

Tax Information Bulletin

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ISSUED QUARTERLY
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1. Sales and Use Tax Rate To Increase in the City of Clovis

On April 1, 2000, the sales and use tax rate within the city limits of Clovis will increase from 7.875 percent to **8.175** percent. This rate increase reflects the statewide 7.25 percent rate, the 0.50 percent Fresno County Transportation Authority (FCTA), the 0.125 percent Fresno County Public Library Transactions and Use Tax (FCPL), plus 0.3 percent for the new voter-approved City of Clovis Public Safety Transactions and Use Tax (CCPS).

Note: Clovis is located in Fresno County. The tax rate in areas of the county outside the city limits of Clovis will remain at 7.875 percent.

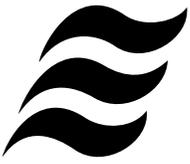
Who must apply the new tax rate?

You must apply the new 8.175 percent if you

- Are a retailer in Clovis and your merchandise is sold and delivered within the city.
- Are a retailer located outside of Clovis who is engaged in business in the city and you sell merchandise for use in the city. You are considered to be engaged in business in the city if you (1) have any type of business location there, (2) deliver into the city using your own vehicles or (3) have an agent or representative in the city who makes sales, takes orders, installs, assembles or makes deliveries for you.
- Are a dealer of vehicles, vessels, or aircraft and sell those items to persons who will register or license them to an address located in Clovis.
- Collect tax on lease payments you receive for leased property used by the lessee in Clovis.

Is there an exemption from the tax rate increase?

In general, fixed-price contracts and fixed-price lease agreements entered into prior to April 1, 2000, are subject to the tax rates in effect at the time you and your customer entered into the contract. To qualify as "fixed-price," neither party can have the unconditional right to adjust the price for an increase in costs or terminate the contract or



lease [Revenue and Taxation Code sections 7261(g) or 7262 (f)]. In addition, the tax amount or rate must be specifically stated in the contract or lease agreement and the seller or lessor cannot have the right to increase the amount of tax collected from the customer because of a rate increase (such as using the term “applicable tax”). If the contract or lease qualifies as fixed-price, you should continue to report and remit the specified tax rate – that is, the rate in effect at the time you entered into the contract.

2. New Legislation Affects Second Quarter Prepayments

Businesses with average taxable sales of \$17,000 per month or more are required to make prepayments. They must continue to make prepayments until advised in writing by the Board to stop. — Editor

Please note the following changes related to sales and use tax prepayments. These changes took effect January 1, 2000.

April Prepayment (April 1 - April 30) (payment due May 24)

Change in percentage of tax liability due
You must report 90% of the tax liability for April. Last year, the percentage was 95%. (Option 1)

Note: As an alternative, you may report based on last year's tax liability. If your business was in operation for all of the second quarter in the previous year, you may compute your prepayment based on the amount that was subject to tax for that quarterly period. (Option 2)

May/June Prepayment (May 1 – June 15)

Change in Due Date
The due date for this reporting period has changed. Your prepayment for this period is now due on **June 24** (last year this payment was due on June 23).

Change in percentage of tax liability due
You must report either

- 135% of the tax liability for May (Option 1) or
- 90% of the tax liability for May and the first 15 days of June (Option 2).

Last year, the percentages for these options were 142.5% and 95%, respectively.

Note: As an alternative, you may report based on last year's tax liability. If your business was in operation for all of the second quarter in the previous year, you may compute your prepayment based on the amount that was subject to tax for that quarterly period (Option 3).

3. Reporting Change for Retailers of Modular Systems Furniture

Do you sell and install modular systems furniture? If so, the provisions of new Regulation 1583, *Modular Systems Furniture*, may affect how you report and account for the tax due on your contracts to sell, install, and assemble modular systems furniture.

In general, contracts to sell and install modular systems furniture are contracts for the sale of tangible personal property. They are not construction contracts. This is true whether or not the systems are affixed to realty.

