STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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June 21, 2013

To Interested Parties:

Notice of Proposed Regulatory Action
by the
State Board of Equalization

Proposed to Amend Regulation 1566.1,

Auto Auctions and Auto Dismantlers

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt California Code of Regulations, title 18, section (Regulation) 1566.1, *Auto Auctions and Auto Dismantlers*. Assembly Bill No. 2618 (Stats. 2012, ch. 756) (AB 2618) added section 6092.5 to the RTC, effective September 29, 2012, to "provide that a licensed dismantler that sells specified vehicles, motorhomes, or commercial coaches subject to registration or qualification under the Health and Safety Code or the Vehicle Code, and salvage certificate vehicles, or a person making those sales at auction, is presumed to be making a sale at retail, subject to tax and not a sale for resale" for purposes of the Sales and Use Tax Law. (Legislative Counsel's Digest for AB 2618.) Proposed Regulation 1566.1 implements, interprets, and makes specific the presumption established by RTC section 6092.5, and prescribes the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption. Proposed Regulation 1566.1 also explains when a resale certificate is considered timely taken in good faith, and provides notice regarding a purchaser's tax liability, under existing law, when property is purchased with a resale certificate, and: (1) the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser knows at the time of purchase that the property is not to be resold in the regular course of business.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on August 13, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on August 13, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of proposed Regulation 1566.1.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6011, 6012, 6015, 6091, 6092, 6092.5, 6093, 6094.5, 6242, and 6243

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Sales and Use Tax

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (Rev. & Tax. Code, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (Rev. & Tax. Code, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § 1700.)

In general, when sales tax does not apply, California use tax applies to the use of any tangible personal property purchased from a retailer for storage, use, or other consumption and stored, used, or consumed in this state. (Rev. & Tax. Code, § 6201; Cal. Code Regs., tit. 18, § 1620, subd. (b).) The use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the tangible personal property is liable for the tax. (Rev. & Tax. Code, §§ 6011, 6201, 6202; Cal. Code Regs., tit. 18, § 1685.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the Board, and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (Rev. & Tax. Code, §§ 6202, 6203; Cal. Code Regs., tit. 18, §§ 1684, 1686.)

A "retail sale" or "sale at retail" is a sale of tangible personal property for any purpose other than resale in the regular course of business. (Rev. & Tax. Code, § 6007.) As relevant here, the term "retailer" includes every seller who makes any retail sale or sales of tangible personal property, including sales at auction, and every person engaged in the business of making sales, including sales at auction, for storage, use, or other consumption. (Rev. & Tax Code, § 6015.)

Sales for Resale

If a person is purchasing property for the purpose of reselling the property in the regular course of business and prior to any storage, use, or other consumption of the property (other than retention, demonstration, or display), the seller may accept a resale certificate from the purchaser. (Rev. & Tax. Code, §§ 6091, 6092, 6093, 6241, 6242, 6243; Cal. Code Regs., tit. 18, § 1668.) Timely acceptance of a resale certificate in good faith relieves the seller of the liability for the sales tax and the duty of collecting the use tax. (Rev. & Tax. Code, §§ 6092, 6242; Cal. Code Regs., tit. 18, § 1668.)

Each resale certificate must contain provisions required by statute and "be substantially in such form" as the Board shall prescribe. (Rev. & Tax. Code, §§ 6093, 6243.) "In the absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains essential elements and otherwise appears to be valid on its face. If the purchaser insists that he or she is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business." (Cal. Code Regs., tit. 18, § 1668, subd. (c).)

After issuing a resale certificate in good faith, the purchaser is then generally liable for the sales tax on the subsequent retail sale of the property in California (unless the retail sale is exempt for some other reason). If a purchaser who issues a resale certificate in good faith thereafter makes any use of the property other than retention, demonstration, or display while holding it for resale in the regular course of business, before making a subsequent retail sale of the property, then the purchaser becomes liable for the use tax on the cost of the property. (Rev. & Tax. Code, §§ 6094, 6244; Cal. Code Regs., tit. 18, § 1668, subd. (g).) However, if a purchaser issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business, then the purchaser is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. (Rev. & Tax. Code, § 6094.5; Cal. Code Regs., tit. 18, § 1668, subd. (g).)

