

Tax Information Bulletin

STATE BOARD
OF EQUALIZATION

ISSUED QUARTERLY
September 2000

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We Want To Hear from You

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1. Annual Taxpayers' Bill of Rights Hearings Scheduled

Each year, the Members of the Board of Equalization hold public hearings to give taxpayers, tax professionals, and other interested parties the opportunity to comment on the tax and fee programs administered by the Board. If you would like to suggest ways to improve our services, or if you want us to look more closely at a tax or fee issue, you are encouraged to present your ideas at these hearings.

Although you do not need to be scheduled in advance to speak at the hearing, it would help us to prepare if you contacted us beforehand to let us know your topic. If your proposal is complex or extensive, we encourage you to submit it in advance and then summarize it in your oral presentation.

Business Tax Hearings

Sacramento

Wednesday, November 1, 2000, 2:00 p.m.
Board of Equalization Headquarters
450 N Street, 1st Floor Board Room

Culver City

Wednesday, November 29, 2000, 1:30 p.m.
Board of Equalization District Office
5901 Green Valley Circle, Suite 207

Property Tax Hearings

Culver City

Wednesday, November 29, 2000, 1:30 p.m.
Board of Equalization District Office
5901 Green Valley Circle, Suite 207

Sacramento

Wednesday, December 13, 2000, 2:00 p.m.
Board of Equalization Headquarters
450 N Street, 1st Floor Board Room



To notify us of a topic you wish to discuss or to send written material in advance, contact the
Taxpayers' Rights Advocate MIC:70
P.O. Box 942879
Sacramento, CA 94279-0070
Toll-free number 1-888-324-2798
FAX: 916-323-3319

2. Sales and Use Tax Rate To Increase in the City of Avalon

On October 1, 2000, the sales and use tax rate in the city limits of Avalon will increase from 8.25 percent to 8.75 percent. This rate increase reflects the statewide 7.25 percent rate, two Los Angeles County Transportation Commission District taxes at 0.50 percent each (LATC) and (LACT), plus 0.50 percent for the new voter-approved Avalon Municipal Hospital and Clinic Transactions and Use Tax (AMHC).

Note: The City of Avalon is located in Los Angeles County, on Santa Catalina Island. The tax rate in areas of Santa Catalina Island outside the city limits of Avalon will remain at 8.25 percent.

Who must apply the new tax rate?

You must apply the new 8.75 percent rate if you

- Are a retailer in the City of Avalon and your merchandise is sold and delivered within the city.
- Are a retailer located outside of the City of Avalon 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 vessels, aircraft, or other facilities, or (3) have an agent or representative in the city who makes sales, takes orders, 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 the City of Avalon.
- Collect tax on lease payments you receive for leased property used by the lessee in the City of Avalon.

Is there an exemption from the tax rate increase?

In general, fixed-price contracts and fixed-price lease agreements entered into prior to October 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. 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.

3. Nonprofit Organizations Usually Pay Tax on Their Purchases

Many organizations that are granted nonprofit status by the United States Internal Revenue Service and the California Franchise Tax Board mistakenly believe they are automatically exempt from California sales tax.

In general, tax applies to purchases by nonprofit organizations of items they will use, such as office equipment and supplies. In addition, some nonprofit organizations are considered consumers of items they sell and are required to pay tax on their purchases of those items.

For example, a qualified youth organization is the consumer of nonalcoholic beverages which it sells on an irregular or intermittent basis — provided the profits from such sales are used exclusively in the furtherance of the purpose of the organization. Accordingly, when a qualified youth group purchases carbonated soda it will sell at a local fair, it should pay tax on its purchases of soda, provided the profits are used to support the organization. Since they are considered the consumer of the soda, the youth group would not have to charge tax when it sells the drinks.

California law provides specific exemptions from sales and use tax for some nonprofit organizations. If you have a question concerning a sales tax exemption for a nonprofit organization,



please see Publication 18 *Tax Tips for Nonprofit Organizations* or call our Information Center for assistance. You can also download the publication from our website, www.boe.ca.gov.

4. Application of Tax to Purchases of Vehicles for Use in Interstate or Foreign Commerce

Regulation 1620, *Interstate and Foreign Commerce*, was recently revised to clarify the application of tax to purchases of vehicles for use in interstate or foreign commerce.

