

Sales/Use/Indirect:

California OAL Approves Department of Tax and Fee Administration's New Marketplace Sales Rule

Notice of Approval of Regulatory Action: Cal. Code of Regs., Title 18, section 1684.5, Cal. Off. of Admin. Law (8/28/23); Cal. Code of Regs., Title 18, section 1684.5, Marketplace Sales, Cal. Dept. of Tax & Fee Admin. (8/28/23). The California Office of Administrative Law (OAL) has approved the California Department of Tax and Fee Administration's (CDTFA) finalized 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 on these rule changes], including clarifying underlying registration requirements, addressing sellers versus advertisers, and authorizing delivery network companies to elect to be deemed marketplace facilitators. According to earlier comments made by the CDTFA, the adopted amendments are intended to:

URL: <https://www.cdtfa.ca.gov/taxes-and-fees/Reg1684-5-OAL-Approval-2023.pdf>

URL: <https://www.cdtfa.ca.gov/taxes-and-fees/Reg1684-5-Text-2023-Final.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

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.

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