Mobilehomes, Commercial Coaches, and Vehicles

In general, every person making a retail sale of a mobilehome, commercial coach, or vehicle is a retailer. However, when the retailer is not licensed or certificated pursuant to the Health and Safety Code (HSC) or Vehicle Code (VC) as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, the use tax rather than the sales tax applies to the sale. The purchaser of the mobilehome, commercial coach, or vehicle is required to pay the use tax to the Department of

Housing and Community Development or to the Department of Motor Vehicles at the time of making application for registration or identification. (Cal. Code Regs., tit. 18, §§ 1610, 1610.2.)

Assembly Bill No. 2618

AB 2618 added section 6092.5 to the RTC effective September 29, 2012. RTC section 6092.5 provides that:

> (a) Every qualified person making any sale 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, is presumed to be making a sale at retail and not a sale for resale. The presumption may be rebutted by taking a resale certificate from any of the following: (1) A person that certifies it is licensed, registered, regulated, or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler. (2) A person that certifies it is licensed, registered, regulated, or certificated under the Business and Professions Code as an automotive repair dealer, or is qualified as a scrap metal processor as described in the Vehicle Code. (3) A person that certifies it is licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor.
>
> (b) A qualified person shall not accept a resale certificate from any person except as provided in subdivision (a).
>
> (c) (1) In addition to the requirements of Sections 6093 and 6243, the certificate shall include the license or registration number of the dealer, dismantler, or automotive repair dealer, as applicable. If the purchaser is not required to hold a seller's permit because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of the seller's permit number. The certificate issued by a purchaser pursuant to this section shall be substantially in such form as the board may prescribe. (2) A qualified person that does not timely obtain a resale certificate as provided in this section may use alternative methods as prescribed by the board to rebut the presumption provided in subdivision (a).
>
> (d) For the purposes of this section, a "qualified person" means a person making a sale at auction or a dismantler licensed under the Vehicle Code.

The July 3, 2012, Senate Floor Analysis of AB 2618 explains that the addition of section 6092.5 to the RTC was intended to address a significant issue regarding "who may purchase salvage

vehicles without being required to pay the sales and use tax." The analysis explains further that by creating the presumption that tax applies to sales of specified vehicles by persons at auctions and licensed dismantlers and only permitting such persons to accept resale certificates from persons who certify that they are licensed, registered, regulated, certificated, or otherwise authorized dealers, dismantlers, automotive repairers, or scrap metal processors, AB 2618 "mitigates a significant opportunity to avoid the sales and use tax."

Effect, Objectives, and Benefits of the Proposed Adoption of Regulation 1566.1

Although Regulation 1668, *Sales for Resale*, provides general guidance regarding the issuance of resale certificates, there is currently no regulation that specifically incorporates the presumption established by RTC section 6092.5, and prescribes the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption in accordance with RTC section 6092.5, subdivision (c). Also, there is no regulation that specifically prescribes the circumstances under which a resale certificate is timely taken in good faith for purposes of rebutting the presumption established by RTC section 6092.5. And, there is no regulation that specifically provides notice regarding a purchaser's tax liability when: (1) property is purchased with a resale certificate prescribed in accordance with RTC section 6092.5, subdivision (c), and the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser issues a resale certificate prescribed in accordance with RTC section 6092.5, subdivision (c), for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business.

Business Taxes Committee Process

Board staff held a meeting with interested parties on January 8, 2013, to discuss a draft of proposed Regulation 1566.1. The effect and objectives of the proposed regulation are to implement, interpret, and make specific the provisions of RTC section 6092.5 and specifically address the issues identified above.