When you sell and install modular systems furniture, you are a retailer of the items sold, with tax due on the entire contract price *less* charges that are specifically excludable or exempted under the law. You must maintain complete and detailed records to support such excluded or exempted charges.

Taxability of Labor Charges

Generally, contracts to sell and install modular systems furniture involve two types of labor: fabrication labor and installation labor. Charges for fabrication labor are generally subject to tax, while charges for installation labor are generally not subject to tax.

Fabrication labor includes the labor to attach, assemble, connect, construct, or fabricate panel systems or components; labor to attach or connect one panel to another to form workstations or cubicles; and labor to construct or fabricate the individual panels, components, or accessories.



Installation labor includes labor to affix, bolt, fasten, or hardwire panels to realty and labor to fasten or affix fully constructed components to fully constructed panel systems or other components.

Alternative to Separately Accounting for Installation Labor Charges

As noted earlier, you must retain detailed records to support installation charges and other nontaxable deductions. However, for contracts to sell and install modular systems entered into on or after October 1, 1999, you may claim a ten percent installation labor deduction in lieu of separately accounting for the actual installation charges incurred. The ten percent deduction is presumed to be a charge for labor to install or apply the property sold. It is computed based on the *total* contract price, excluding charges attributable to freestanding desks, credenzas, lateral files, bookcases, worktables, returns, convergents, corner units, storage towers, chairs, footrests, and other property not attached to panels, other components, or realty.

If you are a subcontractor and have contracted with the seller to assemble and install a modular system or if you are reconfiguring an existing system, the allowable 10% deduction does not apply to your contracts. You should continue to report and separately account for your taxable and nontaxable labor charges. For more information, please call our Information Center.

4. CRV Charges Imposed On Nontaxable Products Are Not Taxable

Beginning January 1, 2000, the list of beverages subject to the California Redemption Value (CRV) was expanded to include nontaxable beverages, such as certain noncarbonated fruit drinks and bottled water. As a result of this change, several retailers have asked how sales tax applies CRV charges imposed on these nontaxable beverages.

If the beverage is considered a nontaxable food product, the CRV charges related to that product are also nontaxable. Of course, tax still applies to

CRV charges related to taxable beverages such as carbonated soft drinks and alcoholic beverages, such as beer and wine coolers.

Please note: The Board does not administer the CRV. If you have questions regarding what products are subject to CRV or the amount of CRV to be charged, please contact the California Department of Conservation (refer to the government section of your telephone directory).

5. Revised Regulation for Printers

Sales and use tax Regulation 1541, *Printing and Related Arts*, was recently revised to explain the application of tax to modern printing processes and to establish certain presumptions regarding the application of tax to special printing aids. The revisions are considered a change in interpretation of the current tax law and are retroactive under the normal statute of limitations (see "Refunds," page 5).

The significant changes to Regulation 1541 are explained in the following sections.

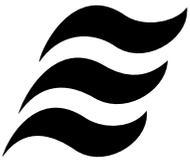
■ Special Printing Aids

"Special printing aids" are *reusable* manufacturing aids a printer uses in the printing process that are useful only to a particular customer. Examples include film, screens, artwork, cutting dies, color separations, and *reusable* printing plates.

Before the revision of Regulation 1541, the printer was considered the consumer of special printing aids unless the printer could document that ownership of the aids transferred to the customer before they were used in printing. Under the revised regulation, *the printer is presumed to be the retailer* of special printing aids unless the printer makes a specific statement on his or her invoice stating that ownership of the special printing aids does *not* transfer to the customer prior to their use.

Printer retains ownership of special printing aids

Printers who want to retain ownership of special printing aids should include the following statement on their invoices: "The selling price of the printed material does not include the transfer of title to the printing aids." The printer is then



considered the consumer of the special printing aids and must pay tax when purchasing those items or the raw materials used to make them.

