

**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**

SPECIFIC PURPOSE, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND
ANTICIPATED BENEFITS

Current Law

Revenue and Taxation Code Sections 6388 and 6388.5

Revenue and Taxation Code (RTC) sections 6388 and 6388.5 provide exemptions from sales and use tax for the sale or storage, use, or other consumption of certain vehicles.¹ The exemption provided by RTC section 6388 applies to a new or remanufactured truck, truck tractor, semitrailer, or trailer with an unladen weight of 6,000 pounds or more, or a new or remanufactured trailer coach or a new or remanufactured auxiliary dolly if:

- It is purchased from a dealer located outside this state for use without this state;
- Delivered by the manufacturer or remanufacturer to the purchaser within this state;
- The purchaser drives or moves the vehicle from the manufacturer's or remanufacturer's place of business in this state to any point outside this state within 30 days after the date of delivery; and
- The purchaser furnishes the following to the manufacturer or remanufacturer:
 - Written evidence of an out-of-state registration for the vehicle;
 - The purchaser's affidavit that they are not a resident of California and that they purchased the vehicle from a dealer at a specified location without the state for use outside this state; and
 - The purchaser's affidavit that the vehicle was moved or driven to a point outside this state within 30 days of the date of delivery of the vehicle to the purchaser.

Prior to the legislative changes discussed below, the exemption provided by RTC section 6388.5 applied to a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more that was:

1. Manufactured or remanufactured outside this state if:
 - It was purchased for use without this state;

¹ The administration of the Sales and Use Tax Law (RTC, § 6001 et seq.) was transferred from the State Board of Equalization (Board) to the California Department of Tax and Fee Administration (Department), operative July 1, 2017, by Assembly Bill No (AB) 102 (Stats. 2017, ch. 16) and references to the "Board" in the statutes discussed in this initial statement of reasons mean the "Department" pursuant to Government Code (GC) section 15570.24 and RTC section 20.

- Delivered by the manufacturer, remanufacturer, or dealer to the purchaser within this state; and
- Driven or moved by the purchaser to any point outside this state within 30 days from and after the date of delivery.

2. Manufactured or remanufactured in this state if:

- It was purchased for use without this state;
- Delivered by the manufacturer, remanufacturer, or dealer to the purchaser within this state; and
- Driven or moved by the purchaser to any point outside this state within 75 days from and after the date of delivery.

Also, the exemption provided by RTC section 6388.5 only applied if the purchaser or the purchaser's agent furnished the following to the manufacturer, remanufacturer, or dealer:

- Written evidence of an out-of-state license and registration for the vehicle. However, in cases where the vehicle was subject to the permanent trailer identification plate program (PTI Program) under Vehicle Code section 5014.1 and was used exclusively in interstate or foreign commerce, or both, written evidence of the purchaser's or lessee's United States Department of Transportation number or Single State Registration System (SSRS) filing could be substituted for the written evidence of an out-of-state license and registration.
- The purchaser's affidavit attesting that they purchased the vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate or foreign commerce, or both.
- The purchaser's affidavit that the vehicle has been moved or driven to a point outside this state within the appropriate period of either 30 days or 75 days of the date of delivery of the vehicle to the purchaser.

AB 321

Section 1 of 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. It also amended RTC section 6388.5 so it would become inoperative on January 1, 2024, and be repealed as of that date.

Section 2 of AB 321 also enacted a new version of RTC section 6388.5 (new RTC section 6388.5) to become operative on January 1, 2024, which was the same as RTC section 6388.5 read prior to the amendments made by section 1. Therefore, beginning January 1, 2024, the law would revert to the pre-AB 321 exemption and RTC section 6388.5 would only apply to a new or remanufactured trailer or semitrailer.

In addition, section 6 of AB 321 provided for the amendments made to RTC section 6388.5 by section 1 of AB 321 to become operative on January 1, 2020. So, in the absence of further legislation, the expanded provisions for trucks with an unladen weight of 6,000 pounds or more would only be operative January 1, 2020, through December 31, 2023.