At the January 8, 2013, meeting, staff responded to written comments received prior to the meeting, as well as other suggestions to add clarifying language to the draft regulation, revise language in the draft regulation to be consistent with RTC section 6092.5, and make some minor grammatical edits. Then, staff incorporated the suggestions discussed at the meeting into a revised draft of proposed Regulation 1566.1 and, on January 10, 2013, staff distributed the revised draft of the proposed regulation to the interested parties that attended the January 8, 2013, meeting and the interested parties that submitted written comments regarding the initial draft of the proposed regulation. However, staff did not receive any comments regarding the revised draft of the proposed regulation from the interested parties.

Therefore, Board staff subsequently prepared Formal Issue Paper 13-003, which recommended that the Board adopt staff's revised draft of Regulation 1566.1 to implement, interpret, and make specific the presumption established by RTC section 6092.5, subdivision (a), and prescribe the

form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption in accordance with RTC section 6092.5, subdivision (c). Specifically, proposed Regulation 1566.1:

- Specifies that it is presumed that a sale of a "vehicle" by a "qualified person" is a sale at retail and not a sale for resale;
- Identifies those sellers affected by the presumption by defining "qualified person" to mean a person making a sale at auction or a dismantler licensed under the VC;
- Identifies the types of property to which the presumption applies by defining the term "vehicle" to mean: (1) a mobilehome or commercial coach required to be registered annually under the HSC; (2) a vehicle required to be registered under the VC or subject to identification under division 16.5 (commencing with § 38000) of the VC; (3) a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of VC section 5014.1; and (4) any salvage certificate vehicle as defined in VC section 11515;
- Explains that a qualified person may rebut the presumption that its sales of vehicles are at retail, by timely taking in good faith a resale certificate from a person that is: (1) licensed, registered, regulated, or certificated under the HSC or VC as a dealer or dismantler; (2) licensed, registered, regulated, or certificated under the BPC as an automotive repair dealer or is qualified as a scrap metal processor as described in the VC; or (3) licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor;
- Provides that a "qualified person" may not accept a resale certificate from any person other than those specified in the regulation;
- Explains when a resale certificate is considered timely taken in good faith in a manner that is consistent with the current provisions of Regulation 1668;
- Describes the essential elements required on a document in order for the document to be considered a resale certificate for purposes of RTC section 6092.5, including the purchaser's license or registration number, as applicable;
- Prescribes the form of the resale certificate that a "qualified person" may accept and provides that the resale certificate should be in substantially the same form as the resale certificate shown in Appendix A of the proposed regulation;
- Prescribes the alternative methods that may be used to rebut the presumption in RTC section 6092.5; and
- Provides notice regarding a purchaser's tax liability, under existing law, when property is purchased with a resale certificate, and: (1) the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser knows at the time of purchase that the property is not to be resold in the regular course of business.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 13-003 during its Business Taxes Committee meeting on March 12, 2013. The Board agreed with staff's recommendation to adopt staff's revised draft of Regulation 1566.1 and unanimously voted to propose the adoption of the regulation because the Board determined that the regulation is reasonably necessary to generally address the issues identified above. The Board also determined that the adoption of the regulation is reasonably necessary to specifically implement, interpret, and make specific the presumption established by RTC section 6092.5, subdivision (a), and prescribe the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption in accordance with RTC section 6092.5, subdivision (c). The Board further determined that the regulation is reasonably necessary to specifically provide notice regarding a purchaser's tax liability when property is purchased with a resale certificate prescribed in accordance with RTC section 6092.5, subdivision (c), and: (1) the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser knows at the time of purchase that the property is not to be resold in the regular course of business.

The Board anticipates that the adoption of proposed Regulation 1566.1 will benefit the public, including regulated persons, by:

- Providing guidance about and promoting awareness of the presumption established by RTC section 6092.5, and the requirements to rebut the presumption;
- Implementing RTC section 6092.5, subdivision (c)(1) by prescribing the form of the resale certificate that qualified persons may timely take in good faith to rebut the presumption that their sales are at retail;
- Implementing RTC section 6092.5, subdivision (c)(2) by prescribing the alternative methods that qualified persons may use to rebut the presumption that their sales are at retail; and
- Generally helping to mitigate the "significant opportunity to avoid the sales and use tax" identified in the July 3, 2012, Senate Floor Analysis of AB 2618.