How Tax Applies to Out-of-State Purchases

Among other things, the revised regulation establishes guidelines for determining whether California use tax applies to purchases of vehicles for use in interstate or foreign commerce (generally buses and commercial trucks) when they are

- Purchased out of state;
- First functionally used outside this state (that is, used for the purpose for which they were designed); *and then*
- Brought into California within 90 days of purchase.

If all of the above conditions apply to your purchase, you will not be regarded as having purchased the vehicle for use in California and you will not be liable for California use tax if *either* of the following conditions is met during the six-month period immediately following the vehicle's entry into California:

- The vehicle is used or stored outside California one-half or more of the time; *or*
- One-half or more of the miles traveled by the vehicle are miles traveled in interstate or foreign commerce.

Other Changes

The regulation revisions further clarify that

- There is no distinction made between the miles in an interstate or foreign commerce trip traveled in California versus the miles traveled in another state or country – all miles on a qualifying interstate trip are considered interstate commerce miles.

- In general, miles associated with an interstate or foreign commerce trip via a commercial vehicle that deadheads during a portion of the trip are miles in interstate commerce.

In addition, several examples have been added to the regulation to illustrate the types of activity that constitute use in interstate or foreign commerce for charter tour buses, per capita bus service, and commercial vehicles.

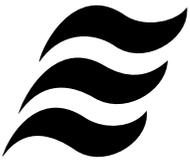
If you have any questions regarding this revision or would like a copy of the new regulation, please call our Information Center. To download a copy from the Internet, visit www.boe.ca.gov/staxregs.htm.

5. Wrap It! Tax It?

The holiday season will soon be here and we want to remind everyone of how sales tax applies to gift-wrapping charges. Whether you are solely in the business of wrapping gifts or offer gift-wrapping as a service to your customers when they purchase your products, sales tax generally applies to your entire gift-wrapping charge, including your charges for labor and materials. It does not matter whether the gift-wrapping is done by you, your employees, or by another party — the entire amount you charge your customer remains subject to tax. This is true even if you only offer gift-wrapping services temporarily during the holidays.

What if I gift-wrap food products? If you gift-wrap food items that you did not sell, tax applies to your total charge for the gift-wrapping. However, if you gift-wrap food products where you were the seller of those food items and the sale was exempt, your charge for gift-wrapping is not taxable unless the gift-wrapping charge is greater than the value of the food products.

What about my purchases of wrapping supplies? Since you are considered the seller of gift-wrapping materials such as paper, tape, ribbons and boxes, you may purchase these items for resale from your suppliers. You must pay tax, however, when purchasing items that do not become a part of the wrapped package (such as scissors and tape dispensers).



For more information. We offer a helpful two-page publication to explain how tax applies to gift-wrapping charges, including charges for wrapping combination packages of food and non-food products. You can order a copy of Publication 106, *Gift-Wrapping Charges*, from our Information Center or download a copy from our website.

6. Change in Reporting Methods on Sales and Installations of Electric Signs

Operative October 1, 2000, the method that you may use to report tax on sales and installations of electric signs has been changed. Starting that date, a contract to furnish and install an electric sign for a single (lump-sum) contract price is taxable on 33% of the contract price.

For example, on October 1, 2000, you contract with a customer to furnish and install an electric monument sign for a lump-sum contract price of \$20,000. Under the new rules, you are required to report tax on \$6,600 ($33\% \times \$20,000 = \$6,600$). You would charge tax using the tax rate in effect at the location where the sign is installed. It is presumed that the remaining \$13,400 ($\$20,000 - \$6,600 = \$13,400$) is for nontaxable installation labor.

Please note: this reporting method is available only on the sale and installation of an electric sign. You may not use it to report the sale of a nonelectric sign.

This change does not affect your responsibility to report tax on the selling price of a sign when you sell a sign without installing it, or when you separately state the selling price of a sign you install.

Example 1. You sell a sign for \$15,000 to a customer who has hired another contractor to install it. You must report tax on \$15,000 at the tax rate in effect at the sales location.

Example 2. You contract to furnish and install an electric sign for which you separately state a sales price of \$15,000 for the sign and \$5,000 for installation labor. Because you have separately stated the selling price, you must report tax on \$15,000, using the tax rate in effect at the location where the sign is installed.

