

Sales/Use/Indirect:

California Department of Tax and Fee Administration Files New Marketplace Sales Rule with OAL

File No. 2023-0717-01, Cal. Off. of Admin. Law (7/23); *Proposed Cal. Code of Regs., Title 18, section 1684.5, Marketplace Sales*, Cal. Dept. of Tax & Fee Admin. (11/18/22). Following a public hearing held on February 7, 2023, addressing the California Department of Tax and Fee Administration's (CDTFA) proposed changes to an emergency rule ("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, and *State Tax Matters*, Issue 2023-4, for details on the February 7, 2023 public hearing], the CDTFA apparently has filed a final "marketplace sales" proposal as a "new rule" with California's Office of Administrative Law. According to earlier comments made by the CDTFA on underlying proposed changes to the marketplace sales rule, the CDTFA had been proposing amendments intended to:

URL: <https://oal.ca.gov/proposed-regulations/>

URL: <https://www.cdtfa.ca.gov/taxes-and-fees/reg-1684-5-2022.htm>

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

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

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230127_6.html

- Further carry out the MFA,
- 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,
- Provide procedures for a "delivery network company" to elect and retain an election to be deemed a marketplace facilitator,
- 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,
- Help businesses understand when the "advertising exclusion" applies to a sale, and
- Provide some examples of websites that both do and do not qualify as "marketplaces."

Please contact us with any questions.

— Galina Philipovitch (San Jose)
Managing Director
Deloitte Tax LLP
gphilipovitch@deloitte.com

Hal Kessler (San Francisco)
Managing Director
Deloitte Tax LLP
hkessler@deloitte.com

Evita Graciela Lopez (Costa Mesa)
Managing Director
Deloitte Tax LLP
evlopez@deloitte.com

Brian Wiggins (Sacramento)
Specialist Executive
Deloitte Tax LLP
bwiggins@deloitte.com

Karri Rozario (Sacramento)
Senior Manager
Deloitte Tax LLP
krozario@deloitte.com

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