The Board has performed an evaluation of whether proposed Regulation 1566.1 is inconsistent or incompatible with existing state regulations and determined that the proposed regulation is not inconsistent or incompatible with existing state regulations. This is because proposed Regulation 1566.1 is the only state regulation that specifically incorporates the presumption established by RTC section 6092.5, and prescribes the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption. This is also because proposed Regulation 1566.1 is consistent with Regulation 1668, which contains general provisions applicable to sales for resale and the issuance of resale certificates. In addition, the Board has determined that there are no comparable federal regulations or statutes to proposed Regulation 1566.1.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulation 1566.1 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulation 1566.1 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of proposed Regulation 1566.1 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulation 1566.1 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of proposed Regulation 1566.1 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of proposed Regulation 1566.1 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 1566.1 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose 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.

CONTACT PERSONS

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984 , by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on August 13, 2013, or as soon thereafter as the Board begins the public hearing regarding proposed Regulation 1566.1 during the August 13, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt proposed Regulation 1566.1. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a copy of proposed Regulation 1566.1 illustrating its express terms; however, the proposed regulation is not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations." The Board has also prepared an initial statement of reasons for

the adoption of the proposed regulation, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt proposed Regulation 1566.1 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulation 1566.1, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Sincerely,

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION

BOARD APPROVED

At the August 13, 2013 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Initial Statement of Reasons for Proposed Adoption of California Code of Regulations, Title 18, Section 1566.1, *Auto Auctions and Auto Dismantlers*

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

Current Law

Sales and Use Tax

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (Rev. & Tax. Code, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (Rev. & Tax. Code, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § 1700.)

In general, when sales tax does not apply, California use tax applies to the use of any tangible personal property purchased from a retailer for storage, use, or other consumption and stored, used, or consumed in this state. (Rev. & Tax. Code, § 6201; Cal. Code Regs., tit. 18, § 1620, subd. (b).) The use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the tangible personal property is liable for the tax. (Rev. & Tax. Code, §§ 6011, 6201, 6202; Cal. Code Regs., tit. 18, § 1685.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the State Board of Equalization (Board), and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (Rev. & Tax. Code, §§ 6202, 6203; Cal. Code Regs., tit. 18, §§ 1684, 1686.)

A "retail sale" or "sale at retail" is a sale of tangible personal property for any purpose other than resale in the regular course of business. (Rev. & Tax. Code, § 6007.) As relevant here, the term "retailer" includes every seller who makes any retail sale or sales of tangible personal property, including sales at auction, and every person engaged in the business of making sales, including sales at auction, for storage, use, or other consumption. (Rev. & Tax Code, § 6015.)

Sales for Resale

If a person is purchasing property for the purpose of reselling the property in the regular course of business and prior to any storage, use, or other consumption of the property (other than retention, demonstration, or display), the seller may accept a resale certificate

from the purchaser. (Rev. & Tax. Code, §§ 6091, 6092, 6093, 6241, 6242, 6243; Cal. Code Regs., tit. 18, § 1668.) Timely acceptance of a resale certificate in good faith relieves the seller of the liability for the sales tax and the duty of collecting the use tax. (Rev. & Tax. Code, §§ 6092, 6242; Cal. Code Regs., tit. 18, § 1668.)

Each resale certificate must contain provisions required by statute and "be substantially in such form" as the Board shall prescribe. (Rev. & Tax. Code, §§ 6093, 6243.) "In the absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains essential elements and otherwise appears to be valid on its face. If the purchaser insists that he or she is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business." (Cal. Code Regs., tit. 18, § 1668, subd. (c).)

After issuing a resale certificate in good faith, the purchaser is then generally liable for the sales tax on the subsequent retail sale of the property in California (unless the retail sale is exempt for some other reason). If a purchaser who issues a resale certificate in good faith thereafter makes any use of the property other than retention, demonstration, or display while holding it for resale in the regular course of business, before making a subsequent retail sale of the property, then the purchaser becomes liable for the use tax on the cost of the property. (Rev. & Tax. Code, §§ 6094, 6244; Cal. Code Regs., tit. 18, § 1668, subd. (g).) However, if a purchaser issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business, then the purchaser is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. (Rev. & Tax. Code, § 6094.5; Cal. Code Regs., tit. 18, § 1668, subd. (g).)

