

Rulemaking File
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Sales and Use Tax
Regulation 1566.1, *Auto Auctioneers and Dismantlers*

OAL Approval

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OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk **LW**
DATE: 10/15/2013
RE: Return of Approved Rulemaking Materials
OAL File No. 2013-0830-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0830-01S regarding Auto Auctioneers and Dismantlers).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2013-0606-01	REGULATORY ACTION NUMBER 2013-0830-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED
 2013 OCT 14 PM 3:03

<p style="text-align: center;">NOTICE</p>	<p style="text-align: center;">REGULATIONS</p>
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OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
 State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2013 25-2	PUBLICATION DATE 6/21/2013	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Auto Auctioneers and Dismantlers	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1566.1
	AMEND
TITLE(S) 18	REPEAL

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE August 29, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 14 2013

Office of Administrative Law

**Final Adopted 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

Memorandum

To : Peggy Gibson
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

2013 OCT 14 AM 10:16
NO. 1566.1, Auto Auctioneers and Dismantlers

Date: October 14, 2013

From : Richard Bennion
Regulations Coordinator
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2013-0830-01S*
Regulations 1566.1, Auto Auctioneers and Dismantlers

The Office of Administrative Law (OAL) is authorized to make the following substitutions and corrections in connection with the above-referenced rulemaking file:

1. At the beginning of the file, OAL is authorized to replace file index.
2. Replace the Final Statement of Reasons behind Tab one with the attached updated Final Statement of Reasons.

If you have any questions or comments, please notify me at (916) 445-2130 or email at Richard.Bennion@boe.ca.gov.

REB

The Department does not anticipate this regulatory action will have any impact on worker safety, or the state's environment.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2013-0924-04
BOARD OF ACCOUNTANCY
 Retired Status

This rulemaking action by the California Board of Accountancy (BOA) adopts five sections and amends three sections in Title 16 of the California Code of Regulations. This rulemaking is designed to establish, pursuant to AB 431, Statutes of 2011, a system for placing a license in a retired status for certified public accountants and public accountants who are not actively engaged in the practice of public accountancy or any activity which requires them to be licensed by BOA. This rulemaking implements the requirements for obtaining and maintaining such a license in retired status. It also establishes how a license may be restored to active status.

Title 16
 California Code of Regulations
 ADOPT: 15, 15.1, 15.2, 15.3, 15.4
 AMEND: 70, 71, 80.1, 80.2
 Filed 10/16/2013
 Effective 01/01/2014
 Agency Contact: Matthew Stanley (916) 561-1792

File# 2013-0910-01
BOARD OF EDUCATION
 Special Education

The Board of Education is repealing section 3052 of title 5 of the California Code of Regulations as a change without regulatory effect to comply with section 56523 of the Education Code which states that the "Superintendent shall repeal those regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related

services that are no longer supported by statute, including Section 3052...of Title 5 of the California Code of Regulations...."

Title 5
 California Code of Regulations
 REPEAL: 3052
 Filed 10/16/2013
 Agency Contact: Debra Thacker (916) 319-0642

File# 2013-0830-01
BOARD OF EQUALIZATION
 Auto Auctioneers and Dismantlers

The California Board of Equalization is adopting one section in Title 18 of the California Code of Regulations. This section is adopted in response to Assembly Bill 2618 (Stats. 2012, ch. 756) that is intended to create a presumption that tax applies to sales of specified vehicles by persons and licensed dismantlers at auctions 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 to mitigate a significant opportunity to avoid the sales and use tax. The new regulation prescribes the form of the resale certificate that may be taken and the alternative methods that may be used to rebut the presumption.

The regulation also explains when a resale certificate is considered timely when 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 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 the purchaser knows that the property is not to be resold in the regular course of business.

Title 18
 California Code of Regulations
 ADOPT: 1566.1
 Filed 10/14/2013
 Effective 01/01/2014
 Agency Contact:
 Richard E. Bennion (916) 445-2130

File# 2013-1004-01
BUREAU OF AUTOMOTIVE REPAIR
 Vehicle Registration Amnesty Program

In this "changes without regulatory effect" filing, the Bureau of Automotive Repair repeals a regulation entitled "Vehicle Registration Amnesty Program." This regulation is repealed since Vehicle Code section 9565, which authorized the amnesty program, was repealed as of January 1, 2013.

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Title 18. Public Revenue
Sales and Use Tax
Regulation 1566.1 *Auto Auctioneers and Dismantlers*

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 - Minutes
 - Deputy Director's Memo dated March 1, 2013
 - BTC Agenda
 - Formal Issue Paper 13-003
 - Exhibit 1 Revenue Estimate
 - Exhibit 2 Text Regulation 1566.1
4. [Reporter's Transcript Business Taxes Committee, March 12, 2013](#)
5. [Estimate of Cost or Savings, March 18, 2013](#)
6. [Economic and Fiscal Impact Statements, June 7, 2013](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date June 21, 2013
 - Email sent to Interested Parties, June 21, 2013
 - CA Regulatory Notice Register 2013, Volume No. 25-Z
8. [Notice to Interested Parties, June 21, 2013](#)

The following items are exhibited:

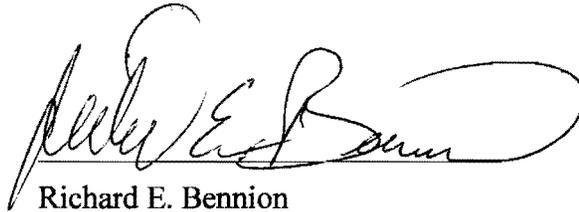
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11. [Draft Minutes, August 13, 2013, and Exhibits](#)
 - Notice of Proposed Regulatory Action
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 - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on August 29, 2013 and that the attached copy is complete. The file was reopened on October 14, 2013 for changes requested by OAL and the file was closed on October 14, 2011, and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

October 14, 2013

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

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

Update of Information in the Initial Statement of Reasons

The factual basis, specific purpose, and necessity for, the problems to be addressed by, and the anticipated benefits from the proposed adoption of California Code of Regulations, title 18, section (Regulations) 1566.1, *Auto Auctions and Auto Dismantlers*, are the same as provided in the initial statement of reasons. The State Board of Equalization (Board) did not make any changes to the text of the proposed Regulation 1566.1 prior to adoption.