Printer sells special printing aids — “sales ultimately subject to sales tax”

As explained earlier, unless the invoice states that ownership of the special printing aids is *not* being transferred to the customer, the printer is presumed to be the retailer of those items. For certain sales —called “sales ultimately subject to sales tax”—the revised regulation also establishes a presumption that

- The printer is selling the special printing aids prior to using them in the printing process,
- The selling price of the special printing aids is included in the sales price of the printed material (regardless of any separate listing on the invoice), and
- The printer may purchase the special printing aids for resale.

“Ultimately subject to sales tax” means the sale is

- Subject to California sales tax, or
- An exempt sale to the U.S. Government, or
- A sale for resale, when the final sale of the printed matter and the special printing aids is a taxable sale in California or an exempt sale to the U.S. Government (the resale certificate given to the printer must be for *both* the printed matter and the special printing aids).

Printer sells special printing aids—sales not ultimately subject to sales tax

These sales include all other sales of printed matter, such as qualifying sales of printed sales messages and newspapers and periodicals and exempt sales in interstate commerce.

For these sales, the printer owes sales tax on the cost of the special printing aids or the raw materials used to produce them, whether or not the selling price of those items is separately stated on his or her invoice. If the printer paid tax at the time of purchase, no additional tax is due. The printer may choose to collect sales tax reimbursement from the customer on the cost of the aids or the amount charged for them, but is not required to do so.

■ Color Separations

Charges of up to \$100 for altering film are considered charges for restoring property to its original condition and are not taxable. Charges greater than \$100 are considered charges for fabrication labor. In general, fabrication labor charges are subject to tax unless they are part of a nontaxable transaction, such as a sale in interstate commerce.

■ Composed Type

The creation and sale of composed type is a nontaxable service unless the typography is a part of the sale of printed material. Tax applies to the gross receipts from the sale of printed material without any deduction for the typography charge.

Composed type includes type alone or together with lined borders and plain, straight, fancy, or curved lines. This includes charts, tables, graphs, and similar methods of providing information. Composed type also includes text combined with clip art on the same page. “Clip art” is defined as commercially available prepackaged, electronic art (including stock photographic images) that is not produced. Images that are scaled or rotated are not considered “produced to the special order of the customer.”

Artwork other than clip art combined with composed type on the same page is not considered composed type. For an explanation of how to compute the tax due on a typography job that includes artwork other than clip art, please see Regulation 1541, section (e)(3).

■ Digital or Electronic Pre-press Instruction

“Digital or electronic pre-press instruction” is defined as the creation of original information by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film or plate, or direct to press. Digital pre-press instruction creates a new program considered a custom computer program under section 6010.9 of the Sales and Use Tax Law and is not taxable when

- The work is performed to the special order of the customer, and
- The resulting program is transferred to the customer on a computer disk or other elec-



tronic storage media (rather than as film or other hard-copy output).

Generally, digital or electronic pre-press instruction is accomplished using a Raster Image Processor (RIP) that combines and translates computer programs, including page layout files and linked graphics, into specific instructions for the printer's proprietary direct-to-film, direct-to-plate or direct-to-press equipment.

Digital pre-press instruction does not include using a computer to create original artwork or to scan, manipulate, or insert artwork. The sale of disks or other storage media that contain digital artwork files (such as QuarkXPress or Adobe PageMaker files) are taxable, just like sales of other tangible graphic artwork. The sale of disks that contain only composed type is not taxable (see previous section).

Refunds

If after reviewing the changes noted above, you believe you have paid more sales or use tax than you owe, you may file a claim for refund of the overpaid tax. You may *not* deduct a past overpayment from the amount due with a current or future sales and use tax return. If you are filing a refund of tax paid on special printing aids, please read the next three sections. If you are filing a claim for refund for another reason, please see next column, "Filing a claim with the Board."