Senate Bill No. 1473

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. Section 28 also added provisions to RTC section 6388.5 providing that, in cases where a vehicle is registered under the International Registration Plan (IRP) pursuant to Vehicle Code section 8052 and is used exclusively in interstate or foreign commerce, or both, written evidence of the purchaser’s or lessee’s United States Department of Transportation number or UCRS filing may be substituted for written evidence of an out-of-state license and registration. Also, section 33 of SB 1473 provided that SB 1473’s amendments to RTC section 6388.5 do not constitute a change in, but are declaratory of, existing law.

In addition, section 29 of SB 1473 replaced SSRS with UCRS in new RTC section 6388.5. However, it did not add provisions to new RTC section 6388.5 for vehicles registered under the IRP. So, in the absence of further legislation, the provisions for vehicles registered under the IRP in current RTC section 6388.5 would only be operative through December 31, 2023.

AB 314

Section 1 of AB 314 (Stats. 2023, ch. 427) 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. It also amended RTC section 6388.5 so it would become inoperative on January 1, 2029, and be repealed as of that date.

Section 2 of AB 314 also amended new RTC section 6388.5 so it would become operative on January 1, 2029. Therefore, beginning January 1, 2029, the law will revert to the pre-AB 321 exemption. RTC section 6388.5 will only apply to a new or remanufactured trailer or semitrailer. Also, the provisions for vehicles registered under the IRP will no longer apply.

In addition, section 5 of AB 314 provided for the amendments made to RTC section 6388.5 by section 1 of AB 314 to become operative immediately. So, in the absence of further legislation, the expanded exemption for trucks with an unladen weight of 6,000 pounds or more will be operative January 1, 2020, through December 31, 2028, and the expanded exemption for used trailers and semitrailers with an unladen weight of 6,000 pounds or more will be operative October 8, 2023, through December 31, 2028.

Regulation 1620.1

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, incorporates and clarifies the provisions of RTC sections 6388 and 6388.5 prior to the amendments made to RTC section 6388.5 by AB 321, SB 1473, and AB 314. The regulation’s appendix also includes a sample affidavit that purchasers, including lessors, can use to satisfy both statutes’ affidavit requirements, in accordance with RTC section 6388.3. The provisions of RTC section 6388 were not amended by the recent legislation discussed above.

Mobile Transportation Equipment

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. 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." Therefore, 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 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.

Amendments to Regulation 1620.1 and New Regulation 1620.15

The Department determined that there are issues (or problems within the meaning of GC, § 11346.2, subd. (b)) because Regulation 1620.1 is not consistent with the amendments AB 321 and SB 1473 made to RTC section 6388.5. The Department considered solely amending Regulation 1620.1 to incorporate the amendments made to RTC section 6388.5 for the specific purpose of addressing those issues (or problems). However, the way the regulation is currently written and differences between RTC sections 6388 and 6388.5, including differences in the vehicles to which their exemptions apply, made it difficult to solely update Regulation 1620.1. Therefore, for the specific purpose of addressing the issues (or problems), the Department determined that it is reasonably necessary to propose to amend Regulation 1620.1 so that it only includes and clarifies the provisions of RTC section 6388. The Department also determined that it is reasonably necessary to propose to adopt new Regulation 1620.15 to include and clarify the provisions of RTC section 6388.5, as amended by AB 321 and SB 1473, in the same manner as amended Regulation 1620.1 incorporates and clarifies RTC section 6388.

Subsequently, the Department prepared drafts of the proposed amendments to Regulation 1620.1 and new Regulation 1620.15, which are discussed below. The Department distributed the drafts to the interested parties with a discussion paper dated May 18, 2023, explaining the proposed amendments and new regulation. The Department also conducted an interested parties meeting on June 8, 2023, to discuss the proposed amendments and new regulation. However, no interested parties commented on the drafts of the proposed amendments or new regulation.

Amendments to Regulation 1620.1

The Department determined that it is reasonably necessary to propose to change the title of Regulation 1620.1 to “Sales of Certain Vehicles to Non-Residents for Use Out-of-State.” This is because the Department determined that the exemption provided by RTC section 6388 only applies to sales of certain vehicles to non-residents for use outside this state and the provisions regarding the exemption provided by RTC section 6388.5 are being removed from the regulation.