The adoption of proposed Regulation 1566.1 was not mandated by federal law or regulations and there is no federal regulation that is identical to Regulation 1566.1.

Regulation 1566.1 includes repetition and duplication of the state statute cited as “authority,” but this is necessary to maintain “clarity” standard of Government Code Section 11349.1(a)(3).

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting Regulation 1566.1 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board’s initial determination that the proposed regulatory action will not have a significant adverse economic impact on business and the Board’s economic impact analysis, which determined that the Board’s proposed regulatory action:

- 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; and
- Will not affect the health and welfare of California residents, worker safety, or the state’s environment.

The proposed regulation may affect small business.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of proposed Regulation 1566.1 does not impose a mandate on local agencies or school districts.

Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the August 13, 2013, public hearing to comment on the proposed regulatory action.

Determinations Regarding Alternatives

By its motion, the Board determined that no alternative to proposed Regulation 1566.1 would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Further, the Board did not reject any reasonable alternatives to proposed Regulation 1566.1 that would lessen any adverse impact the proposed regulation may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed regulation. 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.

Furthermore, 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, and 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 that sales of specified vehicles by qualified persons are sales at retail and not sales for resale, 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.

**Updated Informative Digest for the
State Board of Equalization’s Proposed Adoption of
California Code of Regulations, Title 18, Section 1566.1,
*Auto Auctions and Auto Dismantlers***

On August 13, 2013, the State Board of Equalization (Board) held a public hearing on and unanimously voted to adopt California Code of Regulations, title 18, section (Regulation) 1566.1, *Auto Auctions and Auto Dismantlers*, without making any changes to the original proposed text of the regulation. There have not been any changes to the applicable laws or the effect of the adoption of Regulation 1566.1 described in the informative digest included in the notice of proposed regulatory action.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on August 13, 2013, to comment on the proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

“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.”



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: MARCH 12, 2013, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*.

Issue:

Whether the Board should adopt Sales and Use Tax Regulation (Regulation) 1566.1, *Auto Auctions and Auto Dismantlers*, to implement, interpret, and make specific Revenue and Taxation Code section 6092.5, which provides that any sale of a vehicle, mobilehome, commercial coach, or any salvage certificate vehicle by a person making a sale at auction or a dismantler licensed under the Vehicle Code (VC) is presumed to be a retail sale and not a sale for resale.

Committee Discussion:

There was no discussion of this item.

Committee Action:

Upon motion by Mr. Horton and seconded by Ms. Steel, without objection, the Committee approved and authorized for publication proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*. A copy of the proposed regulation is attached.

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Cynthia Bridges

Cynthia Bridges, Executive Director

BOARD APPROVED

at the March 13, 2013 Board Meeting

/s/ Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Regulation 1566.1. Auto Auctions and Auto Dismantlers.

Reference: Sections 6011, 6012, 6015, 6091, 6092, 6092.5, 6093, 6094.5, 6242, and 6243 Revenue and Taxation Code.

(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.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(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

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(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.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

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.

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

 The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Second District, Lancaster

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Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

March 1, 2013

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the March 12, 2013 Business Taxes Committee meeting. This meeting will address whether the Board should approve and authorize publication of proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, to implement, interpret, and make specific Revenue and Taxation Code section 6092.5, which provides that any sale of a vehicle, mobilehome, commercial coach, or any salvage certificate vehicle by a person making a sale at auction or a dismantler licensed under the Vehicle Code (VC) is presumed to be a retail sale and not a sale for resale.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m. on March 12, 2013** in Room 121 at the address shown above.

Sincerely,

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

JLM:rsw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichelt, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Alan Giorgi, Board Member's Office, Second District
Ms. Lynne Carey, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Cynthia Bridges
Mr. Randy Ferris
Ms. Christine Bisauta
Mr. Robert Tucker
Mr. Bradley Heller
Mr. Lawrence Mendel
Mr. Cary Huxsoll
Ms. Susanne Buehler
Mr. Bradley Miller
Ms. Kirsten Stark
Mr. Michael Patno
Mr. Robert Wilke



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING AGENDA

HONORABLE BETTY YEE, COMMITTEE CHAIRWOMAN

450 N STREET, SACRAMENTO - ROOM 121

MARCH 12, 2013 – 10:00 A.M.

1. Proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*

Request approval and authorization to publish 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.

AGENDA — March 12, 2013 Business Taxes Committee Meeting
Proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*
(Presumption of Retail Sale)

<p>Action 1 – Staff Recommendation</p>	<p><u>Regulation 1566.1. <i>Auto Auctions and Auto Dismantlers.</i></u></p> <p>(a) <u>Definitions.</u></p> <p>(1) <u>Qualified Person.</u> A “qualified person” means a person making a sale at auction or a dismantler licensed under the Vehicle Code.</p> <p>(2) <u>Vehicle.</u> “Vehicle” means:</p> <p>(A) <u>A mobilehome or commercial coach required to be registered annually under the Health and Safety Code.</u></p> <p>(B) <u>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.</u></p> <p>(C) <u>A vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.</u></p> <p>(D) <u>Any salvage certificate vehicle as defined in Section 11515 of the Vehicle Code.</u></p> <p>(b) <u>Presumption.</u></p> <p>(1) <u>It is presumed that a sale of a “vehicle” by a “qualified person” is a sale at retail and not a sale for resale.</u></p> <p>(2) <u>Rebutting the Presumption.</u> 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:</p> <p>(A) <u>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.</u></p> <p>(B) <u>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.</u></p> <p>(C) <u>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.</u></p> <p>(3) <u>A “qualified person” shall not accept a resale certificate from any person except as provided in subdivision (b)(2).</u></p>
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Proposed Regulation 1566.1, Auto Auctions and Auto Dismantlers
(Presumption of Retail Sale)

Action 1 – Staff Recommendation

(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.

