



STATE BOARD OF EQUALIZATION

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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,

A handwritten signature in black ink, appearing to read "Jeffrey L. McGuire", is written over a set of three overlapping horizontal ovals that serve as a signature line.

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 Treichel, 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



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

<p><b>Action 1 – Staff Recommendation</b></p>	<p><b><u>Regulation 1566.1. Auto Auctions and Auto Dismantlers.</u></b></p> <p><u>(a) Definitions.</u></p> <p><u>(1) Qualified Person. A “qualified person” means a person making a sale at auction or a dismantler licensed under the Vehicle Code.</u></p> <p><u>(2) Vehicle. “Vehicle” means:</u></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. 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:</u></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><b>Action 1 – Staff Recommendation</b></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)**

<p><b>Action 1 – Staff Recommendation</b></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)**

<p><b>Action 1 – Staff Recommendation</b></p>	<p><u>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.</u></p> <p><u>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.</u></p> <p align="center"><b>APPENDIX A</b></p> <p align="center"><b><u>California Resale Certificate - Sales by Auto Auctions and Auto Dismantlers</u></b></p> <p><u>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 <b>must</b> include the purchaser's license or registration number, if applicable.</u></p> <p><b><u>I HEREBY CERTIFY:</u></b></p> <p>1. <u>I hold valid California seller's permit number: _____</u>  <u>I am not required to hold a California seller's permit because I do not make any sales in the State.</u></p> <p>2. <u>I certify (check statement that applies and provide your license or registration number, if applicable):</u></p> <p><u>I am licensed, registered, regulated, or certificated under the California Health and Safety Code or the California Vehicle Code as a dealer or dismantler.</u>  <u>My California license or registration number is: _____.</u></p> <p><u>I am licensed, registered, regulated, or certificated under the California Business and Professions Code as an automotive repair dealer.</u>  <u>My California license or registration number is: _____.</u></p> <p><u>I am qualified as a scrap metal processor as described in the California Vehicle Code.</u></p> <p><u>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:</u>  <u>State/Country _____ Registration/License Number, if applicable _____</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)**

<b>Action 1 – Staff Recommendation</b>	<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, <b>I will owe use tax</b> 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>    _____</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="width: 70%; 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>
<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>										

Issue Paper Number 13-003



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- 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

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.

**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

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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

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## 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