

Add Revenue and Taxation Section 6278 to the Sales and Use Tax Law to impose sales tax on a person's retail sales of vehicles, when the Department of Motor Vehicles determines that person failed to hold a dealer's license required under the Vehicle Code at the time of sale.

Source: Sales and Use Tax Department

Existing Law. *Vehicle Code.* Under existing law,¹ the Department of Motor Vehicles (DMV) licenses and regulates those involved in motor vehicle sales in California, including vehicle dealers, manufacturers, distributors, and transporters. Under the law,² no person may act as a California vehicle dealer without first receiving a license or temporary permit from the DMV.

Existing law³ defines a dealer as a person who:

- (a) For commission, money, or other thing of value, sells, exchanges, buys or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in a vehicle subject to registration or a motorcycle, snowmobile, subject to identification under the Vehicle Code, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and, who receives or expects to receive a commission, money brokerage fees, profit, or any other thing of value, from either the vehicle seller or purchaser; or
- (b) Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in vehicles, whether or not the person owned those vehicles.

Revenue and Taxation Code (RTC). Existing law⁴ provides, in part, that every person making any retail sale of a vehicle is a retailer of the vehicle (with certain exceptions). However, existing law⁵ exempts vehicle sales from sales tax when the retailer is not licensed as a vehicle dealer by the DMV. Existing law⁶ also provides that when an unlicensed vehicle dealer sells a vehicle at retail, the dealer is neither required nor authorized to collect the use tax from the purchaser. Instead, the law requires the purchaser to pay the use tax to the DMV who acts on behalf of the BOE. Currently, if the purchaser does not pay the use tax, or fails to pay the proper amount, the BOE must collect the use tax from the purchaser for the unpaid use tax portion, along with interest and penalties due. For an unlicensed vehicle dealer's sales, the BOE must assess and collect use tax against each individual purchaser, rather than assess the sales tax on the unlicensed vehicle dealer's sales.

Even when the person holds a valid seller's permit, existing law allows a retailer who is illegally operating without a dealer's license, to avoid any responsibility for sales or use tax on their vehicle sales.

This Proposal. This proposal allows the BOE to assess unpaid sales tax, penalties, and interest against a retailer who fails to register with the DMV as a licensed vehicle dealer,

¹ Article 2 (commencing with Section 1500) of Chapter 1 of Division 2 of the Vehicle Code.

² Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

³ Section 285 of the Vehicle Code.

⁴ Section 6275 of the RTC.

⁵ Section 6282 of the RTC.

⁶ Sections 6292 and 6293 of the RTC.

when the DMV determines that, at the time of sale, the retailer should have held a vehicle dealer license. The retailer would be allowed a credit for any purchasers' related use tax payments.

This proposal derives from an audit of a truck retailer. The retailer properly held a BOE-issued seller's permit, but sold numerous trucks illegally, without a DMV-issued dealer license. Since the law imposes no tax collection responsibilities on a person who is not a licensed dealer, the truck retailer did not report the tax, nor was responsible for the tax, on any of its truck sales. To ensure the tax is properly paid in such situations, the BOE must review DMV's records and pursue collection against purchasers who failed to remit the proper use tax amount (purchasers often don't pay the tax or declare a lower purchase price than the actual price paid). Even though the retailer was clearly acting as a vehicle dealer, since he had failed to obtain a dealer's license, he was exempted from any tax collection responsibility. This proposal intends to reduce the staff hours devoted to assessing and collecting the use tax from multiple purchasers in these situations, and allow the BOE to pursue tax collection from the unlicensed retailer if the retailer is required to be licensed. Additionally, the proposal may assist DMV's efforts to stop "curbstoning."

Curbstoning is the repeated, unlicensed "flipping" of used cars for profit by unlicensed dealers who pretend to be private parties. Often, customers unknowingly buy damaged, dangerous, or uninsurable vehicles. Curbstoning is illegal in many states, including California, and defrauds thousands of unwary consumers every year. DMV has been actively involved in investigations of curbstoners. For example, an April 12, 2014 investigation resulted in 93 citations, 68 warnings, 109 impounded vehicles, and four individual arrests on outstanding warrants during the operation.

Frequently, curbstoners sell vehicles with hidden problems rejected by reputable dealers. Customers become victims of fraud when they purchase vehicles from curbstoners that tamper with odometers, hide frame damage or rebuild salvage vehicles, sell vehicles with faulty safety devices and those that are subject to mechanics or promissory liens, as well as vehicles that have other problems that are undisclosed at the time of sale.

By imposing tax on these curbstoners, their profits are reduced, which reduces the incentive to continue this illegal activity.

Section 6278 is added to the Revenue and Taxation Code, to read:

6278. Notwithstanding Sections 6275, 6292, and 6293, if the Department of Motor Vehicles determines that a retailer is engaged in the selling of vehicles as outlined in Section 285 of the Vehicle Code, and the retailer failed to obtain a license from the department pursuant to the Vehicle Code as a dealer, the retailer shall be liable for the sales tax on each retail sale of a vehicle in this state made during the period in which the department determines the retailer was required to hold a license. The retailer shall be credited against any tax remitted to the state under this part on the same transaction and the balance, if any, shall constitute an obligation due from the retailer to this state.