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(Presumption of Retail Sale)

Action 1 – Staff Recommendation

(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

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(Presumption of Retail Sale)

Action 1 – Staff Recommendation

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.

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 _____

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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.

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

AGENDA — March 12, 2013 Business Taxes Committee Meeting
Proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*
(Presumption of Retail Sale)

<p>Action 1 – Staff Recommendation</p>	<p><u>Regulation 1566.1. <i>Auto Auctions and Auto Dismantlers.</i></u></p> <p><u>(a) Definitions.</u></p> <p><u>(1) Qualified Person.</u> A “qualified person” means a person making a sale at auction or a dismantler licensed under the Vehicle Code.</p> <p><u>(2) Vehicle.</u> “Vehicle” means:</p> <p><u>(A) A mobilehome or commercial coach required to be registered annually under the Health and Safety Code.</u></p> <p><u>(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.</u></p> <p><u>(C) A vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.</u></p> <p><u>(D) Any salvage certificate vehicle as defined in Section 11515 of the Vehicle Code.</u></p> <p><u>(b) Presumption.</u></p> <p><u>(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.</u></p> <p><u>(2) Rebutting the Presumption.</u> 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:</p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(3) A “qualified person” shall not accept a resale certificate from any person except as provided in subdivision (b)(2).</u></p>
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AGENDA — March 12, 2013 Business Taxes Committee Meeting
Proposed Regulation 1566.1, Auto Auctions and Auto Dismantlers
(Presumption of Retail Sale)

<p>Action 1 – Staff Recommendation</p>	<p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(c) Form of Certificate.</u></p> <p><u>(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:</u></p> <p><u>(A) The signature of the purchaser, purchaser’s employee or authorized representative of the purchaser.</u></p> <p><u>(B) The name and address of the purchaser.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p>
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AGENDA — March 12, 2013 Business Taxes Committee Meeting
Proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*
(Presumption of Retail Sale)

Formal Issue Paper Number 13-003

<p>Action 1 – Staff Recommendation</p>	<p><u>(F) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)</u></p> <p><u>(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.</u></p> <p><u>(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:</u></p> <p><u>(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</u></p> <p><u>(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</u></p> <p><u>(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</u></p> <p><u>(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</u></p> <p><u>(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</u></p> <p><u>(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.</u></p> <p><u>(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</u></p>
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AGENDA — March 12, 2013 Business Taxes Committee Meeting
Proposed Regulation 1566.1, Auto Auctions and Auto Dismantlers
(Presumption of Retail Sale)

Action 1 – Staff Recommendation

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.

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 _____

AGENDA — March 12, 2013 Business Taxes Committee Meeting
Proposed Regulation 1566.1, Auto Auctions and Auto Dismantlers
(Presumption of Retail Sale)

Action 1 – Staff Recommendation	<p>3. This certificate is for the purchase from _____ of the property described below. <div style="text-align: center; font-size: small;">[Vendor's name]</div></p> <p>4. <u>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.</u></p> <p>5. <u>Description of property to be purchased:</u> <hr/> <hr/></p> <p>6. <u>I have read and understand the following:</u> <u>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.</u></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td colspan="2" style="padding: 2px;"><u>Name of Purchaser</u></td> </tr> <tr> <td colspan="2" style="padding: 2px;"><u>Signature of Purchaser, Purchaser's Employee or Authorized Representative</u></td> </tr> <tr> <td style="padding: 2px;"><u>Printed Name of Person Signing</u></td> <td style="padding: 2px;"><u>Title</u></td> </tr> <tr> <td colspan="2" style="padding: 2px;"><u>Address of Purchaser</u></td> </tr> <tr> <td style="padding: 2px;"><u>Telephone Number</u></td> <td style="padding: 2px;"><u>Date</u></td> </tr> </table>	<u>Name of Purchaser</u>		<u>Signature of Purchaser, Purchaser's Employee or Authorized Representative</u>		<u>Printed Name of Person Signing</u>	<u>Title</u>	<u>Address of Purchaser</u>		<u>Telephone Number</u>	<u>Date</u>
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Issue Paper Number 13-003



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers* (Presumption of Retail Sale)

I. Issue

Whether the Board should adopt Sales and Use Tax Regulation (Regulation) 1566.1, *Auto Auctions and Auto Dismantlers*, to implement, interpret, and make specific Revenue and Taxation Code section 6092.5, which provides that any sale of a vehicle, mobilehome, commercial coach, or any salvage certificate vehicle by a person making a sale at auction or a dismantler licensed under the Vehicle Code (VC) is presumed to be a retail sale and not a sale for resale.

II. Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, as proposed in Exhibit 2, to:

- Specify 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;
- Identify those sellers affected by the presumption that a sale was at retail by defining “qualified person” and identify the type of property to which the presumption applies by defining the term “vehicle”;
- Explain 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 persons specified in the proposed regulation;
- Provide that a “qualified person” may not accept a resale certificate from any person other than those specified in the regulation;
- Describe the essential elements required on a document in order for the document to be considered a resale certificate, including the purchaser’s license or registration number, as applicable;
- Prescribe the form of the resale certificate that a “qualified person” may accept and provide that the resale certificate should be in substantially the same form as Appendix A of the proposed regulation.
- Explain when a resale certificate is considered timely and taken in good faith;
- Provide that the seller may rebut the presumption that the sale is at retail and not a sale for resale by using alternate verifiable methods; and
- Explain the purchaser’s liability for tax if the vehicle is used in a taxable manner by the purchaser prior to sale, or if the purchaser knows at the time of its purchase that it will not resell the vehicle in the regular course of business.

