

CHANGES WITHOUT REGULATORY EFFECT UNDER  
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1599, *Coins and Bullion*

**A. Factual Basis**

California Code of Regulations, title 18, section (Regulation) 1599, *Coins and Bullion*, prescribes the application of tax to the sale of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins. Subdivision (a)(3) of the current regulation provides that such a sale is exempt from sales and use tax when the sale is in bulk and the sale is by or through a person registered pursuant to the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or not required to be registered under the Commodity Exchange Act.

Revenue and Taxation Code (RTC) section 6355 provides an exemption from sales and use tax for sales in bulk of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins that are substantially equivalent to transactions in securities or commodities. RTC section 6355, subdivision (b)(1) deems a sale in bulk to have occurred if the amount of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in the transaction totals \$1,000 or more in market value. However, RTC section 6355, subdivision (b)(2), added by Senate Bill No. 213 (Stats. 1993, ch. 977):

- Mandated that the California Department of Tax and Fee Administration (Department)<sup>1</sup> adjust the \$1,000 amount by September 1, 1994, based on the change in the California Consumer Price Index from June of the prior calendar year to June of the current calendar year, and for the resulting amount to be the “applicable amount” for the succeeding calendar year;
- Mandated that the Department adjust the “applicable amount” for the current calendar year by October 1 each year thereafter, based on the prior June to June change in the California Consumer Price Index, and for the resulting amount to be the “applicable amount” for the succeeding calendar year; and
- Provided that when the applicable amount as adjusted for inflation equals or exceeds the operative threshold by five hundred dollars (\$500), the operative threshold automatically increases to the applicable amount as adjusted for inflation, rounded to the nearest multiple of \$500, effective January 1 of the succeeding calendar year.

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<sup>1</sup> References to the Department mean the State Board of Equalization prior to July 1, 2017, (Gov. Code, §§ 15570.22, 15570.24; RTC, § 20.)

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Therefore, the \$1,000 operative threshold in subdivision (b)(1) of RTC section 6355 was previously raised to \$1,500 for sales occurring on or after January 1, 2009, pursuant to RTC section 6355. The Department also changed subdivision (a)(3)(A) of Regulation 1599 to incorporate the \$1,500 threshold for sales occurring on or after January 1, 2009, under California Code of Regulations, title 1, section (Rule) 100.

After making the annual inflation adjustment to the applicable amount for 2022, as shown in the attached table, the Department determined that the resulting amount is \$2,115.92. Therefore, the operative threshold increases to \$2,000 pursuant to RTC section 6355 for sales occurring on or after January 1, 2023. Accordingly, the Department proposes to change Regulation 1599, subdivision (a)(3)(A) to provide that for sales occurring on and after January 1, 2023, a sale in bulk occurs if the total market value of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in a single transaction is \$2,000 or more.

In addition, the Department proposes to divide subdivision (a)(3)(A) of Regulation 1599 into three separate paragraphs in order to improve the subdivision's readability. The Department also proposes to replace a reference to section 6011 "of the Sales and Use Tax Law" in subdivision (a)(3)(A) with a reference to "Revenue and Taxation Code" section 6011 because they are both references to the same statute and the change makes the reference to section 6011 consistent with the reference to Revenue and Taxation Code section 6355 in the same subdivision.

Finally, the Department proposes to replace gendered pronouns with gender-neutral pronouns in subdivisions (b)(1) and (b)(5) of Regulation 1599 by changing every occurrence of "his or her" and "him or her" to "their" and "them," respectively, in accordance with Assembly Concurrent Resolution (ACR) No. 260 (Stats. 2018, ch. 190), which encourages state agencies to use gender-neutral pronouns and avoid the use of gendered pronouns in regulations.

The Department has determined that the proposed changes to Regulation 1599 are appropriate for processing under Rule 100 because they make the regulation consistent with the increase in the operative threshold under RTC section 6355 for sales occurring on or after January 1, 2023, they make the reference to section 6011 consistent with the reference to section 6355, they make non-substantive changes to replace gendered pronouns with gender-neutral pronouns in accordance with ACR No. 260, and they do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

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**B. Proposed Amendments**

The following Rule 100 changes are proposed to title 18 of the California Code of Regulations:

TEXT OF PROPOSED CHANGES

Regulation 1599. Coins and Bullion.

(a) General.

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged):

(A) The sale is in bulk amount. For sales occurring on or before December 31, 2008, a sale in bulk occurs if the total market value of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in a single transaction is \$1,000 or more.

For sales occurring on or after January 1, 2009, and before January 1, 2023, a sale in bulk occurs if the total market value of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in a single transaction is \$1,500 or more.

For sales occurring on or after January 1, 2023, a sale in bulk occurs if the total market value of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in a single transaction is \$2,000 or more, or is equal to or exceeds the adjusted amount as computed by Revenue and Taxation Code Section 6355. For purposes of this regulation, market value means sales price as defined in Revenue and Taxation Code Section 6011 of the Sales and Use Tax Law.

(B) . . . (unchanged).

(4) . . . (unchanged).

(b) Application of Tax to Specific Types of Transactions.

(1) Options to Buy. “Options to buy” are contracts in which the seller agrees to sell specified property, usually at a predetermined price, while the buyer obtains the right but not the duty to purchase the property. Accordingly, the “buyer” has the option to purchase the property but may decide not to purchase without breaching the contract. A sale happens if the buyer

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exercises ~~his or her~~their option to purchase the property and tax applies at the time the option is exercised unless the sale is otherwise exempt. On the other hand, if the option is not exercised, no sale happens and no tax applies.

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) Credit Transactions. When a consumer makes a down payment and enters a contract for the purchase of coins, the parties may regard it as a credit transaction. But the sale may or may not happen at the time the “credit” is extended.

In some instances, the buyer receives a loan of the balance of the purchase price, and the title to the coins is transferred to the buyer. But the creditor, who may be the buyer's broker or the seller, retains possession of the property owned by the buyer as collateral for the loan to ~~him or her~~them. The buyer's creditor has the power to sell the buyer's property and pay off the loan if the market price of the property falls and approaches the amount of the loan. Often the broker or seller has power to repledge the property to ~~his or her~~their creditor to secure a loan to ~~him or her~~them. In any event a sale of tangible personal property to the consumer happens and tax applies unless otherwise exempt. These transactions are usually referred to as “margin” or “marginated” purchases.

In other instances, the contract conditions the passage of title to the goods to the buyer on ~~his or her~~their payment of the full purchase price (conditional sales contract). The seller does not deliver possession of the goods until the payment of the full purchase price. Under this arrangement neither title nor possession in lieu of title can pass until full payment, and so a sale cannot happen until then. The seller and the buyer can agree to cancel the contract before title passes to the buyer and so no sale may ever happen under the contract. But if the title does pass after full payment, the sale happens and tax applies unless otherwise exempt. Because the seller may hold goods for the buyer, and the market price of the goods may fluctuate, the seller may regard the contract as an extension of credit to the buyer or may refer to the transaction as a “margin” or “marginated” purchase.

Other “credit” arrangements are possible. Each transaction must be examined to determine if or when a sale or purchase happened.

(6) . . . (unchanged).

(7) . . . (unchanged).

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(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6007, 6008, 6009, 6011, 6354 and 6355, Revenue and Taxation Code.