

Initial Statement of Reasons
Title 13, Division 1, Chapter 1
Article 4.2 – Vehicle Dealers

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.

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 taxes collected under Vehicle Code section 4456 and Revenue and Taxation 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. This action identifies the groups of used vehicle dealers who will begin reporting and submitting taxes to the department beginning January 1, 2021. This proposed action also identifies the method by which used vehicle dealers are required to report and submit taxes to the department.

Section 274.00 used Vehicle Dealer Sales Tax: Applicability

The purpose of Section 274.00 is to establish a phased in approach with respect to which dealers are required to comply with the rules first. The decision to require initial compliance by the groups identified in subsections (a)(1) through (a)(4) was a decision made between both the department and the CDTFA and requires newer used vehicle dealers and those who have either failed to pay taxes or paid less than the required amount to begin reporting to the department on January 1, 2021. Other used vehicle dealers in good standing with the department will begin reporting and remitting sales tax to the department in January 2023.

Subsection (a) is adopted to require used vehicle dealers who meet one or more of the standards in subsections (a)(1) through (a)(4) to begin submitting sales tax to the department on January 1, 2021.

Subsection (a)(1) requires used vehicle dealers who have been licensed by the department for less than two years to begin submitting sales tax to the department beginning January 1, 2021. The department and the CDTFA determined it necessary to have this group of dealers begin submitting sales tax as they are not only new to being licensed but will also likely be able to conform to the new requirements as their business practices are still being developed.

Subsection (a)(2) requires used vehicle dealers who have reinstated their Seller's Permit after having it cancelled, suspended, revoked or voluntarily surrendered within the last two

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years to begin submitting sales tax to the department on January 1, 2021. Seller's Permits are issued by the CDTFA and the CDTFA will take action against a Seller's Permit if the permittee fails to pay the required sales tax. The department recognizes that there are several reasons for which action could be taken against a Seller's Permit, however, a Seller's Permit is typically revoked for failing to file the required tax returns. The fact that an action was taken by the CDTFA against the Seller's Permit indicates conduct that requires additional state support and oversight. Initial reporting will allow the department and the CDTFA to begin monitoring these dealers as quickly as possible and ensure they are submitting the sales tax in the appropriate amount. Vehicle Code section 11721(f) requires an occupational license to be automatically cancelled if the Seller's Permit is either suspended or revoked. The department is also requiring dealers who voluntarily surrendered their Seller's Permit within the last two years to begin reporting and remitting sales tax to the department on January 1, 2021. The department and the CDTFA anticipate this will capture those dealers who voluntarily surrendered their Seller's Permits before an adverse action could be taken against it. Adding voluntary surrenders to subsection (a)(2) will allow the department and the CDTFA to begin monitoring these dealers as quickly as possible and ensure they are submitting the sales tax in the appropriate amount.

Subsection (a)(3) requires used vehicle dealers who have had an understatement of tax reporting in the last two years, as discovered during a CDTFA audit and/or compliance review, to begin submitting sales tax to the department on January 1, 2021. The CDTFA uses a DMV data repository to estimate the dollar amount of used vehicle dealer sales and compare them to the actual taxable sales reported on the returns. Dealers with material differences are selected for field audits by CDTFA compliance staff. The information received from the data repository allows the CDTFA to effectively identify dealers who are underreporting their sales tax obligation. These used vehicle dealers are considered at risk as they have already been verified as having a tax deficiency or delinquency. Initial reporting will allow the department and the CDTFA to begin monitoring these dealers as quickly as possible and ensure they are submitting the sales tax in the appropriate amount.

Subsection (a)(4) is adopted to require a used vehicle dealer who does not participate in the Business Partner Automation program, to begin submitting sales tax to the department on January 1, 2021. Business partners provide oversight of used vehicle dealers and verify that the vehicle registration documents are correct and that the registration fees and taxes are being accurately reported and retrieved from the dealers account. This section addresses vehicle dealers who file paper documents with the department, typically through one of the department's ten Industry Business Centers. Because of the reduced oversight, used vehicle dealers who are not affiliated with a business partner, will be required to submit the taxes with the registration fees at the time they deliver the sales documents to the department for processing.