Refunds of tax paid: special printing aids

If you paid tax on the purchase of special printing aids, you may file for a refund of the tax paid if the aids were included in a sale of printed material that was ultimately subject to California tax and you claim the customer owned the aids at the time you used them.

Computing the refund amount: special printing aids

In general, there are three options for computing the amount of tax you should have paid on special printing aids:

- **Actual basis** — List the amount of tax you paid on special printing aids sold with each sale of printed material that was ultimately subject to tax.

- **Sample basis** — Compute a percentage of tax-paid special printing aids used in sales ultimately subject to tax, based on a sample of sales transactions.
- **Percentage of sales** — (1) For the claim period, calculate your total sales of printed material that included special printing aids; (2) Determine which of those sales were ultimately subject to tax; (3) Divide the result of step 2 by the result of step 1; and (4) Multiply your tax-paid purchases of special printing aids during the claim period by that percentage.

How to file for a refund: special printing aids

Special printing aid vendors can file claims on behalf of printers for refund of tax paid on special printing aids that were resold prior to use — provided the vendor *refunds the tax to his or her customer*. Or printers may directly file a claim for refund for an unclaimed "tax-paid purchases resold" deduction, provided the claimed refund does not exceed the amount of tax paid during the claim period. If the refund amount exceeds the tax paid, the printer must file for a refund through their special printing aid vendor.

Filing a claim with the Board

If you are filing a claim for refund directly with the Board, please send your claim to: Refund Section, Board of Equalization, P.O. Box 942879, Sacramento CA 94279-0039. Please note that the time period for filing a refund claim is limited by law. For information regarding the how the limitation period applies to your claim, or how to compute and document the claim, please contact your district office.

6. New Publication Explains Tax Collection Procedures

Tax professionals and taxpayers alike can benefit from reading our new publication 54, *Tax Collection Procedures*. Although the pamphlet includes information on what steps may be taken if a tax billing is not paid on time — such as liens, levies, and the possible loss of a seller's permit, it also discusses payment options available to eligible taxpayers, such as installment payment agreements. Because of the options that are available,



taxpayers are strongly encouraged to contact the Board if they are unable to pay a tax billing on time. By finding a way to pay the liability, they can avoid some of the stronger collection actions that can be taken.

To have a copy of publication 54 mailed to you, call our Information Center at 1-800-400-7115. You can also download a copy from the Internet, at www.boe.ca.gov.

7. Bundled Sales Of Cellular Telephones, Pagers And Other Wireless Devices—A Clarification

We published an article on the subject of bundled sales of wireless telecommunication devices in June 1999. However, some readers found the article to be unclear. We hope the following update, which includes specific examples, will help clarify how to apply tax for those types of sales. Although the focus of our article is on bundled sales of cellular telephones, the application of tax is the same for bundled sales of pagers and other wireless devices sold on or after January 1, 1999. — Editor

It is a common practice to sell cellular telephones, pagers, and other wireless telecommunication devices in what are called bundled packages. Regulation 1585, *Cellular telephones, Pagers, and Other Wireless Telecommunication Devices*, defines “bundled transactions” as sales in which the customer is required to activate the cellular telephone or contract for service with a wireless telecommunications provider for a period greater than one month as a condition of sale. Generally, the customer receives a promotional or discounted sales price on the cellular telephone if he or she enters into a bundled transaction. Sometimes accessories are included or sold with the wireless device at a discounted price.

To know how to apply tax to a bundled sale, you must know your cost, bundled selling price, and unbundled selling price. The unbundled selling price is the price at which the cellular phone has been sold to customers who were not required to activate the phone.

As explained in the next column, the application of tax is based on whether you are a consumer or a retailer of the wireless device.

Bundled Sales: Are You a Consumer or a Retailer?

■ ***Bundled sales that do not include accessories***

If the *unbundled selling price* of the phone is less than 50 percent of the cost of the phone, you are considered the consumer of the telephone. **Tax is due on your cost of the phone** and you may not collect tax reimbursement from the customer.

