

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

Statement of Explanation

Title 18. Public Revenues

Regulation 1620, Interstate and Foreign Commerce

A. Factual Basis

Revenue and Taxation Code (RTC) section 6248, subdivision (a) establishes a rebuttable presumption that California use tax applies to the storage, use, or other consumption of a vehicle, vessel, or aircraft purchased outside of California, but brought into California within 12 months after its purchase, and the rebuttable presumption is incorporated into subdivision (b)(5) of California Code of Regulations, title 18, section (Regulation) 1620, *Interstate and Foreign Commerce*.

RTC section 6248, subdivision (a)(1) and (4) provides that the rebuttable presumption applies when the “vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code,” and when the “vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership”; and these provisions are incorporated into Regulation 1620, subdivision (b)(5)(A)1 and 4, respectively. In 2009, the Legislature enacted Assembly Bill No. (AB) 1547 (Stats. 2009, ch. 545), and section 2 of AB 1547 added a second sentence to RTC section 6248, subdivision (a)(1) to further provided that “For purposes of this section, a closely held corporation or *limited liability corporation* shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.” (Italics added.) Section 2 of AB 1547 also added the phrase “If purchased by a nonresident of California” to the beginning of section 6248, subdivision (a)(4), to clarify that the rebuttable presumption applies if a vehicle, vessel, or aircraft is “purchased by a nonresident of California” and “used or stored in this state more than one-half of the time during the first 12 months of ownership.” Then, in 2010, the Legislature enacted Senate Bill No. (SB) 1330 (Stats. 2010, ch. 328), and section 220 of SB 1330 replaced the reference to “limited liability corporation” with a reference to “limited liability company” in the second sentence of section 6248, subdivision (a)(1) (where indicated in italics above) to correct a typographical error. Therefore, the State Board of Equalization (Board) proposes to change Regulation 1620, subdivision (b)(5)(A)1 and 4 to conform to the amendments made to RTC section 6248, subdivision (a)(1) and (4) by AB 1547 and SB 1330 under California Code of Regulations, title 1, section (Rule) 100.

In addition, RTC section 6248, subdivision (e), contains an exception from the rebuttable presumption (described above) for aircraft and vessels brought into California for repair, retrofit, and modification, which is incorporated into Regulation 1620, subdivision (b)(5)(D), and AB 1547 clarified the exception from the rebuttable presumption. The bill clarified that the exception only applies to aircraft and vessels brought into the state “exclusively” for repair, retrofit, or modification. The bill clarified that the exception only applies to vessels if the services are “performed by a repair facility that holds an appropriate permit issued by the Board

and is licensed to do business by the county in which it is located,” and the exclusion only applies to aircraft if the services are “performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility.” The bill also deleted RTC section 6248, subdivision (e)(2), which previously limited the airtime and sailing time that could be logged on an aircraft or vessel that qualifies for the exception from the rebuttable presumption. Furthermore, the Legislature enacted AB 242 (Stats. 2011, ch. 727) in 2011 and AB 242 amended RTC section 6248, subdivision (e) to clarify the exception for vessels brought into the state exclusively for repair, retrofit, and modification. AB 242 clarified that the repair facility performing the services must be licensed to do business by “the city, county, or city and” county in which it is located “if the city, county, or city and county so requires.” Therefore, the Board proposes to change Regulation 1620, subdivision (b)(5)(D) to conform to the amendments made to RTC section 6248, subdivision (e) by AB 1547 and AB 242 under Rule 100.

The proposed changes to Regulation 1620, subdivision (b)(5)(A) and (D) are appropriate for processing under Rule 100 because they make the regulation consistent with the changes made to RTC section 6248 by AB 1547, SB 1330, and AB 242, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

Rule 100 changes are proposed to Regulation 1620, subdivision (b)(5)(A) and (D).

TEXT OF PROPOSED CHANGES

1620. Interstate and Foreign Commerce.

(a) Sales Tax.