Remember, charges for installation labor are nontaxable. For example, when you install a sign sold by someone else or owned by the person for whom you are doing the installation, all your labor charges are nontaxable. However, if you furnish and install a sign with separately stated charges for the sign and the installation labor, you may be required to document that the charges for installation do not include taxable fabrication labor. For example, you furnish and install a sign and separately state labor charges of \$12,000. You may be required to provide bid sheets or time sheets that document the entire \$12,000 was for installation labor and not fabrication of the sign.

For more information, call our Information Center and request a copy of Regulation 1521, *Construction Contractors*. See subdivision (c)(12).

7. Special Printing Aids – An Explanation of “Resales Ultimately Subject to Tax”

There has been some confusion regarding the application of tax to sales for resale of special printing aids and the definition of “ultimately subject to tax.” Specifically, there have been questions about situations where a printer makes a sale of both printed matter and special printing aids, but a subsequent seller only sells the printed matter. Examples of these transactions include printers of packaging materials, product labels, newspapers and books.

Regulation 1541, *Printing and Related Arts*, subdivision (c)(1), provides in part

“Ultimately subject to sales tax,” means either the printer’s sale of the printed material and special printing is subject to sales tax or is an exempt sale to the US Government, or if the printer’s sale of the printed material is for resale, a subsequent sale of the printed material and special printing aid is subject to California sales tax or is an exempt sale to the US Government.

This subdivision means that when there is a series of resales, every sales transaction must be of *both* the printed matter *and* special printing aids



in order for the transactions to be considered ultimately subject to tax.

The resale provision in Regulation 1541(c)(1) was intended to deal with print broker situations where the broker is generally fulfilling the same function as a printer. For example:

Printer Z uses special printing aids to print brochures that will be ultimately sold to a hospital in California for use in its clinic. Printer Z sells the printed brochures and special printing aids to Print Broker A who then resells both the printed matter and special printing aids to Print Broker B. Print Broker B resells both the printed matter and special printing aids in a taxable sale to the California hospital. All three sales transactions are considered sales ultimately subject to tax and fall under the provisions of Regulation 1541(c)(1). Both Printer Z and Print Broker A may accept resale certificates for both the printed material and the special printing aids.

When a subsequent seller is reselling only the printed matter and not the special printing aids, the resale transactions are not considered “ultimately subject to tax.” These sales fall under the provisions of Regulation 1541(c)(3) - sales of printed material other than those ultimately subject to tax. For example:

A printer uses special printing aids — artwork and plates — to print children’s books. The printer sells the special printing aids and printed books to a publisher who will resell the books to retail bookstores throughout California. All of the books will be sold in sales subject to California sales tax.

Even though all the books will eventually be sold in taxable sales, the publisher is only reselling the printed material - *not* the special printing aids. Thus the sale by the printer to the publisher falls under the provisions of 1541(c)(3) and not 1541(c)(1). The publisher should not give the printer a resale certificate for the special printing aids. Tax would be due on the printer’s selling price of the special printing aids, which is deemed to be the sales price of the special

printing aids, or their components to the printer.

We hope that this article clarifies the confusion over what is meant by resales of special printing aids “ultimately subject to tax.” If you still have questions, please call our Information Center.

8. If You Import Merchandise from a Foreign Country, You May Be Billed for California Use Tax

If you are a California resident and import merchandise from a foreign country, you should know that your purchase price for merchandise purchased outside California and shipped or brought to California may be subject to use tax.

California’s use tax is similar to its sales tax. The rate for both taxes is the same. The use tax is applied to merchandise bought outside California by its residents and shipped or brought into the state for storage, use, or consumption. The use tax was established in 1935 to protect California businesses from tax free, out-of-state competition. However, unlike the sales tax, which is imposed on the seller, the use tax is imposed on the purchaser. Use tax does not apply to the purchase price of merchandise purchased by retailers for resale unless the merchandise is not resold and is used for another purpose (such as personal use).

The state generally relies on residents and businesses to voluntarily report and pay the use tax to the State Board of Equalization. In addition to voluntary compliance and other use tax programs, the Board is implementing a commercial import pilot project. The pilot project is designed to collect use tax from consumers and businesses that purchase merchandise from foreign countries through commercial importers. The Board will use information acquired from the U.S. Customs Service to assess use tax on foreign purchases where customs brokers are involved.

