

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



TITLE 13: DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (department) proposes to adopt Sections 274.00, 274.02, and 274.04, in Article 4.2, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to used vehicle dealer sales tax remittance to the department.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than **November 9, 2020**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to amend these regulations under the authority granted by Vehicle Code section 1651 and Revenue and Taxation Code section 6295, in order to implement, interpret, or make specific Vehicle Code sections 4456 and 4750.6, and Revenue and Taxation Code section 6295.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Assembly Bill (AB) 85 (Chapter 8; Statutes of 2020) adopted Vehicle Code section 4750.6 and Revenue and Taxation Code section 6295. AB 82 (Chapter 14; Statutes of 2020) amended Revenue and Taxation Code section 6295 and amended Vehicle Code sections 4456 and 4750.6, to require the department to collect sales tax from used vehicle dealers and remit those taxes to the California Department of Tax and Fee Administration (CDTFA).

Revenue and Taxation Code section 6295 requires a used vehicle dealer to pay applicable sales tax to the department acting for and on behalf of the

California Department of Tax and Fee Administration (CDTFA) and requires the department to establish, through regulation, requirements for implementation of this section. Vehicle Code section 4456 requires that on and after January 1, 2021, a used vehicle dealer shall submit with the application, payment of the applicable sales tax measured by the gross receipts from the sale of a vehicle. Vehicle Code section 4750.6 requires the department to transmit to the CDTFA all collections of sales tax collected under Vehicle Code section 4456 and Revenue and Tax Code section 6295.

The department is promulgating rules to establish a phased in approach to requiring used vehicle dealers to begin submitting sales tax to the department. The department, in consultation with the CDTFA, determined it necessary to require used vehicle dealers who pose a higher risk of a tax delinquency and used vehicle dealers who are either new to used vehicle sales industry or not associated with a business partner to begin reporting and remitting sales tax to the department on January 1, 2021 as those dealers are more likely to require additional support and oversight. The department, in consultation with the CDTFA and business partners, has identified the department's registration database as the database that will be used to report sales tax when entering vehicle sales information. The department determined the registration database is the most efficient means by which to carry out the requirements of AB 82 as used vehicle dealers and the department's business partners currently have access to and are familiar with that database.

This proposed action adopts Section 274.00 to identify the groups of used vehicle dealers who will begin reporting and submitting sales tax to the department on January 1, 2021, and the group of used vehicle dealers who will begin reporting and submitting sales tax on January 1, 2023. In consultation with the CDTFA, the department determined dealers at a higher risk of failing to pay taxes, dealers who are relatively new to the used vehicle sales industry and dealers who do not work with a business partner will benefit from additional oversight. Used vehicle dealers in good standing with the department and the CDTFA will have additional time to comply.

This proposed action adopts Section 274.02 to identify the database to which sales tax will be reported and the means by which the department will receive funds from used vehicle dealers whether they're working with a business partner or reporting directly to the department.

This proposed action adopts Section 274.04 to identify rules for non-titling transactions. When the vehicle purchaser takes the registration paperwork to

either register the vehicle themselves or register the vehicle out of state, this provision will ensure that the sales tax is reported on the registration database prior to the vehicle purchaser taking the vehicle sales documents.

BENEFITS OF THE PROPOSED REGULATION

The benefits of the proposed regulation will ensure increased revenue to the state without increasing the tax burden on used vehicle dealers.

CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS

The department conducted a review of other regulations and has determined there are no other regulations related to the process by which a used vehicle dealer shall report and pay sales tax to the department. The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL STATUTES OR STATE REGULATIONS

The department has determined that there are no comparable federal statutes or state regulations.

DOCUMENTS INCORPORATED BY REFERENCE

There are no documents incorporated by reference.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency:* \$4-6 million in fiscal year 2020/2021, \$2-3 million in fiscal year 2021/2022 and ongoing based on implementation.

The department will be reimbursed through an Interagency Agreement with the Department of Tax and Fee Administration.

- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Effects on Housing Costs:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.

- *Cost Impact on Representative Private Persons or Businesses:* This action does not impose any costs on representative private persons or businesses. This proposed action redirects the payment of the sales tax to the department, as required by statute. The electronic report of sales databases referenced in the proposed regulations is already being utilized by vehicle dealers in California.
- *Small Business Impact:* This proposed action may have an impact on small businesses.
- *Local Agency/School District Mandate:* The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- *Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:* This regulation will not have an adverse economic impact on businesses. This proposed action redirects the payment of the sales tax to the department.

RESULTS OF THE ECONOMIC IMPACT STATEMENT

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

The department has determined that this action will not impact 1) the creation or elimination of jobs within the State of California, 2) the creation or elimination of existing businesses within the State of California, or 3) the expansion of businesses currently doing business within the State of California, or 4) worker safety or the state's environment.

This action is intended to implement statutory requirements designed to increase revenue without increasing taxes on used vehicle dealers or California residents.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as 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 provisions of law.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Randi Calkins, Regulations Analyst
Department of Motor Vehicles
Legal Affairs Division
PO Box 932382, MS C-244
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-8898
Facsimile: (916) 657-6243
E-Mail: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Shelly Johnson Marker, Chief of Staff
Department of Motor Vehicles
Telephone: (916) 657-6469

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <https://www.dmv.ca.gov/portal/about-the-california-department-of-motor-vehicles/california-dmv-rulemaking-actions/>

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.