

Sales/Use/Indirect:

California: CDTFA Proposes Adoption of Marketplace Sales Rule through Regular Non-Emergency Process

Proposed Cal. Code of Regs., Title 18, section 1684.5, Marketplace Sales, Cal. Dept. of Tax & Fee Admin. (11/18/22). The California Department of Tax and Fee Administration (CDTFA) is proposing to adopt its emergency regulation (“Regulation 1684.5”) implementing California’s marketplace facilitator legislation (MFA) enacted in 2019 [see A.B. 147 (2019) / S.B. 92 (2019) for more details on this 2019 legislation] through California’s “regular rulemaking process,” including proposed amendments intended to further carry out the MFA and clarify that all sales of tangible personal property (*i.e.*, taxable and nontaxable) are counted for purposes of meeting California’s annual \$500,000 sales threshold. Also among the changes are those intended to provide procedures for a “delivery network company” to elect and retain an election to be deemed a marketplace facilitator, as well as define and clarify certain important terms and phrases such as facilitate, fulfillment or storage services, listing products for sale, order taking, payment processing services, providing customer service or accepting or assisting with returns or exchanges, setting prices, and virtual currency. Other proposed changes seek to help businesses understand when the “advertising exclusion” applies to a sale, as well as provide some examples of websites that both do and do not qualify as “marketplaces.” The deadline to provide written comments on the proposed rule is January 2, 2023. The CDTFA has not scheduled a related public hearing at this time but may if appropriately and timely requested. Please contact us with any questions.

URL: <https://oal.ca.gov/wp-content/uploads/sites/166/2022/11/2022-Notice-Register-Number-46-Z-November-18-2022.pdf>

URL: http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB147

URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB92

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