The Department determined that it is reasonably necessary to propose to add periods to the ends of the titles of subdivisions (a) and (b) of Regulation 1620.1 to make their punctuation consistent with the punctuation of the titles of subdivision (c) and (d). The Department determined that it is reasonably necessary to propose to insert “The following terms have the following meanings for purposes of this regulation:” before the definitions in subdivision (a) of Regulation 1620.1 to limit the application of all the definitions. The Department determined that it is reasonably necessary to propose to delete subdivisions (a)(1), (2), and (6) from Regulation 1620.1, which define “Permanent Trailer Identification (PTI) Program,” “Purchaser’s Agent,” and “United States Department of Transportation (USDOT) Number,” because those terms are used in RTC section 6388.5, but not RTC section 6388. Also, the terms “permanent trailer identification plate program or PTI plate program,” “purchaser’s agent,” and “USDOT number” are being defined in new Regulation 1620.15 (discussed below).

The Department determined that it is reasonably necessary to propose to add a new subdivision (a)(1) to Regulation 1620.1 to define the term “dealer” because that term is used in RTC section 6388, but not defined in the statute. New subdivision (a)(1) generally defines “dealer” to mean a person that is engaged wholly or in part in the business of selling or leasing vehicles, whether or not such vehicles are owned by the person, because the Department determined that RTC section 6388 does not require the term “dealer” to be given a specific or narrow meaning. The Department also determined that it is reasonably necessary to propose to add a new subdivision (a)(2) to Regulation 1620.1 to define the term “Department” to mean the California Department of Tax and Fee Administration because the term “Department” is used in the proposed amendments to Regulation 1620.1.

The Department determined that it is reasonably necessary to propose to amend the definition of “remanufacturer” in subdivision (a)(3) of Regulation 1620.1 to clarify that a remanufacturer is a person that is licensed as a remanufacturer as defined in Vehicle Code section 507.8 by the Department of Motor Vehicles (DMV) or licensed as a remanufacturer by the appropriate governmental agency in another state. The Department determined that it is reasonably necessary to propose to amend the definition of “remanufactured vehicle” in subdivision (a)(3) to clarify that it has the same meaning as set forth in Vehicle Code section 507.5 and that a vehicle constructed in another state will qualify as a remanufactured vehicle if it was constructed by a person licensed as a remanufacturer by the appropriate governmental agency in that state and the vehicle meets that state’s requirements to be a remanufactured vehicle. This is because RTC section 6388 does not define either term, and the Department determined that an out-of-state remanufacturer may not be required to be licensed by the DMV as a remanufacturer and a vehicle that is remanufactured in another state may have to satisfy different requirements to qualify as a remanufactured vehicle in that state. The Department also determined that it is reasonably necessary to propose to amend the definition of “remanufactured vehicle” to clarify

that the term “used vehicle” means a used vehicle as defined in Vehicle Code section 665 to avoid confusion.

The Department determined that it is reasonably necessary to propose to delete subdivisions (a)(4) and (7) from Regulation 1620.1, which define the terms “Single State Registration System (SSRS)” and “United States – Federal Maritime Commission (FMC) Number,” because neither term is used in RTC sections 6388. The Department determined that it is reasonably necessary to propose to amend the definition of the term “vehicle” in subdivision (a)(8) so the term only includes a new or remanufactured truck, truck tractor, semitrailer, or trailer with an unladen weight of 6,000 pounds or more, or a new or remanufactured trailer coach, or auxiliary dolly because the exemption provided by RTC section 6388 is limited to those vehicles. The Department determined that it is reasonably necessary to propose to delete subdivision (a)(5), which defines the term “trailer,” and delete the other references to trailers from the regulation since trailers are included in the amended definition of “vehicle.” The Department determined that it is reasonably necessary to propose to renumber subdivision (a)(8) as subdivision (a)(4) after the deletion of subdivisions (a)(4) through (7).