III. Other Alternative Considered

Do not approve proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*.

IV. Background

Effective September 29, 2012, Revenue and Taxation Code (RTC) section 6092.5, as added by Assembly Bill No. 2618 (Stats. 2012, ch. 756) (AB 2618), provides that every “qualified person” making any sale of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code (HSC); or of a vehicle required to be registered under the VC or subject to identification under Division 16.5 (commencing with Section 38000) of the VC; or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the VC; or of any salvage certificate vehicle as defined in Section 11515 of the VC, is presumed to be making a retail sale and not a sale for resale. RTC section 6092.5 specifies that a “qualified person” means a person making a sale at auction or a dismantler licensed under the VC.

A “qualified person” may rebut the presumption that a sale was made at retail by accepting a resale certificate from any one of the following: a person that certifies it is licensed, registered, regulated, or certificated under the HSC or the VC as a dealer or dismantler; a person that certifies it is licensed, registered, regulated, or certificated under the Business and Professions Code (BPC) as an automotive repair dealer, or is qualified as a scrap metal processor as described in the VC; or 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. A “qualified person” is not allowed to accept a resale certificate from any other person for purposes of rebutting the presumption that the sale was made at retail.

RTC section 6092.5 provides that the resale certificate should include the license or registration number of the dealer, dismantler, or automotive repair dealer, as applicable, in addition to the elements prescribed by RTC section 6093 and 6243 with respect to the form of certificate. RTC section 6092.5 further provides that the resale certificate issued by the purchaser must be in substantially the same form as the Board may prescribe. If a “qualified person” does not timely obtain a resale certificate, it may use alternative methods as prescribed by the Board to rebut the presumption that the sale was made at retail.

The Board of Equalization sponsored AB 2618. The primary purpose of the legislation is to close the tax gap related to the auto auction and dismantling industry where purchasers who are not properly licensed to sell, repair, or dismantle vehicles are purchasing vehicles without paying tax reimbursement to the sellers or use tax to the Department of Motor Vehicles (DMV), by issuing a resale certificate at the time of purchase at a salvage auto auction. Alternatively, some of the purchasers are remitting use tax to DMV upon registration of the vehicles but declaring a purchase price upon which the use tax is based at a much lower amount.

V. Discussion

General

The sales tax is imposed upon the retailer, including persons making sales at auction, 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 storage, use, or other consumption (other than retention, demonstration, or display) of the property, the seller may accept a resale certificate from the purchaser. Timely acceptance of a resale certificate in good faith relieves the seller of the liability for the sales tax. 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

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containing a statement that the specific property is being purchased for resale in the regular course of business. As discussed herein, “qualified persons” making sales of “vehicles” may only accept resale certificates from certain persons. The purchaser is then generally liable for the sales tax on the subsequent retail sale of the property (unless this retail sale is exempt for some other reason). If a purchaser who issues a resale certificate in good faith thereafter makes any taxable use of the property, he or she becomes liable for the use tax on the cost of the property.

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 HSC or 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 DMV at the time of making application for registration or identification.

Interested Parties Meeting and Comments

Staff held a meeting with interested parties on January 8, 2013, to discuss the Initial Discussion Paper and proposed regulation distributed on December 18, 2012. At the meeting, staff addressed written comments received prior to the meeting, as well as other suggestions to add clarifying language, revise language to be consistent with section 6092.5, and make some minor grammatical edits. Staff incorporated the suggestions discussed at the meeting and redistributed the proposed regulation to those in attendance at the meeting on January 10, 2013 and to those who submitted written comments. Staff did not receive any comments after January 10, 2013.

VI. Alternative 1 - Staff Recommendation**A. Description of Alternative 1**

Staff recommends the Board approve and authorize publication of Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, to implement, interpret, and make specific Revenue and Taxation Code section 6092.5. After discussing section 6092.5 with interested parties and reviewing interested parties’ comments, staff proposes Regulation 1566.1 to:

- Specify 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;
- Identify those sellers affected by the presumption that a sale was at retail by defining “qualified person” to mean a person making a sale at auction or a dismantler licensed under the VC;
- Identify the type of property to which the presumption applies by defining the term “vehicle” to mean:
 - a mobilehome or commercial coach required to be registered annually under the HSC;
 - a vehicle required to be registered under the VC or subject to identification under Division 16.5 (commencing with Section 38000) of the VC;
 - a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the VC;
 - any salvage certificate vehicle as defined in Section 11515 of the VC.
- Explain 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:

FORMAL ISSUE PAPER 13-003

- licensed, registered, regulated, or certificated under the HSC or VC as a dealer or dismantler, or
 - licensed, registered, regulated, or certificated under the BPC as an automotive repair dealer, or
 - qualified as a scrap metal processor as described in the VC, or
 - 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.
- Provide that a “qualified person” may not accept a resale certificate from any person other than those specified in the regulation;
 - Describe the essential elements required on a document in order for the document to be considered a resale certificate, including the purchaser’s license or registration number, as applicable;
 - Prescribe the form of the resale certificate that a “qualified person” may accept and provide that the resale certificate should be in substantially the same form as Appendix A of the proposed regulation.
 - Explain when a resale certificate is considered timely and taken in good faith;
 - Provide that the seller may rebut the presumption that the sale is at retail and not a sale for resale by using alternate verifiable methods; and
 - Explain the purchaser’s liability for tax if the vehicle is used in a taxable manner by the purchaser prior to sale, or if the purchaser knows at the time of its purchase that it will not resell the vehicle in the regular course of business.