Mobilehomes, Commercial Coaches, and Vehicles

In general, every person making a retail sale of a mobilehome, commercial coach, or vehicle is a retailer. However, when the retailer is not licensed or certificated pursuant to the Health and Safety Code (HSC) or Vehicle Code (VC) as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, the use tax rather than the sales tax applies to the sale. The purchaser of the mobilehome, commercial coach, or vehicle is required to pay the use tax to the Department of Housing and Community Development or to the Department of Motor Vehicles at the time of making application for registration or identification. (Cal. Code Regs., tit. 18, §§ 1610, 1610.2.)

Assembly Bill No. 2618

Assembly Bill No. 2618 (Stats. 2012, ch. 756) (AB 2618) added section 6092.5 to the Revenue and Taxation Code (RTC) effective September 29, 2012. RTC section 6092.5 provides that:

> (a) Every qualified person making any sale 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, is presumed to be making a sale at retail and not a sale for resale. The presumption may be rebutted by taking a resale certificate from any of the following: (1) A person that certifies it is licensed, registered, regulated, or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler. (2) A person that certifies it is licensed, registered, regulated, or certificated under the Business and Professions Code as an automotive repair dealer, or is qualified as a scrap metal processor as described in the Vehicle Code. (3) A person that certifies it is licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor.

(b) A qualified person shall not accept a resale certificate from any person except as provided in subdivision (a).

(c) (1) In addition to the requirements of Sections 6093 and 6243, the certificate shall include the license or registration number of the dealer, dismantler, or automotive repair dealer, as applicable. If the purchaser is not required to hold a seller's permit because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of the seller's permit number. The certificate issued by a purchaser pursuant to this section shall be substantially in such form as the board may prescribe. (2) A qualified person that does not timely obtain a resale certificate as provided in this section may use alternative methods as prescribed by the board to rebut the presumption provided in subdivision (a).

(d) For the purposes of this section, a "qualified person" means a person making a sale at auction or a dismantler licensed under the Vehicle Code.

The July 3, 2012, Senate Floor Analysis of AB 2618 explains that the addition of section 6092.5 to the RTC was intended to address a significant issue regarding "who may purchase salvage vehicles without being required to pay the sales and use tax." The analysis explains further that by creating the presumption that tax applies to sales of specified vehicles by persons at auctions and licensed dismantlers and only permitting such persons to accept resale certificates from persons who certify that they are licensed, registered, regulated, certificated, or otherwise authorized dealers, dismantlers, automotive repairers, or scrap metal processors, AB 2618 "mitigates a significant opportunity to avoid the sales and use tax."

Specific Purpose of, Problems Intend to be Addressed by, Necessity for, and Anticipated Benefits from the Proposed Regulation

Although California Code of Regulations, title 18, section (Regulation) 1668, *Sales for Resale*, provides general guidance regarding the issuance of resale certificates, there is currently no regulation that incorporates the presumption established by RTC section 6092.5, and prescribes the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption in accordance with RTC section 6092.5, subdivision (c). Also, there is no regulation that specifically prescribes the circumstances under which a resale certificate is timely taken in good faith for purposes of rebutting the presumption established by RTC section 6092.5. And, there is no regulation that specifically provides notice regarding a purchaser's tax liability when: (1) property is purchased with a resale certificate prescribed in accordance with RTC section 6092.5, subdivision (c), and the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser issues a resale certificate prescribed in accordance with RTC section 6092.5, subdivision (c), for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business.

Board staff held a meeting with interested parties on January 8, 2013, to discuss a draft of proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*. The specific purpose of proposed Regulation 1566.1 is to implement, interpret, and make specific the provisions of RTC section 6092.5 and Regulation 1566.1 is intended to specifically address the issues (or problems) identified above.