(1) In General. . . . (unchanged).

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States - When Sales Tax Applies. . . . (unchanged).

(B) From Other States - When Sales Tax Does Not Apply. . . . (unchanged).

(C) Imports. . . . (unchanged).

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

(A) To Other States - When Sales Tax Applies. . . . (unchanged).

(B) Shipments Outside the State - When Sales Tax Does Not Apply. . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(C) Exports.

1. When Sales Tax Applies. . . . (unchanged).
2. When Sales Tax Does Not Apply. . . . (unchanged):
 - a. . . . (unchanged).
 - b. . . . (unchanged).
 - c. . . . (unchanged)::

Example 1. . . . (unchanged). Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. . . . (unchanged). Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

Example 5. . . . (unchanged).

Example 6. . . . (unchanged).

(D) Proof of Exemption. . . . (unchanged).

(E) Particular Applications.

1. Property Mailed to Persons in the Armed Forces. . . . (unchanged).
2. Property for Defense Purposes Delivered to Offices of the United States. . . . (unchanged).
3. Airplanes Delivered to Agencies of the United States. . . . (unchanged).
4. Repairers. . . . (unchanged).

(b) Use Tax.

(1) In General. . . . (unchanged).

(2) Exceptions.

(A) . . . (unchanged).

(B) Interstate and Foreign Commerce.

1. In General. . . . (unchanged).
2. Intermodal Cargo Containers. . . . (unchanged):
 - a. . . . (unchanged).
 - b. . . . (unchanged).
 - c. . . . (unchanged).
- (C) . . . (unchanged).
- (D) Hand-Carried from a Foreign Country.
 1. . . . (unchanged).
 2. . . . (unchanged).
- (3) Purchase for Use in this State. . . . (unchanged).
- (4) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 90-Day Test (Prior to October 2, 2004, and from July 1, 2007, through September 30, 2008). . . . (unchanged).
 - (A) Physically Located Outside California. . . . (unchanged).
 - (B) Used in Interstate or Foreign Commerce.
 1. . . . (unchanged).
 2. . . . (unchanged).
 3. . . . (unchanged).
- (5) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the Vehicle Code, as that section now reads or is hereinafter amended.

For purposes of subdivision (b)(5), a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in section 516 of the Vehicle Code.

2. In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

3. In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

4. If purchased by a nonresident of California, theThe vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(B) Evidence Rebutting Presumption. . . . (unchanged).

(C) Used in Interstate or Foreign Commerce.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1. Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state exclusively for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility.~~

~~2. Subdivision (b)(5)(D)1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.~~

- (E) Binding Purchase Contract. . . . (unchanged).
- (6) Purchase for Use in This State - Locomotives - 90-Day Test. . . . (unchanged):
 - (A) Physically Located Outside California. . . . (unchanged).
 - (B) Used in Interstate or Foreign Commerce. . . . (unchanged).
- (7) Examples of Interstate and Foreign Commerce. . . . (unchanged):
 - Example 1. . . . (unchanged).
 - Example 2. . . . (unchanged).
 - Example 3. . . . (unchanged).
 - Example 4. . . . (unchanged).
 - Example 5. . . . (unchanged).
 - Example 6. . . . (unchanged).
 - Example 7. . . . (unchanged).
 - Example 8. . . . (unchanged).
 - Example 9. . . . (unchanged).
 - Example 10. . . . (unchanged).
 - Example 11. . . . (unchanged).
 - Example 12. . . . (unchanged).
 - Example 13. . . . (unchanged).
- (8) Imports. . . . (unchanged).
- (9) “Storage” and “Use” - Exclusions. . . . (unchanged):
 - Example 1. . . . (unchanged).
 - Example 2. . . . (unchanged).
 - Example 3. . . . (unchanged).
 - Example 4. . . . (unchanged).

(c) Rail Freight Cars. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396 and 6405, Revenue and Taxation Code.