

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

Statement of Explanation

Title 18. Public Revenues

Regulation 1699, *Permits*

A. Factual Basis

Subdivision (k) of California Code of Regulations, title 18, section (Regulation) 1699, *Permits*, interprets and implements Revenue and Taxation Code (RTC) section 6225, and provides that a “qualified purchaser” is required to register with and report and pay specified use tax to the California Department of Tax and Fee Administration (Department). Subdivision (k)(4) of Regulation 1699 provides that one of these conditions to be a qualified purchaser is that the person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.

Assembly Bill No. (AB) 1097 (Stats. 2023, ch. 355) amended the definition of “qualified purchaser,” in RTC section 6225 effective January 1, 2024, and added subdivision (e) to RTC section 6225 to provide that section 6225 shall remain in effect only until January 1, 2029, and as of that date is repealed. AB 1097 also adds new RTC section 6225, operative January 1, 2029, to define “qualified purchaser” the same way it was defined prior to the amendments.

Prior to the amendments by AB 1097, a requirement to be a “qualified purchaser” was that the person receives at least \$100,000 in gross receipts from business operations per calendar year. AB 1097 amended RTC section 6225, subdivision (c)(4), to instead require that the person make more than \$10,000 in purchases subject to use tax per calendar year and the use tax has not otherwise been paid on those purchases to a retailer engaged in business in this state or to a retailer who is authorized by the Department, under the rules and regulations as it may prescribe, to collect the tax.

Accordingly, the Department proposes to change Regulation 1699, subdivision (k)(4), to specify that the condition that the person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year, applies prior to January 1, 2024, and on and after January 1, 2029. The Department further proposes to add a second paragraph to subdivision (k)(4), to specify that from January 1, 2024, through December 31, 2028, the condition is that the person makes more than ten thousand dollars (\$10,000) in purchases subject to use tax per calendar year and that tax has not otherwise been paid on those purchases to a retailer engaged in business in this state or authorized by the Department to collect the tax.

In addition, the administration and enforcement of the Sales and Use Tax Law (RTC, § 6001 et seq.) was transferred from the State Board of Equalization (Board) to the Department by Government Code (GC) section 15570.22, operative July 1, 2017, and the references to the Board in the Sales and Use Tax Law and Regulation 1699 mean the Department pursuant to GC section 15570.24 and RTC section 20. Therefore, the Department proposes to replace the terms “Board” and “Board of Equalization” with “Department” throughout Regulation 1699, including Appendix A, which provides a sample certification for concessionaires. Accordingly, the

Department also proposes to add GC sections 15570.22 and 15570.24 to the authority note citation.

Finally, the Department proposes to replace gendered pronouns with gender-neutral pronouns in subdivisions (a), (d), (f), and Appendix A of Regulation 1699 by changing every occurrence of “his or her,” “him or her,” and “he or she” to “their” and “them,” and “they,” respectively, with three exceptions. In the first paragraph of subdivision (d), the Department proposes to replace “his or her” with “the retailer” to maintain a clear singular noun for consistency with the bullet points following. In the second paragraph of subdivision (d), the Department proposes to replace the first instance of “his or her” before “premises” with “the prime retailer’s” for clarity regarding the singular qualifier for “premises.” In the last paragraph of subdivision (d), the Department proposes to delete “himself or herself” without a replacement, as the sentence does not necessitate one to retain its meaning clearly. These changes are in accordance with Assembly Concurrent Resolution (ACR) No. 260 (Stats. 2018, ch. 190), which encourages state agencies to use gender-neutral pronouns and avoid the use of gendered pronouns in regulations.

The proposed changes to Regulation 1699 are appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because the proposed changes make the regulation consistent with the amendments made by AB 1097 to RTC section 6225, with GC section 15570.24 and RTC section 20, they make non-substantive changes to replace gendered pronouns with gender-neutral pronouns or clarifying nouns in accordance with ACR No. 260, and they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

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

TEXT OF PROPOSED CHANGES

Regulation 1699. Permits.

(a) Seller’s Permit In General--Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller’s permit for each place of business in this state at which transactions relating to sales are customarily negotiated with ~~his or her~~their customers. For example, a seller's permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale. However, permits are required for warehouses or other places at which merchandise is stored and from which retail sales of such merchandise negotiated out-of-state are delivered or fulfilled.

