quarterly period, a holder of a use tax direct payment permit shall file a return with the ~~board~~Department. The person required to file the return shall deliver it together with a remittance for the amount of tax due to the ~~board~~Department. The return shall show the aggregate sales price of tangible personal property purchased during the reporting period with respect to which the person filing the return has issued a use tax direct payment exemption certificate relieving the retailer of liability for reporting and paying use tax, or sales tax under Revenue and Taxation Code section 6052, and such other information as the ~~board~~Department may require.

(f) Exemption Certificates. The ~~board~~Department shall allow any holder of a use tax direct payment permit to issue a use tax direct payment exemption certificate to any registered retailer or seller subject to all of the following:

(1) The use tax direct payment exemption certificate shall be provided by the Department to the holder of the use tax direct payment permit~~in a form prescribed by the board~~, and will include~~shall be signed by, and bear~~ the name, address, and permit number of~~,~~ the holder of

the use tax direct payment permit. The holder of the use tax direct payment permit shall sign and date the certificate and include the retailer's name and a description of the property purchased.

(2) Once a use tax direct payment exemption certificate has been issued by a holder of a use tax direct payment permit, it shall remain effective until revised or withdrawn by the holder of the permit or until the retailer or seller has received written notice that the permit has been revoked by the ~~board~~Department.

(3) A use tax direct payment exemption certificate relieves a person selling property from the duty of collecting use tax only if taken timely and in good faith from a person who holds a use tax direct payment permit. A certificate will be considered timely if it is taken 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 delivery of the property to the purchaser, or prior to the digital product being transferred electronically or accessed remotely by the purchaser.

In the absence of evidence to the contrary, a seller will be presumed to have taken a use tax direct payment exemption certificate in good faith if the certificate otherwise appears to be valid on its face. However, on and after January 1, 2027, a use tax direct payment exemption certificate issued for purchases of digital products transferred electronically or accessed remotely is not accepted in good faith if the retailer has knowledge that the transaction is subject to sales tax and that the sale or purchase of digital products transferred electronically or accessed remotely by the retailer to the purchaser has not exceeded the threshold as provided in Regulation 1600.1.

Examples:

(A) Purchaser obtains a use tax direct payment permit because the sales price from its purchases of digital products transferred electronically from Retailer A exceeded the threshold as provided in Regulation 1600.1. Retailer B makes a sale of digital products transferred electronically to Purchaser that is subject to sales tax, but in the aggregate, and as reflected in Retailer B's sales records, the sale or purchase of such products from Retailer B to Purchaser has not exceeded the threshold amount. Retailer B may not accept a use tax direct payment exemption certificate from Purchaser in good faith and must report and pay the applicable sales tax.

(B) Purchaser obtains a use tax direct payment permit because it made purchases for its own use of tangible personal property subject to the use tax at a cost of more than five hundred thousand dollars ($500,000) during the calendar year immediately preceding the application for the permit. Retailer C makes a one-million-dollar ($1,000,000) sale of digital products transferred electronically to Purchaser that is subject to sales tax, but in the aggregate, and as reflected in Retailer C's sales records, the sale or purchase of such products from Retailer C to Purchaser has not exceeded the threshold amount. Retailer C may not accept a use tax direct payment exemption certificate from Purchaser in good faith, and must report and pay the applicable sales tax.

(C) Purchaser obtains a use tax direct payment permit because it made purchases for its own use of tangible personal property subject to the use tax at a cost of more than five hundred thousand dollars ($500,000) during the calendar year immediately preceding the application for the permit. Retailer D, an out-of-state retailer engaged in business in California, makes a one-million-dollar ($1,000,000) sale of digital products transferred electronically to Purchaser that is subject to use tax. Retailer D may accept a use tax direct payment exemption certificate from Purchaser in good faith, and is not responsible for collecting and remitting use tax on the sale.

(4) A purchaser who issues a use tax direct payment exemption certificate that is accepted in good faith by a seller or retailer of tangible personal property shall be the sole person liable for any sales tax and related interest and penalties with respect to any transaction that is subsequently determined by the ~~board~~Department to be subject to sales tax and not use tax. The local sales tax portion so determined shall be allocated to the city, county, or city and county~~, or redevelopment agency~~ to which the tax would have been allocated if it had been reported and paid by the retailer in accordance with ~~Part~~part 1.5 (commencing with Revenue and Taxation Code ~~Section~~section 7200). Such allocation shall be based on the place of sale as provided in Regulation 1802 and Regulation 1822.

(5) Any person who holds a use tax direct payment permit and gives a use tax direct payment exemption certificate to a seller or retailer shall, in addition to any applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

(g) Resale Transactions. A use tax direct payment exemption certificate shall not be substituted for a resale certificate, because the tax consequences are different. Resale certificates shall only be issued with respect to property which the purchaser intends to resell, and use tax direct payment exemption certificates shall be issued only for property purchased for use or other consumption. If a retailer makes sales under both a use tax direct payment exemption certificate and a resale certificate to the same customer, an audit trail must be maintained to identify which property is sold pursuant to each certificate.

(h) Revocation of Permit. The ~~board~~Department may revoke the use tax direct payment permit of any person who fails to purchase tangible personal property for own use of at least $500,000 per year. The permit shall remain valid for all transactions taking place prior to the date the permit is revoked.

(i) Successor Entities. A successor entity to a use tax direct payment permit holder shall qualify to obtain a use tax direct payment permit if the predecessor entity so qualified in the calendar year in which the succession occurred but must obtain its own permit.

~~(j) Operative Date. The provisions of this regulation apply only to purchases that occur on or after January 1, 1998.~~

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 6007, 6009, 6052, 6070, 6201.55 and 7051.3, Revenue and Taxation Code.