B. Pros of Alternative 1

- Provides guidance to persons selling at auction, licensed dismantlers, and their customers with respect to specified vehicle sales and purchases.
- Minimizes potential controversy by prescribing the form of the resale certificate that qualified persons may take to rebut the presumption that their sales are at retail.
- Eliminates the need for taxpayers to create their own resale certificates for purposes of rebutting the presumption established by section 6092.5.
- Increases taxpayers’ awareness of their recordkeeping and compliance requirements.

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff’s recommendation does require adoption of a new regulation.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 1566.1 and thereby begin the formal rulemaking process. Staff will also notify taxpayers of the new regulation through other outreach efforts.

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F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation, updating manuals and publications, and engaging in other outreach efforts is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

While overall impact is minimal, promulgating a regulation that prescribes the form of the resale certificate will provide qualified persons and their customers a resale certificate that may be used to rebut the presumption that their sales are at retail.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Other Alternative

A. Description of Alternative 2

Do not approve proposed Regulation 1566.1.

B. Pros of Alternative 2

The Board would not incur the workload associated with processing and publicizing the regulation.

C. Cons of Alternative 2

Taxpayers may not understand their recordkeeping and compliance requirements with respect to the sales and purchases covered by section 6092.5.

D. Statutory or Regulatory Changes for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Without a regulation that prescribes the form of the resale certificate that qualified persons may take to rebut the presumption that their sales are at retail, a qualified person or its customer would

FORMAL ISSUE PAPER 13-003

be required to create their own certificate and ensure that it contains the essential required elements.

H. Critical Time Frames for Alternative 2

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales Use Tax Department; and Tax and Fee Programs Division, Legal Department.

Current as of: February 21, 2013

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

**Proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*
(Presumption of Retail Sale)****I. Issue**

Whether the Board should adopt Sales and Use Tax Regulation (Regulation) 1566.1, *Auto Auctions and Auto Dismantlers*, to implement, interpret, and make specific Revenue and Taxation Code section 6092.5, which provides that any sale of a vehicle, mobilehome, commercial coach, or any salvage certificate vehicle by a person making a sale at auction or a dismantler licensed under the Vehicle Code (VC) is presumed to be a retail sale and not a sale for resale.

II. Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, as proposed in Exhibit 2, to:

- Specify 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;
- Identify those sellers affected by the presumption that a sale was at retail by defining “qualified person” and identify the type of property to which the presumption applies by defining the term “vehicle”;
- Explain 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 persons specified in the proposed regulation;
- Provide that a “qualified person” may not accept a resale certificate from any person other than those specified in the regulation;
- Describe the essential elements required on a document in order for the document to be considered a resale certificate, including the purchaser’s license or registration number, as applicable;
- Prescribe the form of the resale certificate that a “qualified person” may accept and provide that the resale certificate should be in substantially the same form as Appendix A of the proposed regulation.
- Explain when a resale certificate is considered timely and taken in good faith;
- Provide that the seller may rebut the presumption that the sale is at retail and not a sale for resale by using alternate verifiable methods; and
- Explain the purchaser’s liability for tax if the vehicle is used in a taxable manner by the purchaser prior to sale, or if the purchaser knows at the time of its purchase that it will not resell the vehicle in the regular course of business.

III. Other Alternative Considered

Do not approve proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the Staff Recommendation that would impact sales and use tax revenue. The Staff Recommendation is intended to ensure compliance with the provisions of AB 2618 (Stats. 2012, ch. 756).

Other Alternatives Considered

Alternative 2 – Do not approve proposed Regulation 1566.1.

There is nothing in Alternative 2 that would impact sales and use tax revenue.

Revenue Summary

Alternative 1 – Staff Recommendation does not have a revenue impact.

Alternative 2 – does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Acting Chief, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Ms. Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of February 15, 2013.

Regulation 1566.1. Auto Auctions and Auto Dismantlers.

Reference: Sections 6011, 6012, 6015, 6091, 6092, 6092.5, 6093, 6094.5, 6242, and 6243 Revenue and Taxation Code.

(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.

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

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MARCH 12, 2013

BUSINESS TAXES COMMITTEE
PROPOSED REGULATION 1566.1
AUTO AUCTIONS AND AUTO DISMANTLERS

Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

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For the Board
of Equalization:

Betty T. Yee
Chair

Jerome E. Horton
Member

Michelle Steel
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John
Chiang, State
Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief, Board
Proceedings Division

For Staff:

Susanne Buehler
Chief, Tax Policy
Division

Cary Huxsoll
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 MARCH 12, 2013

4 ---oOo---

5 MS. RICHMOND: Our next item is the
6 Business Taxes Committee.

7 Ms. Yee is the Chair of that committee.

8 Ms. Yee.

9 MS. YEE: Thank you very much.

10 I hereby convene the Businesses Taxes
11 Committee. There is one item before us this morning
12 -- and I'll wait for staff to get settled -- and
13 that's proposed Regulation 1566.1 relating to auto
14 auctions and auto dismantlers.

15 I'll have the staff introduce the issue.

16 Good morning.

17 MS. BUEHLER: Good morning. I am Susanne
18 Buehler with the Sales and Use Tax Department. With
19 me today is Mr. Cary Huxsoll from our Legal
20 Department.

21 We have one agenda item for your
22 consideration this morning. For this agenda, we
23 request your approval and authorization to publish
24 proposed sales and use tax Regulation 1566.1, auto
25 auctions and auto dismantlers.