The Department determined that it is reasonably necessary to propose to combine current subdivisions (b)(1) and (b)(2)(A) of Regulation 1620.1, renumber the combined text as subdivision (b), and renumber current subdivisions (b)(2)(A)1 through 4 as subdivisions (b)(1) through (4). This is because the amendments clarify that tax generally applies to vehicles, clarify that tax does not apply when the requirements for the RTC section 6388 exemption are satisfied, and incorporate and clarify the statutory requirements for the RTC section 6388 exemption.

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 by subdivision (c) (discussed below) and otherwise appears to be valid on its face, and delete the third paragraph in current subdivision (c), which provides a similar presumption. The Department determined that it is reasonably necessary to propose to delete the requirements for a valid affidavit from current subdivision (b)(2)(A)3 and include clarified requirements for a properly completed affidavit in subdivision (c), which is called “Affidavit.” The Department determined that it is reasonably necessary to propose to delete current subdivision (b)(2)(B) because its presumption is inconsistent with RTC section 6388. The Department determined that it is reasonably necessary to propose to delete current subdivision (b)(2)(C), which refers to the affidavit in the regulation’s appendix, because the proposed amendments also deleted the affidavit in the appendix (discussed below). The Department also determined that it is reasonably necessary to propose to delete current subdivision (b)(3) and include similar provisions in proposed Regulation 1620.15 (discussed below) because current subdivision (b)(3) incorporates and clarifies provisions in RTC section 6388.5, but not RTC section 6388.

The Department determined that it is reasonably necessary to propose to reformat the first paragraph in subdivision (c) of Regulation 1620.1 as subdivision (c)(1) and delete all the text from reformatted subdivision (c)(1) related to the provisions of RTC section 6388.5. In addition, the Department determined that it is reasonably necessary to propose to add text to the end of reformatted subdivision (c)(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.

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 subdivision (c)(1) to avoid confusion about the Department's forms. The Department also determined that it is reasonably necessary to propose to reformat the second paragraph in current subdivision (c) as subdivision (c)(3), revise it so it only incorporates and clarifies the provisions of RTC section 6388 and it does not incorporate or clarify the provisions of RTC section 6388.5, and revise it to make it consistent with the requirements in new subdivision (c)(1)(A). The Department determined that the amendments to subdivision (c) are reasonably necessary to ensure that Regulation 1620.1 only includes and clarifies the provisions of RTC section 6388.

The Department determined that it is reasonably necessary to propose to amend subdivision (d) of Regulation 1620.1 to clarify that the sale of a vehicle to a lessor qualifies for the RTC section 6388 exemption provided the sale and subsequent use of the vehicle meets the requirements in subdivision (b). The Department determined that it is reasonably necessary to propose to amend subdivision (d) of Regulation 1620.1 to require a lessor to provide the name and address of the lessee on the affidavit required by subdivision (b) if the documentation provided pursuant to subdivision (b)(4) shows that the vehicle is registered in the lessee's name because it helps connect the affidavit for a vehicle with the evidence of out-of-state registration for that vehicle. The Department also determined that it is reasonably necessary to propose to delete all the text that incorporates or clarifies the provisions of RTC section 6388.5 and the non-statutory requirements regarding lessees from subdivision (d) to make the subdivision consistent with RTC section 6388.

The Department determined that it is reasonably necessary to propose to amend subdivision (e) of Regulation 1620.1 so that it only requires purchasers to maintain records documenting that they purchased a qualifying vehicle, removed it from the state within 30 days after the date of delivery, and it was used outside the state, and provide those records to the Department upon request. The Department determined that it is also reasonably necessary to propose to delete all the text related to the provisions of RTC section 6388.5 from subdivision (e). This is because the Department determined that the amendments to subdivision (e) are reasonably necessary to make the subdivision consistent with RTC section 6388.

In addition, revised subdivision (c)(1) of Regulation 1620.1 prescribes the requirements for a properly completed affidavit and revised subdivision (c)(2) provides 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 subdivision (c)(1). Therefore, the Department determined that it is reasonably necessary to propose to delete the regulation's Appendix, which contains a form for use as an affidavit for the RTC section 6388 and 6388.5 exemptions, because the Department determined that there is no longer any need to include a form in the regulation for use as an affidavit for the RTC section 6388 exemption.