Example 1 (consumer status). As a cellular telephone seller, you purchase a cellular telephone for \$100. Customers who agree to activate the phone with a specific service provider for a one-year period can purchase the phone for \$25 (bundled price). Customers who purchased the same model phone without the activation agreement were charged \$40 (unbundled sales price). Since the \$40 unbundled sales price of the phone is less than 50 percent of the cost of the phone ($\$100 \text{ cost} \times 50\% = \50), you are considered the consumer of the telephone and owe tax based on your \$100 cost of the phone. As the consumer, you may not collect tax reimbursement from your customer on your phone sale.

If, when sold in a bundled transaction, the *unbundled sales price* of the cellular telephone is 50 percent or more of the cost of the phone, you are the retailer of the phone. **Tax is due on the unbundled sales price of the phone.** Again, this unbundled sales price may be substantially different than the actual promotional or discounted sales price offered in the bundled transaction.

Example 2 (retailer status). As a cellular telephone seller, you purchase a telephone for \$100. Customers who agree to activate the phone with a specific service provider for a one-year period can purchase the phone for \$25 (bundled sales price). Customers who purchased the same model phone without the activation agreement were charged \$110 (unbundled sales price). Since the \$110 unbundled sales price of the telephone is more than 50 percent of the cost of the phone ($\$100 \text{ cost} \times 50\% = \50), you are considered a retailer of the phone and tax is due on the \$110 unbundled sales price of the phone. As a retailer, you may collect sales tax reimbursement from your customer on the \$110 unbundled sales price of the phone.



■ **Bundled sales that include accessories**

Sometimes retailers include “free” accessories (for example chargers, adapters, and phone covers) when they sell wireless telecommunication devices. How tax applies will depend on whether you charge a separate amount for the accessories.

You do not charge a separate amount

If you sell a cellular telephone in a bundled transaction and include an accessory, but do not charge a separate amount for the accessory (including charging \$0), then the cost of the accessory should be combined with the cost of the phone to determine if the unbundled sales price of the phone is less than 50 percent of the combined cost.

Example 3 (accessories included). As a cellular telephone seller, you purchase a cellular telephone for \$100 and a car adapter for \$25. During a special promotion, customers receive a free car adapter when they purchase a phone (no separate amount is charged for the adapter). Customers who agree to activate the phone with a specific service provider for a one-year period can purchase the phone with the adapter for \$40 (bundled sales price). Customers who purchased the same model phone without the activation agreement are charged \$60 (unbundled price). Since the \$60 unbundled sales price of the phone is less than 50 percent of the cost of the phone combined with the cost of the adapter (\$100 phone cost + \$25 adapter cost = \$125; $\$125 \times 50\% = \62.50), you are considered the consumer of the phone and adapter and owe tax based on your \$125 cost of the phone and adapter. As the consumer, you may not collect tax reimbursement from your customer on your sale of the phone and adapter.

You charge a separate amount

When an accessory is sold with a cellular telephone and a separately stated amount is charged for the accessory, the cost and sales price of the phone and the accessory are considered separately in determining whether you are a consumer or retailer of the respective items.

Example 4 (accessories sold for a separate price). As a cellular telephone seller, you purchase a telephone for \$100 and a car adapter for \$25. During a special promotion, customers can purchase a car adapter for \$15 when they purchase a phone. Customers who agree to activate the phone with a specific service provider for a one-year period can purchase the phone for \$25 (bundled price). Customers who purchased the same model phone without the activation agreement were charged \$110 (unbundled price). Since the \$110 unbundled sales price of the phone is more than 50 percent of the cost of the phone ($\$100 \text{ phone cost} \times 50\% = \50), you are considered the retailer of the telephone. Since the \$15 sales price of the adapter is more than 50 percent of the cost of the adapter ($\$25 \text{ adapter cost} \times 50\% = \12.50), you are also the retailer of the adapter. You will owe tax on \$125 (\$110 unbundled sales price of the phone + \$15 separately stated sales price of the adapter). As a retailer, you may collect sales tax reimbursement from your customer on the \$125 sales price of the phone and adapter.