26 The proposed regulation will implement,
27 interpret and make specific Revenue and Taxation
28 Code Sections 6092.5, which provides that any sale

1 of a vehicle, mobile home, commercial coach or any
2 salvaged certificate vehicle by a person making a
3 sale at auction or a dismantler licensed under the
4 Vehicle Code is presumed to be a retail sale and not
5 a sale for resale.

6 Section 6092.5 further provides that a
7 seller may rebut the presumption by taking a resale
8 certificate from specified persons, which include
9 licensed dealers, dismantlers, automotive repair
10 dealers and qualified scrap metal processors.

11 We would be happy to answer any questions
12 that you may have.

13 MR. HORTON: Move adoption.

14 MS. YEE: Okay.

15 MS. STEEL: Second.

16 MS. YEE: Motion by Mr. Horton, second by
17 Ms. Steel.

18 Without objection, such will be the order.
19 Thank you very much.

20 MS. BUEHLER: Thank you.

21 MS. YEE: And that concludes the Business
22 Taxes Committee.

23 Thank you.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on MARCH 12, 2013 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: April 11, 2013



JULI PRICE JACKSON
Hearing Reporter

**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

Proposed Amendment of Sales and Use Tax Regulation 1566.1, *Auto Auctioneers and Dismantlers*

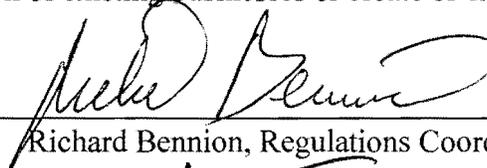
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

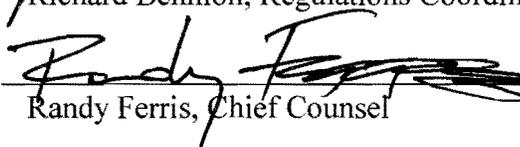
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date March 15, 2013
Richard Bennion, Regulations Coordinator

Approved by  Date 3/18/13
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

June 21, 2013

See SAM Section 6601 - 6616 for Instructions and Code Citations

AGENCY NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1566.1, Auto Auctions and Auto Dismantlers		NOTICE FILE NUMBER 2013-0606-01

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts businesses and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) Please see the attached .

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No
Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ of the _____ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

Savings of approximately \$ _____ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

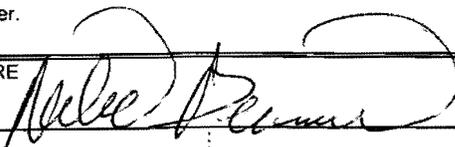
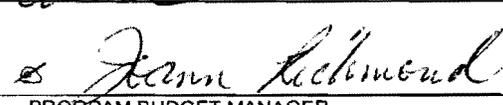
- 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ fiscal year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- 4. Other.

SIGNATURE	TITLE
	Regulations Coordinator
AGENCY SECRETARY ¹	DATE
APPROVAL/CONCURRENCE 	6/7/13
DEPARTMENT OF FINANCE ²	DATE
APPROVAL/CONCURRENCE  Exempt under SAM section 6660	

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2008)) for the Proposed Adoption of
California Code of Regulations, Title 18, Section 1566.1,
Auto Auctions and Auto Dismantlers

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.”

The State Board of Equalization (Board) is proposing to adopt California Code of Regulations, title 18, section (Regulation) 1566.1, *Auto Auctions and Auto Dismantlers*, 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 Vehicle Code (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 Health and Safety Code (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, *Sales for Resale*;
- 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 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, based upon the foregoing information and all of the information in the rulemaking file, the Board has determined that proposed Regulation 1566.1 is consistent with current law, including RTC section 6092.5, and 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;
- 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;
- Will not have a significant effect on housing costs;
- 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; and
- 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.

In addition, the Board intends to make the resale certificate set forth in Appendix A to Regulation 1566.1 available to the public on the Board's website, and the proposed regulation provides that when a seller does not timely obtain a resale certificate, the seller may establish that a sale of a vehicle subject to the presumption in RTC section 6092.5 was in fact a sale for resale "through some alternative verifiable method." Therefore, 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 regulatory action.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2013-02006-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>RECEIVED FOR FILING PUBLICATION DATE</p> <p>JUN 06 '13 JUN 21 '13</p> <p>Office of Administrative Law</p> <p>NOTICE</p>	<p>REGULATIONS</p>
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AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Auto Auctions and Auto Dismantlers		TITLE(S) 18	FIRST SECTION AFFECTED 1566.1	2. REQUESTED PUBLICATION DATE June 21, 2013
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

ACTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	<input type="checkbox"/> ADOPT
	<input type="checkbox"/> AMEND
	<input type="checkbox"/> REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs, title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
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TYPED NAME AND TITLE OF SIGNATORY

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt
California Code of Regulations, Title 18, Section 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.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, June 21, 2013 10:09 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Angeles, Joel; Armenta, Christopher; Baetge, Michelle; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Bridges, Cynthia; Chung, Sophia (Legal); Davis, Toya P.; Delgado, Maria; Duran, David; Elliott, Claudia; Epolite, Anthony (Legal); Ferris, Randy (Legal); Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Giorgi, Alan; Giorgi, Dolores; Goehring, Teresa; Hale, Mike; Hamilton, Tabitha; Hanohano, Rebecca; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Robert (Legal); Levine, David H. (Legal); LoFaso, Alan; Madrigal, Claudia; Maeng, Elizabeth; Mandel, Marcy Jo; Matsumoto, Sid; McGuire, Jeff; Miller, Brad; Mandel, Marcy Jo @ SCO; Moon, Richard (Legal); Morquecho, Raymond; Nienow, Trecia (Legal); Pielsticker, Michele; Ralston, Natasha; Richmond, Joann; Riley, Denise (Legal); Salgado-Ponce, Sylvia; Schultz, Glenna; Shah, Neil; Silva, Monica; Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Suero-Gabler, Cynthia; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichel, Tim; Tucker, Robert (Legal); Vasquez, Rosalyn; Vasquez, Rosalyn; Vassar, Alex; Vigil, Michael; Wallentine, Sean; Whitaker, Lynn; White, Sharon; Williams, Lee; Zivkovich, Robert
Subject: State Board of Equalization - Announcement of Regulatory Change 1566.1

The State Board of Equalization proposes to adopt Regulation 1566.1, *Auto Auctions and Auto Dismantlers*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on Tuesday, August 13, 2013.

The proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, is intended to ensure compliance with section 6092.5, as added to the Revenue and Taxation Code by Assembly Bill No. 2618 (Stats. 2012, ch. 756), effective September 29, 2012.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_1566_1_2013.htm

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

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

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984
Richard.Bennion@boe.ca.gov

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
<Legal.Regulations@BOE.CA.GOV>
Sent: Friday, June 21, 2013 11:04 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change to Sales and Use Tax Regulation 1566.1

The State Board of Equalization proposes to adopt Regulation 1566.1, *Auto Auctions and Auto Dismantlers*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on Tuesday, August 13, 2013.

The proposed Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, is intended to ensure compliance with section 6092.5, as added to the Revenue and Taxation Code by Assembly Bill No. 2618 (Stats. 2012, ch. 756), effective September 29, 2012.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_1566_1_2013.htm

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

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

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Board is including penalties for violating these proposed regulations in anticipation that they will go into effect. Including penalties for these proposed regulations will ensure appropriate disciplinary action is imposed for violations of these sections. If the proposed regulations do not become final by close of this proceeding, the corresponding portions of this proposal will be removed.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been 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 proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Contact Person or by accessing the Board's website at: http://www.ptbc.ca.gov/laws/prop_regs/index.shtml.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below, or by accessing the website at: http://www.ptbc.ca.gov/laws/prop_regs/index.shtml.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Sarah Conley
Address: Physical Therapy Board
2005 Evergreen Street,
Suite 1350
Sacramento, CA 95815
Telephone No.: (916) 561-8210
Fax No.: (916) 263-2560
E-mail Address: Sarah.Conley@dca.ca.gov

The back-up contact person is:

Name: Elsa Ybarra
Address: Physical Therapy Board
2005 Evergreen Street,
Suite 1350
Sacramento, CA 95815
Telephone No.: (916) 561-8262
Fax No.: (916) 263-2560
E-mail Address: Elsa.Ybarra@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at: http://www.ptbc.ca.gov/laws/prop_regs/index.shtml.

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Section 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 13–15, 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 9:30 a.m. or as soon thereafter as the matter may be heard on August 13, 14, or 15, 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 9:30 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 13-15, 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.

**TITLE 22. EMPLOYMENT
DEVELOPMENT DEPARTMENT**

**Amendment of Title 22, California Code of
Regulations Section 311–1**

**Notice of Intention to Amend the Conflict of
Interest Code**

The Employment Development Department (Department) proposes to amend its Conflict of Interest Code, printed in California Code of Regulations (CCR), title 22, section 311–1. The Department will adopt these amendments after considering all comments, objections, or recommendations regarding the proposed action.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The existing Appendix to section 311–1 lists those designated employees in the Department who are required to file statements of economic interest, pursuant to Government Code sections 87100 through 87102, and the disclosure category for each of those designated employees. The proposed changes to the Appendix:

- (1) Add additional positions.
- (2) Streamline position titles to reflect generic civil service classification titles. (Some service classification titles may change or add disclosure categories due to this revision.)
- (3) Delete from the list of designated employees positions which no longer exist within the Department.

AUTHORITY AND REFERENCE

Authority: Sections 87300 and 87306, Government Code.

Reference: Sections 87300, 87301, 87302 and 87306, Government Code.

FISCAL IMPACT

Anticipated costs or savings in federal funding to the State: None.

Anticipated costs or savings to any State Agency: None.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

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.

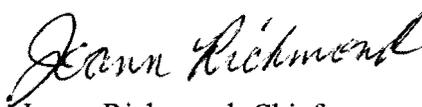
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

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, Chief
Board Proceedings Division

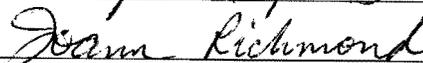
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STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the August 13, 2013 Board Meeting



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

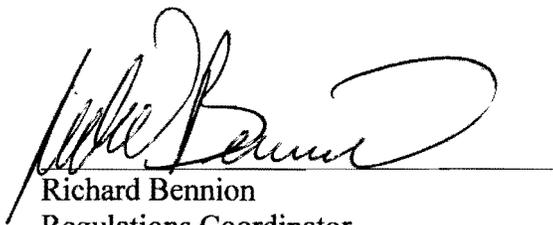
Support: NA

Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Taxes Regulation 1566.1, *Auto Auctioneers and Dismantlers*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on June 21, 2013, 53 days prior to the public hearing.

August 20, 2013

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

AUGUST 13, 2013

ITEM F PUBLIC HEARING

F1 PROPOSED ADOPTION OF SALES AND USE TAX REGULATION

1566.1, AUTO AUCTIONS AND AUTO DISMANTLERS

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Michelle Steel
Vice-Chairwoman

Betty T. Yee
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief, Board Proceedings
Division

For Board of
Equalization Staff:

Bradley Heller
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 AUGUST 13, 2013

4 ---oOo---

5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next item is item F
7 Public Hearing; F1 Proposed Adoption of Sales and
8 Use Tax Regulation 1566.1, Auto Auctions and Auto
9 Dismantlers.