Finally, the Department determined that it is reasonably necessary to propose to delete the references to RTC sections 6388.5 and 6421 from Regulation 1620.1's reference note because those sections are not implemented, interpreted, or made specific by the amended regulation. The Department also determined that it is reasonably necessary to propose to add references to RTC sections 7053 and 7054 to Regulation 1620.1's reference note because those sections are implemented, interpreted, and made specific by the record requirements in subdivision (e).

New Regulation 1620.15

The draft of new Regulation 1620.15 included and clarified the provisions of RTC section 6388.5 as amended by AB 321 and SB 1473. The Department determined that it is reasonably necessary to propose to name the regulation "Sales of Vehicles for Use Exclusively Out-of-State or in Interstate or Foreign Commerce" because the exemption provided by RTC section 6388.5 only applies to sales of vehicles for use exclusively outside this state, or exclusively in interstate or foreign commerce, or both.

The Department determined that it is reasonably necessary to propose to include definitions for the terms used within Regulation 1620.15 in subdivision (a) of the regulation. The Department determined that it is reasonably necessary to propose to include definitions for the terms "dealer," "Department," "International Registration Plan," "purchaser," and "Unified Carrier Registration System filing" in subdivisions (a)(1), (2), (3), (5), and (8) because all those terms, except "Department," are used in RTC section 6388.5, and "Department" is used throughout Regulation 1620.15. The Department determined that it is reasonably necessary to propose to include the same general definition of the term "dealer" included in the amendments to Regulation 1620.1. The Department determined that it is reasonably necessary to propose to define the term "International Registration Plan" or "IRP" to mean the International Registration Plan Agreement developed by the American Association of Motor Vehicle Administrators referred to in Vehicle Code section 8052 because the Department determined that it is the plan referred to in RTC section 6388.5. The Department determined that it is reasonably necessary to

propose to include a new general definition for the term “purchaser” because the Department determined that RTC section 6388.5 does not require that term to be given a special or specific meaning. The Department also determined that it is reasonably necessary to propose to define the term “Unified Carrier Registration System filing” or “UCRS filing” to mean a person’s application for registration in the online federal registration system being implemented by the Federal Motor Carrier Safety Administration (FMCSA) in the United States Department of Transportation (USDOT) because the Department determined that it was the system established and named the “Unified Carrier Registration System” pursuant to section 13908 of title 49 of the United States Code.

The Department determined that it is reasonably necessary to propose to include definitions for the terms “permanent trailer identification plate program” or “PTI plate program,” “purchaser’s agent,” “remanufacturer,” “remanufactured vehicle,” and “USDOT number” in subdivisions (a)(4), (6), (7), and (9) of Regulation 1620.15 because those terms are 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. The proposed definition provides that “permanent trailer identification plate program” or “PTI plate program” means the registration program for assigning permanent trailer identification certificates and permanent trailer identification plates to certain trailers, pursuant to Vehicle Code section 5014.1, administered by the Department of Motor Vehicles (DMV). The Department determined that it is reasonably necessary to propose to define “purchaser’s agent” based upon the definition of “Purchaser’s Agent” in current Regulation 1620.1 and 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. The Department determined that it is reasonably necessary to propose to define “remanufacturer” and “remanufactured vehicle” the same way as those terms are defined in the proposed amendments to Regulation 1620.1 because nothing indicates that the Legislature intended for those terms to have different meanings in RTC sections 6388 and 6388.5. The Department determined that it is reasonably necessary to propose to define “USDOT number” based on the definition of United States Department of Transportation (USDOT) Number in current Regulation 1620.1, but revise it to more closely match the FMCSA’s description of a USDOT number at <https://www.fmcsa.dot.gov/registration/do-i-need-usdot-number>.