At the January 8, 2013, meeting, staff responded to written comments received prior to the meeting, as well as other suggestions to add clarifying language to the draft regulation, revise language in the draft regulation to be consistent with RTC section 6092.5, and make some minor grammatical edits. Then, staff incorporated the suggestions discussed at the meeting into a revised draft of the proposed regulation and, on January 10, 2013, staff distributed the revised draft of the proposed regulation to the interested parties that attended the January 8, 2013, meeting and the interested parties that submitted written comments regarding the initial draft of the proposed regulation. However, staff did not receive any comments regarding the revised draft of the proposed regulation from the interested parties.

Therefore, Board staff subsequently prepared Formal Issue Paper 13-003, which recommended that the Board adopt staff's revised draft of Regulation 1566.1 to implement, interpret, and make specific the presumption established by RTC section 6092.5, subdivision (a), and prescribe the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption in accordance with RTC section 6092.5, subdivision (c). Specifically, proposed Regulation 1566.1:

- Specifies that it is presumed that a sale of a "vehicle" by a "qualified person" is a sale at retail and not a sale for resale;
- Identifies those sellers affected by the presumption by defining "qualified person" to mean a person making a sale at auction or a dismantler licensed under the VC;
- Identifies the types of property to which the presumption applies by defining the term "vehicle" to mean: (1) a mobilehome or commercial coach required to be registered annually under the HSC; (2) a vehicle required to be registered under the VC or subject to identification under division 16.5 (commencing with § 38000) of the VC; (3) a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of VC section 5014.1; and (4) any salvage certificate vehicle as defined in VC section 11515;
- Explains that a qualified person may rebut the presumption that its sales of vehicles are at retail, by timely taking in good faith a resale certificate from a person that is: (1) licensed, registered, regulated, or certificated under the HSC or VC as a dealer or dismantler; (2) licensed, registered, regulated, or certificated under the BPC as an automotive repair dealer or is qualified as a scrap metal processor as described in the VC; or (3) licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor;
- Provides that a "qualified person" may not accept a resale certificate from any person other than those specified in the regulation;
- Explains when a resale certificate is considered timely taken in good faith in a manner that is consistent with the current provisions of Regulation 1668;
- Describes the essential elements required on a document in order for the document to be considered a resale certificate for purposes of RTC section 6092.5, including the purchaser's license or registration number, as applicable;
- Prescribes the form of the resale certificate that a "qualified person" may accept and provides that the resale certificate should be in substantially the same form as the resale certificate shown in Appendix A of the proposed regulation;
- Prescribes the alternative methods that may be used to rebut the presumption in RTC section 6092.5; and
- Provides notice regarding a purchaser's tax liability, under existing law, when property is purchased with a resale certificate, and: (1) the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser knows at the time of purchase that the property is not to be resold in the regular course of business.

The Board considered Formal Issue Paper 13-003 during its Business Taxes Committee meeting on March 12, 2013. The Board agreed with staff's recommendation to adopt staff's revised draft of Regulation 1566.1 and unanimously voted to propose the adoption of the regulation because the Board determined that the regulation is reasonably necessary to generally address the issues (or problems) identified above. The Board also determined that the adoption of the regulation is reasonably necessary to specifically

implement, interpret, and make specific the presumption established by RTC section 6092.5, subdivision (a), and prescribe the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption in accordance with RTC section 6092.5, subdivision (c). The Board further determined that the regulation is reasonably necessary to specifically provide notice regarding a purchaser's tax liability when property is purchased with a resale certificate prescribed in accordance with RTC section 6092.5, subdivision (c), and: (1) the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser knows at the time of purchase that the property is not to be resold in the regular course of business.