10 And I believe we have someone that wants to
11 make a public comment.

12 MR. HORTON: Uh, welcome, Mr. Heller. Uh,
13 as we requested, Mr. Heller makes his presentation,
14 we would also ask that Jonathan Morrison please come
15 forward. Jonathan -- Mr. Morrison is Director of
16 CEAL and Regulatory Affairs.

17 MR. HELLER: I'll go ahead and start.

18 MR. HORTON: Okay. Hopefully, he will --

19 MR. HELLER: -- join us.

20 MR. HORTON: Staff will attempt to notify
21 Mr. Morrison.

22 MR. HELLER: Chairman Horton, as you said,
23 I'm Bradley Heller from the Board's Legal
24 Department.

25 Um, I'm here to request that the Board
26 Members vote to adopt proposed Regulation 1566.1,
27 Auto Auctions and Auto Dismantlers.

28 The regulation implements, interrupts and

1 incorporates the presumption established by Revenue
2 and Taxation Code Section 6092.5 with regard to
3 sales by auto dismantlers and sales at auction of
4 specified vehicles.

5 I can answer any questions you have and
6 respond to any comments there may be.

7 MR. HORTON: Discussion, Members?

8 Member Yee.

9 MS. YEE: Oh, no discussion. I'm ready to
10 move.

11 MR. HELLER: Um, Chairman Horton, if you
12 want --

13 MR. HORTON: Miss -- Miss Richmond, what's
14 our next item?

15 MS. RICHMOND: Our next item is item G, the
16 Tax Program Nonappearance Matters.

17 MR. HORTON: Mr. Heller, you're presenting
18 on that one?

19 MR. HELLER: Uh, no, I'm not. But I can
20 stay, and if you'd like to put this item over, to
21 wait to see if the other person comes. And I'll
22 just wait, and we can recall this item if you'd like
23 to.

24 MR. HORTON: Yeah, just in the interest of
25 assuring that the taxpayers have an opportunity to
26 testify if they will. And given the, uh,
27 inconsistency in our schedule, uh, we will put this
28 matter over, please.

1 MR. HELLER: Okay, thank you.

2 (Whereupon other proceedings were had.)

3 MR. HORTON: Mr. Heller, while we have you
4 here, uh --

5 MR. HELLER: You want to do F1?

6 MR. HORTON: -- we're going to see if we
7 can return to item H1.7?

8 MS. STEEL: F1.

9 MR. HORTON: Oh, strike that.

10 MS. YEE: F1.

11 MR. HORTON: F1.

12 MR. RUNNER: F1?

13 MR. HORTON: Mm-hmm.

14 MR. RUNNER: I'm in two different
15 notebooks, so I have to adjust here.

16 F1?

17 MR. HORTON: That's what Member Steel says.
18 I usually follow her.

19 MS. RICHMOND: And Board Proceedings has
20 had no luck reaching the person that wanted to make
21 a public comment.

22 MR. HORTON: Okay. For the record, we
23 tried.

24 MR. HELLER: Chairman Horton, again, this
25 is Bradley Heller from the Legal Department. And
26 I'm here to request that the Board adopt proposed
27 Regulation 1566.1, Auto Auctions and Auto
28 Dismantlers.

1 MR. HORTON: Members?

2 MR. RUNNER: Move.

3 MS. STEEL: So move.

4 MR. HORTON: Move approval by Member

5 Runner. Second by Member Steel.

6 Without objection, Members, such will be

7 the order.

8 MR. HELLER: Thank you.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on August 13, 2013 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 6 constitute a complete and accurate transcription of the shorthand writing.

Dated: August 28, 2013

Kathleen Skidgel



KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter

2013 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, August 13, 2013**

The Board recessed at 2:11 p.m. and reconvened at 2:18 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

B4 Ivon Pitti, 688101

PERIOD, \$

For Appellant:

Ivon Pitti, Taxpayer

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: LIST ISSUE(S)

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

PUBLIC HEARING**F1 Proposed Adoption of Sales and Use Tax Regulation 1566.1, *Auto Auctions and Auto Dismantlers***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of a new regulation to implement, interpret, and make specific the presumption established by Revenue and Taxation Code section 6092.5 (Exhibit 8.1).

Speakers were invited to address the Board, but there were none.

Action: The Board deferred consideration of this matter to later in the day.

[G1] LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

G1.1 Interior Design Specialists, Inc., 553909 (EH)

PERIOD, \$

Action: Redetermine as recommended by the Appeals Division.

G1.2 Ker, Inc., 467118 (FH)

PERIOD, \$

Action: Redetermine as recommended by the Appeals Division.

2013 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, August 13, 2013****CHIEF COUNSEL MATTERS****RULEMAKING****J1 Second Readoption of Emergency Regulation 2000, *Retailer Reimbursement Retention***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for second readoption of emergency Regulation 2000 to maintain the status quo while the Board considers the adoption of a permanent regulation (Exhibit 8.3).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board readopted emergency Regulation 2000 as recommended by staff.

Section 100 Changes**J2 Proposed Amendments to Regulation 1642, *Bad Debts***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to make the regulation consistent with amendments to Revenue and Taxation Code sections 6055 and 6203.5 (Exhibit 8.4).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved authorization to make Rule 100 changes to Regulation 1642, *Bad Debts*, as recommended by staff.

PUBLIC HEARING**F1 Proposed Adoption of Sales and Use Tax Regulation 1566.1, *Auto Auctions and Auto Dismantlers (Continued)***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of a new regulation to implement, interpret, and make specific the presumption established by Revenue and Taxation Code section 6092.5 (see Exhibit 8.1).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, as recommended by staff.

Note: These minutes are not final until Board approved.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

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.

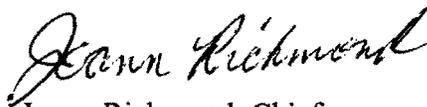
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

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, Chief
Board Proceedings Division

JR:reb

**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