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. The Department also determined that it was reasonably necessary to propose to divide the definition of vehicle into two subdivisions, (A) and (B), that apply to purchases in different periods. This is because the expanded exemption for new, used, or remanufactured trucks that was added to current RTC section 6388.5 by AB 321 became operative on January 1, 2020, and would have expired on January 1, 2024, when current RTC would have been repealed by its own terms, in the absence of further legislation. Therefore, subdivision (a)(10)(A) provided that for purchases prior to January 1, 2020, and on or after January 1, 2024, the term “vehicle” means a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more. Subdivision (a)(10)(B) provided that for purchases on January 1, 2020, through December 31,

2023, the term “vehicle” means a new, used, or remanufactured truck or a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more.

The Department determined that it is reasonably necessary to propose that subdivision (b) of Regulation 1620.15 clarify that tax generally applies to vehicles, clarify that tax does not apply when the requirements for the RTC section 6388.5 exemption are satisfied, and incorporate and clarify the statutory requirements for the RTC section 6388.5 exemption, similar to revised subdivision (b) of Regulation 1620.1. Therefore, subdivision (b)(1) incorporates the statutory requirement to remove a vehicle to a point outside this state within 30 days or 75 days after the date of delivery. Subdivision (b)(2) incorporates the statutory requirement to provide a copy of the out-of-state license and registration for the vehicle or written evidence of the purchaser’s or lessee’s USDOT number or UCRS filing, when permitted, to the manufacturer, remanufacturer, or dealer. Subdivision (b)(3) incorporates the statutory requirement to provide the purchaser’s affidavit to the manufacturer, remanufacturer, or dealer. Subdivisions (b)(2) and (3) clarify that the documents must be provided to the delivering manufacturer, remanufacturer, or dealer. Subdivision (b)(3) also requires an affidavit to be accepted in good faith and provides a presumption that an affidavit was accepted in good faith if the affidavit contains the essential elements required by subdivision (c) and appears to be valid on its face, the same as revised renumbered subdivision (b)(3) of Regulation 1620.1.

The Department 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.

The Department 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 subdivision (c)(1) to avoid confusion about the Department's forms. The Department also determined that it is reasonably necessary to propose that subdivision (c)(3) provide procedures that allow a purchaser or purchaser's agent to provide a single affidavit listing multiple vehicles that were purchased from the same location in the same transaction, which are the same as the procedures provided in revised reformatted subdivision (c)(3) of Regulation 1620.1.

The Department determined that it is reasonably necessary to propose that subdivision (d) of Regulation 1620.15 clarify that the sale of a vehicle to a lessor qualifies for the RTC section 6388.5 exemption provided that the sale and subsequent use of the vehicle meet the requirements in subdivision (b), similar to revised subdivision (d) of Regulation 1620.1. The Department also determined that it is reasonably necessary to propose that subdivision (d) require a lessor to provide the name and address of the lessee on the affidavit required by subdivision (b)(3) if the documentation provided pursuant to subdivision (b)(2) shows that the vehicle is registered in the lessee's name, assigns or confirms the lessee's USDOT number, or includes a copy of the lessee's current UCRS filing. This is because it helps connect the affidavit for a vehicle with the documentation provided pursuant to subdivision (b)(2) for that vehicle.

Finally, the Department determined that it is reasonably necessary to propose that subdivision (e) of Regulation 1620.15 require purchasers to maintain records documenting that they purchased a qualifying vehicle, removed it from the state within either 30 days or 75 days after the date of delivery, and it was used exclusively out-of-state, or exclusively in interstate or foreign commerce, or both, and provide those records to the Department upon request.

Changes to New Regulation 1620.15

The Department subsequently determined that there was an issue (or problem) with its draft of new Regulation 1620.15 because it was not consistent with the amendments AB 314 made to RTC section 6388.5. Therefore, the Department determined that it is reasonably necessary to propose to revise subdivisions (a)(10) and (b)(2)(B) of new Regulation 1620.15 for the specific purpose of addressing that issue (or problem).