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one seller’s permit is required. For example, a service station operator

having a restaurant in addition to the station on the same premises requires only one seller's permit for both activities.

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) Concessionaires. For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer's own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is not operating as a concessionaire are that ~~he or she~~the retailer:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.
- Establishes ~~his or her~~their own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is not liable for any tax liabilities of the retailer operating on ~~his or her~~the prime retailer's premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of ~~his or her~~their obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a seller's permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that ~~he or she holds~~they hold a seller's permit for that location with the ~~Board~~Department. The following essential elements must be included in the statement in order to relieve the prime retailer of ~~his or her~~their liability for any unreported tax liabilities incurred by the concessionaire:

- The seller's permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location).
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of ~~his or her~~their liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Appendix A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on ~~his or her~~their retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer ~~himself or herself, he or she is,~~they are not liable for any sales or use taxes owed by ~~his or her~~their lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate ~~his or her~~their business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owned by the lessee or grantee.

(e) . . . (unchanged).

(f) Inactive Permits. A seller's permit may only be held by a person actively engaged in business as a seller of tangible personal property. The ~~Board~~Department may revoke a seller's permit where it finds that the person holding the permit is not actively engaged in business as a seller of tangible personal property.

(1) Any person who holds a seller's permit but is not actively engaged in business as a seller of tangible personal property shall promptly surrender the permit by notifying the ~~Board~~Department to cancel it.

(2) Except as explained in paragraph (3) of this subdivision, a person holding a seller's permit will be held liable for any taxes, interest, and penalties incurred, through the date on which the ~~Board~~Department is notified to cancel the permit, by any other person who, with the permit holder's actual or constructive knowledge, uses the permit in any way. For example, a permit holder may be held liable for tax, interest, and penalty actually incurred by ~~his or her~~their transferee where the transferee displays the permit in ~~his or her~~their place of business, or uses the permit number on a resale certificate, or files sales and use tax returns under the permit number. The permit holder has the burden of establishing that the ~~Board~~Department received notice to cancel the permit.

(A) The seller's permit holder may notify the ~~Board~~Department by delivering the actual seller's permit to the ~~Board~~Department with the clear request that the permit be canceled. Where the reason for cancellation is that the permit holder transferred the business, the permit holder should identify the name and address of the transferee at the time the permit is surrendered to the ~~Board~~Department. The permit holder may also notify the ~~Board~~Department by delivering a written statement or email to the ~~Board~~Department that the permit holder has transferred or otherwise ceased the business, or will do so at a specified time, and requesting that the permit be canceled. The statement should identify the name and address of the transferee, if any. The permit holder may also provide this notice to the ~~Board~~Department orally, but it will be presumed that such notice was not provided unless the ~~Board~~Department's records reflect that the permit holder clearly notified the ~~Board~~Department of the cessation or transfer of the business for which the permit was held.

(B) The BoardDepartment will also be regarded as having received notice of cancellation of the seller's permit, and the permit holder will be excused from liability for the tax, interest, and penalty incurred by another person using the permit, as of the date the BoardDepartment receives actual notice of transfer of the business for which the permit was issued. It will be presumed such notice was not received by the BoardDepartment unless the BoardDepartment's records reflect that the BoardDepartment received a clear notice of the cessation or transfer of the business for which the permit was held. For example, the BoardDepartment's receipt of an application for a seller's permit from the transferee constitutes sufficient notice if it contains adequate information to show that the application pertains to the same business for which the permit was held. Notice to another state agency of a transfer or cessation of a business does not constitute notice to the BoardDepartment. Rather, the BoardDepartment must itself receive actual notice of the transfer or cessation of business.

(3) Where the seller's permit holder does not establish that the BoardDepartment received actual notice of the transfer of the business for which the permit was held and is thus liable for the taxes, interest, and penalties incurred by another person using that permit, that liability is limited to the quarter in which the business was transferred and the three subsequent quarters, and shall not include any penalties imposed on the other person for fraud or intent to evade the tax. However, these limitations (liability only for the quarter in which the business was transferred and the three subsequent quarters and no fraud or intent to evade penalty) do not apply where, after the transfer of the business, 80 percent or more of the real or ultimate ownership of that business is held by the permit holder. For these purposes, stockholders, bondholders, partners, or other persons holding an ownership interest in an entity are regarded as having the "real or ultimate ownership" of that entity.

(g) Non-issuance or Revocation of a Seller's Permit.

(1) The BoardDepartment may refuse to issue a seller's permit to any person submitting an application for a seller's permit if the person has an outstanding final liability with the BoardDepartment for any amount under the Sales and Use Tax Law. The BoardDepartment may also refuse to issue a seller's permit if the person applying for it is not a natural person and is being controlled by a person with an outstanding final liability for any amount under the Sales and Use Tax Law.

(2) . . . (unchanged).

(3) Control and Controlling -- For the purposes of this section and as defined in Section 22971 of the Business and Professions Code, the BoardDepartment defines the words "control" and "controlling" to mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person. Evidence that a person controls or is controlling another person may include, but is not limited to, the ownership of voting securities, by contract, other than a commercial contract for goods or nonmanagement services, or as otherwise provided below; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of that person. It shall be a rebuttable presumption that a person has the power to control another person if any of the following apply:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(4) A final liability will not be deemed to be outstanding for the purposes of this part if the person with the outstanding liability as described in paragraph (g)(1) has entered into a payment plan pursuant to Revenue and Taxation Code section 6832 and remains in full compliance with it. If the person submitting an application for a seller's permit has entered into a payment plan as provided in this paragraph and fails to comply with the terms of the payment plan, the ~~Board~~Department may seek revocation of the seller's permit obtained by the person pursuant to this section.

(5) The ~~Board~~Department shall consider offers in compromise when determining whether to issue a seller's permit. If a seller's permit is conditioned on an offer in compromise being entered into, then a final liability will not be deemed outstanding for the purposes of this part, if the offer in compromise has been accepted by the ~~Board~~Department and the person has paid the amount in full or remains in full compliance with the compromise plan. If the person submitting an application for a seller's permit has entered into an offer in compromise as provided in this paragraph and fails to comply with the terms of the offer in compromise, the ~~Board~~Department may seek revocation of the seller's permit obtained by the person pursuant to this section.

(6) Whenever any person is denied a permit pursuant to this section, the ~~Board~~Department shall give the person written notice of the denial. Any person denied a permit pursuant to this section may make a request for reconsideration by the ~~Board~~Department, if submitted in writing within 30 days of the denial. A timely submitted written request for reconsideration shall afford the person a hearing in a manner that is consistent with a hearing provided for by Revenue and Taxation Code section 6070. If a request for reconsideration is not filed within the 30-day period, the denial becomes final.

(h) Due Date of Returns--Closeout of Account on Yearly Reporting Basis. Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the ~~Board~~Department on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

(i) . . . (unchanged).

(j) . . . (unchanged).

(k) Use Tax Permit -- Qualified Purchasers. Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the ~~Board~~Department:

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) Prior to January 1, 2024, and on and after January 1, 2029, the~~The~~ person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.

From January 1, 2024, through December 31, 2028, the person makes more than ten thousand dollars (\$10,000) in purchases subject to use tax per calendar year and that tax has not otherwise been paid on those purchases to a retailer engaged in business in this state or authorized by the Department to collect the tax.

(5) The person is not otherwise registered with the ~~board~~Department to report use tax.

The return must show the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, for which the qualified purchaser did not pay tax to a retailer required to collect the tax or a retailer the qualified purchaser reasonably believed was required to collect the tax. Notwithstanding Revenue and Taxation Code sections 6451, 6452, 6452.1, and 6455, the returns for the 2009 calendar year and subsequent years shall be filed with the ~~Board~~Department, together with a remittance of the amount of the tax due, on or before April 15 of the succeeding calendar year.

NOTE: Authority cited: Sections 15570.22 and 15570.24, Government Code; Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6070, 6070.5, 6071.1, 6072, 6073, 6075 and 6225, Revenue and Taxation Code.

Regulation 1699 App. A. Appendix A Certification of Permit - Concessionaires

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the ~~Board of Equalization~~California Department of Tax and Fee Administration:

Name of retailer on whose premises I operate my business: _____

Location of premises: _____

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier's Signature: _____ Date: _____

Certifier's Printed Name _____

Certifier's Seller's Permit Number: _____

Certifier's Business Name and Address* _____

Certifier's Telephone Number _____

***Please Note:** The certifier *must* be registered to do business at the location of the retailer upon whose premises ~~he or she is~~they are making retail sales.