The Board anticipates that the adoption of proposed Regulation 1566.1 will benefit the public, including regulated persons, by:

- Providing guidance about and promoting awareness of the presumption established by RTC section 6092.5, and the requirements to rebut the presumption;
- Implementing RTC section 6092.5, subdivision (c)(1) by prescribing the form of the resale certificate that qualified persons may timely take in good faith to rebut the presumption that their sales are at retail;
- Implementing RTC section 6092.5, subdivision (c)(2) by prescribing the alternative methods that qualified persons may use to rebut the presumption that their sales are at retail; and
- Generally helping to mitigate the "significant opportunity to avoid the sales and use tax" identified in the July 3, 2012, Senate Floor Analysis of AB 2618.

The adoption of proposed Regulation 1566.1 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to proposed Regulation 1566.1.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-003, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its March 12, 2013, Business Taxes Committee meeting in deciding to propose the adoption of Regulation 1566.1 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt proposed Regulation 1566.1 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed regulation at this time because the Board determined that the proposed regulation is reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to proposed Regulation 1566.1 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 has been identified and brought to the Board'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 GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(6) AND ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

AB 2618 added section 6092.5 to the RTC effective September 29, 2012. The Board is proposing to adopt Regulation 1566.1 to implement, interpret, and make specific the presumption established by RTC section 6092.5, subdivision (a), and prescribe the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption in accordance with RTC section 6092.5, subdivision (c). The Board is also including provisions in proposed Regulation 1566.1 to explain when a resale certificate is considered timely taken in good faith that are consistent with the current provisions of Regulation 1668. And, the Board is including provisions in proposed Regulation 1566.1 that provide notice regarding a purchaser's tax liability, under existing law, when property is purchased with a resale certificate, and: (1) the purchaser subsequently makes any storage, use, or other consumption of the property, other than retention, demonstration, or display while holding it for resale in the regular course of business; or (2) the purchaser knows at the time of purchase that the property is not to be resold in the regular course of business.

The Board anticipates that the adoption of proposed Regulation 1566.1 will benefit the public, including regulated persons, by:

- Providing guidance about and promoting awareness of the presumption established by RTC section 6092.5, and the requirements to rebut the presumption;
- Implementing RTC section 6092.5, subdivision (c)(1) by prescribing the form of the resale certificate that qualified persons may timely take in good faith to rebut the presumption that their sales are at retail;
- Implementing RTC section 6092.5, subdivision (c)(2) by prescribing the alternative methods that qualified persons may use to rebut the presumption that their sales are at retail; and
- Generally helping to mitigate the "significant opportunity to avoid the sales and use tax" identified in the July 3, 2012, Senate Floor Analysis of AB 2618.

Therefore, the Board has determined that the adoption of proposed Regulation 1566.1 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

In addition, proposed Regulation 1566.1 will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of proposed Regulation 1566.1 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of proposed Regulation 1566.1 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

Proposed Text of

California Code of Regulations, Title 18, Section

1566.1, *Auto Auctions and Auto Dismantlers*,

(A new regulation to be added to the California Code of Regulations)

1566.1. Auto Auctions and Auto Dismantlers.

(a) Definitions.

(1) Qualified Person. A "qualified person" means a person making a sale at auction or a dismantler licensed under the Vehicle Code.

(2) Vehicle. "Vehicle" means:

(A) A mobilehome or commercial coach required to be registered annually under the Health and Safety Code.

(B) 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.

(C) A vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(D) Any salvage certificate vehicle as defined in Section 11515 of the Vehicle Code.

(b) Presumption.

(1) It is presumed that a sale of a "vehicle" by a "qualified person" is a sale at retail and not a sale for resale.

(2) Rebutting the Presumption. To rebut the presumption, a "qualified person" may timely take in good faith a resale certificate in the form described in subdivision (c) from any of the following:

(A) A person that certifies it is licensed, registered, regulated, or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler.

(B) A person that certifies it is licensed, registered, regulated, or certificated under the Business and Professions Code as an automotive repair dealer, or is qualified as a scrap metal processor as described in the Vehicle Code.

(C) A person that certifies it is licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor.

(3) A "qualified person" shall not accept a resale certificate from any person except as provided in subdivision (b)(2).

(4) 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. A resale certificate remains in effect until revoked in writing.

(5) In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the certificate contains the essential elements as described in subdivision (c)(1) and otherwise appears to be valid on its face.