The Department determined that it is reasonably necessary to propose to reformat subdivisions (a)(10)(A) and (B), as subdivision (a)(10)(A)(i) and (ii). The Department determined that it is reasonably necessary to propose to revise reformatted subdivision (a)(10)(A)(i) to provide that for purchases prior to January 1, 2020, and on and after January 1, 2029, "vehicle" means a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more. The Department determined that it is reasonably necessary to propose to revise reformatted subdivision (a)(10)(A)(ii) to provide that for purchases on January 1, 2020, through October 7, 2023, "vehicle" means a new, used, or remanufactured truck or a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more. The Department also determined that it is reasonably necessary to propose to add subdivision (a)(10)(A)(iii) to provide that for purchases on October 8, 2023, through December 31, 2028, "vehicle" means 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. This is because AB 314 expanded the exemption provided by current RTC section 6388.5, so it applies to a "used" trailer or semitrailer with an unladen weight

of 6,000 pounds or more, beginning on October 8, 2023. It also amended current RTC section 6388.5 so it will become inoperative on January 1, 2029, and be repealed as of that date.

The Department determined that it is reasonably necessary to revise subdivision (b)(2)(B) to clarify that its provisions apply to a vehicle purchased on or before December 31, 2028. This is because AB 314 amended current RTC section 6388.5 so it will become inoperative on January 1, 2029, and its provisions for providing written evidence of the purchaser's or lessee's USDOT number or UCRS filing will be repealed as of that date.

Changes to the Definition of "Vehicle" in Both Regulations

Finally, 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 taxpayers 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 by Regulation 1661. 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).

Determinations

The Department has determined that the adoption of the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 is reasonably necessary for the specific purpose of addressing the issues (or problems) discussed above by:

- Amending Regulation 1620.1 so that it only includes and clarifies the provisions of RTC section 6388; and
- Adopting new Regulation 1620.15 to include and clarify the provisions of RTC section 6388.5, as amended by AB 321, SB 1473, and AB 314, in the same manner as amended Regulation 1620.1 incorporates and clarifies RTC section 6388.

The Department anticipates that the adoption of the amendments to Regulation 1620.1 and new Regulation 1620.15 will promote fairness and benefit the Department and taxpayers by clarifying the exemptions provided by RTC section 6388 and 6388.5. In addition, the Department has determined that the adoption of the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 is not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to the proposed amendments to Regulation 1620.1 or new Regulation 1620.15.

DOCUMENTS RELIED UPON

The Department relied upon Department staff's understanding of the Sales and Use Tax Law in proposing to adopt the amendments to Regulation 1620.1 and new Regulation 1620.15 discussed above. The Department did not rely upon any technical, theoretical, or empirical study, report or similar document.

ALTERNATIVES CONSIDERED

The Department considered whether to begin the regular rulemaking process to adopt the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 at this time or, alternatively, whether to take no action at this time. The Department decided to begin the regular rulemaking process to adopt the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 because the Department determined that the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 are reasonably necessary for the reasons set forth above.

The Department did not reject any reasonable alternative to the proposed amendments to Regulation 1620.1 or new Regulation 1620.15, including any reasonable alternative that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative to the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 has been identified and brought to the Department's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GC SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 on California businesses and individuals. The Department determined that the proposed amendments revise Regulation 1620.1 so that it only includes and clarifies the provisions of RTC section 6388. The Department determined that new Regulation 1620.15 includes and clarifies the provisions of RTC section 6388.5. The Department also determined that businesses and individuals will not incur any costs to comply with the provisions of amended Regulation 1620.1 and new Regulation 1620.15 that they would not otherwise incur to comply with the current provisions of RTC sections 6388 and 6388.5, as currently implemented, interpreted, and made specific by Regulation 1620.1. The Department also determined that businesses that sell vehicles and businesses and individuals that purchase vehicles that qualify for the exemptions provided by RTC section 6388 and 6388.5 will generally benefit from the clarifications provided by the proposed amendments to Regulation 1620.1 and new Regulation 1620.15, but they will not receive a monetary benefit.

As a result, the Department determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000. The Department also prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and the Department determined in the economic impact assessment that the adoption of the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the State of California and will not affect the expansion of businesses currently doing business within the State of California.

Furthermore, Regulation 1620.1 and new Regulation 1620.15 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Department determined that the adoption of the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Department's initial determination that the adoption of the proposed amendments to Regulation 1620.1 and new Regulation 1620.15 discussed above will not have a significant adverse economic impact on business.