Subsection (b) is adopted to require all other used vehicle dealers who are licensed by the department to submit sales tax to the department beginning January 1, 2023. This provision is necessary to ensure those businesses who are established and in good standing with the department and the CDTFA will have additional time to implement processing changes in advance of when they will be required to remit sales tax to the department. Many of the

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businesses that fall into subsection (b) have robust information systems in place and will need time to reprogram those systems.

Subsection (c) is adopted to clarify that once a dealer reports and remits sales tax to the department, it will continue to do so. This provision is necessary to ensure consistency in the sales tax reporting and remittance processes and minimize the opportunity for fraud by allowing dealers to enter and exit the program.

Section 274.02. Used Vehicle Dealer Sales Tax: Payment and Reporting

The purpose of Section 274.02 is to identify payment and reporting requirements when a vehicle is sold. Section 274.02 is adopted to identify the department's electronic registration database as the means by which a used vehicle dealer is required to report and submit sales tax information. The registration database is familiar and accessible to all used vehicle dealers and business partners who will be affected by these rules. When a used vehicle dealer is working with a business partner, the used vehicle dealer pays fees and sales tax to the business partner using an Automated Clearing House, or ACH, transfer to the business partner. Using the sales tax information entered into the registration database, the department will receive the sales tax through an ACH transfer from the business partner. Used vehicle dealers who are not working with a business partner, will pay the sales tax to the department at the time they deliver the documents to a departmental field office for processing. The department, in concurrence with the CDTFA and business partners, has selected its registration database as the most effective and familiar means by which used vehicle dealers will report and remit sales tax to the department.

§274.06. Used Vehicle Dealer Sales Tax: Non-Titling Transactions

The purpose of Section 274.06 is to establish procedures when a vehicle purchaser either demands title or intends on registering the vehicle in another state. In either of these circumstances, the used vehicle dealer shall make a notation in the registration database and collect the sales tax prior to releasing the titling documents to the purchaser. This provision is necessary to ensure the amount of sales tax collected is reported prior to the vehicle purchase taking control of the sales documents. Regardless of whether the purchaser registers the vehicle on their own or in another state, the department will still be able to collect the appropriate taxes from the sale.

DEPARTMENTAL DOCUMENTATION SUPPORTING GOVERNMENT CODE SECTIONS 11346.2(b)(3) THROUGH (b)(S)

Studies, Reports or Documents - Gov. Code Sec. 11346.2(b)(3)

- No studies, reports or other documents were relied upon.

Reasonable Alternatives and Department's Response - Gov. Code Sec. 11346.2(b)(4)(A)

- No alternatives have yet been presented that would be as effective.

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Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Businesses -
Gov. Code Sec. 11346.2(b)(4)(B)

- No alternatives have been yet been presented that would lessen any adverse impact on small businesses.

Evidence Supporting Determination of No Significant Adverse Economic Impact on
Business - Gov. Code Sec. 11346.2(b)(5)

- This regulation will not have an adverse economic impact on businesses. Used vehicle dealers are currently required to remit sales tax to the CDTFA. This proposed action redirects the payment of the sales tax to the department.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

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

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.

Effect on Housing Costs

- None

Local Agency/School District Mandates

- The proposed regulatory action will not impose any costs on local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Small Business Impact

- This proposed action may impact small businesses.

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.

ECONOMIC IMPACT ANALYSIS (Government Code Section 11346.3(b))

The department has made the following determination related to this proposed regulatory action:

Creation or Elimination of Jobs Within the State of California

- The department does not anticipate this action will impact jobs in California. The proposed rule adopts a statutory requirement that used vehicle dealers submit sales tax to the department beginning January 1, 2021.

Creation or Elimination of Businesses Within the State of California

- Used vehicle dealers are required to pay sales tax. This proposed action does not impact a dealer's tax liability, it does redirect the agency to which the taxes are paid. The department does not anticipate the requirements contained in this proposed action will create or eliminate businesses within the state.

Expansion of Businesses Currently Doing Business Within the State of California

- Used vehicle dealers are required to pay sales tax. This proposed action does not impact a dealer's tax liability, it does redirect the agency to which the taxes are paid. The department does not anticipate the requirements contained in this proposed action will expand businesses within the state.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

- This proposed action is unlikely to benefit worker safety or the state's environment, or the welfare of California residents. This action is intended to implement statutory requirements designed to increase revenue without increasing taxes.