We know calculating the tax due on these transactions can be complicated. If you have questions regarding how tax applies to bundled and unbundled sales of cellular telephones, pagers and other wireless telecommunication devices, please contact our Information Center.

8. Changes in Sales Tax Prepayment Rates for Distributions of Qualifying Fuels

Beginning April 1, 2000, the following prepayment rates will apply to distributions of gasoline, diesel, and other qualifying fuels:

- 8.5 cents (\$0.085) per gallon for motor vehicle fuel (gasoline)
- 3.0 cents (\$0.03) per gallon for aircraft jet fuel
- 6.5 cents (\$0.065) per gallon for diesel and other qualifying fuels, as described below

Other qualifying fuels include kerosene, any type of flammable liquid sold as or marketed as diesel fuel, and home heating oil meeting industry specifications for diesel No. 1 or No. 2.



How long will the new rates remain in effect?

These rates will remain in effect through March 31, 2001, unless the price of these fuels increases or decreases significantly, resulting in prepayments that consistently exceed or are significantly lower than the fuel retailer's sales tax liability.

9. Y2K Was A-OK

We are pleased to report that the Board of Equalization enjoyed an incident-free rollover into the new millennium. All automated systems, networks and facilities performed flawlessly as we transitioned into January 2000. This was the direct result of over two years of dedicated effort by staff, whose diligence produced this outcome. While we are pleased at the initial results of our planning, we will remain vigilant over the coming months to ensure continued Y2K compliance.

10. New or Revised Reference Material

If you would like to obtain a copy of any of the following reference material, please call the Information Center. Copies of some publications can also be obtained from our website, www.boe.ca.gov.

Sales and Use Tax Publications

- 1 Sales and Use Tax Law
- 51 Guide to Board of Equalization Services (November 1999)
- 54 Tax Collection Procedures (March 2000)
- 111 Swap Meets and Flea Markets (November 1999)
- 112 Purchases from Out-of-State Vendors (January 2000)

Sales and Use Tax Regulations

- 1502 Computers, Programs, and Data Processing (effective 12/3/99)
- 1532 Teleproduction or Other Postproduction Service Equipment (effective 1/8/00)
- 1541 Printing and Related Arts (effective 12/3/99)
- 1583 Modular Systems Furniture (effective 12/3/99)

- 1684 Collection of Use Tax by Retailers (effective 10/5/99)
- 1685 Payment of Tax by Purchasers (effective 10/21/99)
- 1703 Interest and Penalties (effective 1/8/00)
- 1705 Relief from Liability (effective 1/7/00)
- 1827 Collection of Use Tax by Retailers (effective 10/22/99)

How To Contact Us

Information Center. Call at any time to use our automated services, including our faxback service. To speak to a representative, call between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding State holidays.

1-800-400-7115

Telephone devices for the deaf

1-800-735-2929 (TDD phone)

1-800-735-2922 (voice phone)

Internet. Visit us at www.boe.ca.gov to obtain information on tax rates, publications, legislation, regulations, telephone numbers, education programs, public meetings, and so forth.

Seller's Permit Verification. To verify permit numbers, you can call **1-888-225-5263** to use our automated voice response system. Or you can visit our website, www.boe.ca.gov.

Taxpayers' Rights Advocate. Call the Advocate's office if you need help with a problem you have been unable to resolve at other levels. Call toll-free, **1-888-324-2798**.

Tax Evasion Hotline. Call to report suspected tax evasion. Call toll-free, **1-888-334-3300**.

Copies of Legislative Bills. Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. Or visit the following website: www.leginfo.ca.gov. The Bill Room does not provide copies of Board forms or publications.