(c) Form of Certificate.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser makes no sales in this State, the purchaser must include on the certificate the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale in the regular course of business. The document must contain the phrase "for resale." The use of phrases such as "non-taxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) A statement that the purchaser is licensed, registered, regulated, or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler; or is licensed, registered, regulated, or certificated under the Business and Professions Code as an automotive repair dealer; or is qualified as a scrap metal processor as described in the Vehicle Code; or is licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor. The purchaser shall include the license or registration number, as applicable. If

the purchaser is regulated by another state, the certification should identify the state.

(F) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in subdivision (c)(1) is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation.

(d) Other Evidence to Rebut the Presumption that the Sale is at Retail. If the seller does not timely obtain a resale certificate in the form described in subdivision (c), the seller will be relieved of liability for the tax only where the seller shows through some alternative verifiable method that the property:

(1) Was in fact resold by the purchaser and was not stored, used, or otherwise consumed by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been stored, used, or otherwise consumed by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was stored, used, or otherwise consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was stored, used, or otherwise consumed by the purchaser and tax was reported to the Department of Housing and Community Development, acting for and on behalf of the Board, at the time of making application for registration, or

(5) Was stored, used, or otherwise consumed by the purchaser and tax was reported to the Department of Motor Vehicles, acting for and on behalf of the Board, at the time of making application for registration or identification, or

(6) Was stored, used, or otherwise consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(e) Purchaser's Liability for Tax. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (c) and that otherwise appears valid on its face, and who thereafter makes any storage, use, or other consumption of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored, used, or otherwise consumed and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property

is first so stored, used, or otherwise consumed. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6015, 6091, 6092, 6092.5, 6093, 6094.5, 6242, and 6243, Revenue and Taxation Code.

APPENDIX A

California Resale Certificate - Sales by Auto Auctions and Auto Dismantlers

Sales of "vehicles" as defined in Regulation 1566.1, subdivision (a)(2), at auction or by dismantlers licensed under the California Vehicle Code are presumed to be retail sales and not sales for resale unless the seller timely takes a valid resale certificate from any person specified in paragraph 2 below. The resale certificate **must** include the purchaser's license or registration number, if applicable.

I HEREBY CERTIFY:

1. _____ I hold valid California seller's permit number: _____.
   _____ I am not required to hold a California seller's permit because I do not make any sales in the State.
2. I certify (check statement that applies and provide your license or registration number, if applicable):

   _____ I am licensed, registered, regulated, or certificated under the California Health and Safety Code or the California Vehicle Code as a dealer or dismantler.

   My California license or registration number is: _____.

   _____ I am licensed, registered, regulated, or certificated under the California Business and Professions Code as an automotive repair dealer.

   My California license or registration number is: _____.

   _____ I am qualified as a scrap metal processor as described in the California Vehicle Code.

   _____ I am not registered or licensed in California, but I am licensed, registered, regulated, certificated, or otherwise authorized as a dealer, dismantler, automotive repairer, or scrap metal processor in the following jurisdiction outside the state of California:

   State/Country_____ Registration/License Number, if applicable_____.

3. This certificate is for the purchase from _____ of the property described below.
   [Vendor's name]
4. I will resell the item(s) described in paragraph 5, which I am purchasing for resale in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any storage, use, or other consumption of the item(s) other than retention, demonstration, and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, ***I will owe use tax*** based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased:

   _____

   _____

6. I have read and understand the following:

   A person may be guilty of a misdemeanor under California Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or $500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1566.1

Title: 1566.1, *Auto Auctions and Auto Dismantlers*

Preparation: Bradley Heller
Legal Contact: Bradley Heller

The proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, regarding the presumption that any sale of a vehicle, mobilehome, commercial coach, and salvage certificate vehicle by a person at auction or by a dismantler is a retail sale.

History of Proposed Regulation:

August 13, 2013	Public Hearing
June 21, 2013	OAL publication date; 45-day public comment period begins; Interested Parties mailing
June 6, 2013	Notice to OAL
March 12, 2013	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA