

**Add Revenue and Taxation Code Section 6092.5 to the Sales and Use Tax Law to provide that every person selling a vehicle at auction may not accept a resale certificate from a purchaser who is not a licensed dealer or dismantler.**

**Source: Sales and Use Tax Department**

**Existing Law**

Revenue and Taxation Code (RTC) Section 6272 provides that the term “vehicle” is defined in Vehicle Code (VC) Section 670 and shall include off-highway motor vehicles subject to identification under Division 16.5 (commencing with section 38000) of the VC. RTC Section 6275 provides that every person making any retail sale of a vehicle required to be registered under the VC or subject to identification under Division 16.5, is a retailer of the vehicle for the purposes of the Sales and Use Tax Law regardless of whether he or she is a retailer by reason of any other provision of the Sales and Use Tax Law. RTC Section 6282 exempts from the sales tax the gross receipts from the sales of vehicles required to be registered under the VC when the retailer is other than a person licensed under the VC as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to VC Section 11615.5. RTC Section 6292 provides that when a vehicle is sold at retail by other than a person licensed under the VC as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle shall pay the use tax to the Department of Motor Vehicles (DMV).

These sections provide that every person making a retail sale of a vehicle is a retailer, but the retailer is exempt from the sales tax when the retailer is not a licensed dealer with DMV. In this instance, the applicable tax is a use tax rather than a sales tax. The purchaser of the vehicle is required to pay the use tax to the DMV at the time of registration.

Chapter 3 of Division 5 of the VC, commencing with Section 11500, provides for the requirements of a person wishing to engage in business as an automobile dismantler. The law requires such a person to have a permanent place of business and to apply for a dismantler’s license with the DMV.

**Background.** The sales tax is generally imposed upon the retailer for the privilege of selling tangible personal property at retail in this state. If a person is purchasing property for the purpose of reselling the property prior to any use of the property, the seller may accept a resale certificate from the purchaser. Acceptance of a resale certificate in good faith relieves the seller of the liability for the sales tax. The purchaser is then liable for the sales tax on the subsequent retail sale of the property (unless the property is again sold for resale or is exempt for some other reason).

The same provisions generally apply to sales of vehicles. However, persons engaged in the business of selling vehicles are generally required by the VC to obtain a license to sell vehicles from the DMV. This license is generally referred

to as a dealer's license. Persons engaged in the business of auto dismantling must obtain a dismantler's license from DMV. Sales of vehicles for resale between licensed dealers and dismantlers are generally permitted and require the issuance and acceptance in good faith of a resale certificate.

The sale of a vehicle by a non-dealer is still a retail sale. These are generally referred to as private party sales. A private party seller may or may not have a seller's permit. In a private party sale, the non-dealer seller is not liable for the sales tax on the sale of the vehicle, even if the seller has a seller's permit. Instead, the purchaser is liable for use tax. The purchaser pays the use tax to the DMV at the time of registration. Both the purchaser and private party seller complete necessary forms notifying the DMV of the vehicle sale.

The problem area involves salvage certificate vehicles. A salvage certificate vehicle is a one that has been wrecked or damaged, and the owner, insurance company, financial institution or leasing company considers it too expensive to repair. Generally, this involves forwarding the certificate of ownership, license plates, and a required fee to the DMV. The DMV then issues a salvage certificate for the vehicle. The vehicle may subsequently be repaired and re-registered with the DMV. To be re-registered, the vehicle must pass a safety inspection with the DMV or the California Highway Patrol. It is then classified as a "revived salvage" or "salvaged" vehicle.

Since a salvage certificate vehicle is not subject to registration with DMV, an auto auction selling such a vehicle may currently accept a resale certificate from any person with a seller's permit, not just a licensed dealer. For example, a person with a seller's permit for the operation of a restaurant may properly issue a resale certificate for the purchase of a salvage certificate vehicle from an auto auction if the salvage certificate vehicle will be resold by the purchaser. The purchaser may resell the salvage certificate vehicle as-is, sell the various parts and components of the vehicle to different people, or repair the vehicle so that it may be resold as a vehicle that may be operated on the highway again.

### **This Proposal**

This proposal would provide that any person selling a vehicle at auction may not accept a resale certificate from a purchaser who is not a licensed dealer. For the purposes of this proposal, a licensed dealer includes a person licensed as a dismantler with DMV. The sale of a vehicle to a person other than a licensed dealer is a retail sale and the seller is liable for the sales tax.

This proposal is intended to close a tax gap in the auto auction industry that allows non-dealers to purchase vehicles without tax by issuing a resale certificate at the time of purchase at a salvage auto auction. This proposal would require salvage auto auctions to collect tax on the sale of any vehicle that is sold to a non-dealer. Based on data received from auto auctions, a substantial number of vehicles are being purchased by non-dealers at salvage auto auctions.

Audits and investigations have disclosed permit holders that are not licensed dealers that are acquiring salvage certificate vehicles by issuing a resale

certificate, and are not reporting any subsequent sales of vehicles. Additionally, purchasers do not appear to be registering the vehicles with DMV and reporting use tax.

In addition to addressing the tax gap for vehicles sold at auction, this proposal may also provide consumer and environmental benefits. Requiring a person who is not a licensed dealer or dismantler to pay tax on the purchase of a salvage certificate vehicle at auction will act as an economic deterrent and may limit sales to these unlicensed purchasers. When a person who is not a licensed dealer or dismantler purchases a salvage certificate vehicle, there is a very good possibility that substandard repairs will be made to the vehicle before it is resold. This may result in an unsafe vehicle being sold to a consumer that may not realize the extent to which the vehicle was damaged previously. Also, licensed dismantlers are required to properly dispose of hazardous materials such as motor oil, anti-freeze, and refrigerant in a manner which protects the environment. An unlicensed person is not subject to the same requirements and inspections which results in unsafe disposal of these toxic materials.

To remedy this situation, the RTC should be amended to provide that any person selling a vehicle may only accept a resale certificate from a person holding a dealer's license issued by DMV. Any sale of a vehicle to a purchaser that does not hold a valid dealer's license issued by DMV is a retail sale and the retailer is liable for the sales tax.

*Section 6092.5 is added to the Revenue and Taxation Code to read:*

6092.5. Every person making any sale at auction of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of any salvage certificate vehicle as defined in section 11515 of the Vehicle Code, to any person who is not licensed or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler may not accept a resale certificate from the purchaser.