The Board will send inquiry letters and use tax returns to California residents and businesses that have been identified as purchasers of property from abroad through commercial importers. The letters and tax return will provide directions



for completing and filing the return, including the date the tax is due, directions for calculating the amount of tax and claiming any exemptions that may apply. Additional information about the customs import pilot project is available from the Board's Planning, Evaluation & Technology Section at (916) 445-5167.

If you have purchased goods from a retailer other than a California retailer and you were not taxed, you must report the tax to the Board. If you hold a California seller's permit, you should report the cost of the items purchased on line 2 of your next regularly filed sales and use tax return. If you file a Consumer Use Tax Return, you should report the cost of the items on line 1. If you do not file a return, you must report the tax directly to the Board. You may use either the Individual Use Tax Return found in the Board's publication 79-B *California Individual Use Tax*, or you may submit a letter to the Board describing the item purchased, the purchase price, and a check or money order for the amount of tax due.

Whichever reporting method is used, you must report the tax at the rate in effect at the location where you first stored, used, or consumed the property. For example, the purchase price of goods used in Orange County must be reported at the tax rate of 7.75 percent. If you have questions about the proper rate of tax, reporting methods, or would like a copy of publication 79-B, please contact our Information Center at 1-800-400-7115. Publication 79-B can also be downloaded from our website at www.boe.ca.gov.

9. I Am Being Audited! Do I Have To Sign "The Waiver"?

Your auditor may ask you to sign a *Waiver of Limitation* if you need to delay the start or completion of your audit. By signing the waiver you agree to extend the three-year statute of limitations for the period indicated. This allows the Board to examine your records and issue a tax assessment or refund for periods that would otherwise expire.

Since the *Waiver of Limitation* is a voluntary agreement, you do not have to sign the form. However, an estimated billing may be issued if

there is an indication that tax is due for the expiring period and there is insufficient time to complete the audit.

For example: While examining your records, the auditor questions the validity of a claimed exempt sale. Since the sale occurs in a period that will soon be outlawed by statute, the auditor asks you to sign a *Waiver of Limitation* to keep the audit time period open. Given additional time to research the proper documentation and make further analysis, the transaction may be proven to be exempt. However, if you did not sign the *Waiver of Limitation*, the Board may issue an estimated billing for tax on the questioned transaction. If you do not agree with the estimated billing, you would have to file a *Petition for Redetermination* within 30 days of the date of the billing.

In short, the *Waiver of Limitation* allows more time for you and the auditor to resolve audit issues before the Board bills you for an estimated tax assessment. If you have any other questions or concerns about the *Waiver of Limitation*, be sure to discuss them with your auditor.

10. Can I Buy Containers and Packing Materials for Resale?

When you sell your products do you put them in plastic bags? Do you pack them in boxes filled with styrofoam pellets? Do you wrap them in plastic film or paper before delivering them to your customers? If you do, your purchases of these types of containers and packing materials may not be subject to tax.

Containers that you sell with your products that are not returned to you are called nonreturnable containers. Nonreturnable containers can include cardboard cartons, bottles, paper bags, cans and clothes hangers. You may purchase nonreturnable containers for resale because they are considered resold with your product. In addition, packing materials such as styrofoam pellets, carton sealing tape, strapping, stretch film, twine, glue and bubble pack may also be purchased for resale because they are considered part of the nonreturnable container.

Please note, packers and shippers (people who are in the business of preparing goods for ship-



ment) are generally consumers of these same items and must generally pay tax on their purchases of containers and packaging materials. In addition, different rules apply to purchases of returnable containers.

For more information or a copy of Regulation 1589, *Containers and Labels*, or Regulation 1630, *Packers, Loaders, and Shippers*, please contact our Information Center.

11. Safety of Board Employees

Paying taxes seldom comes under the category of “pleasurable things to do.” Dealing with deadlines and legal requirements is not always easy; however, most people try to cooperate with the Board in complying with those responsibilities.

Unfortunately, this is not always the case, as when Board employees are threatened with physical harm. Whether such threats are made in jest or with serious intent, the Board must take them seriously. Employees have the right to feel safe and secure in their jobs. Because of this, it is the Board’s policy that threats to staff — whether made by other employees or from the public — be reported to management and, if necessary, to law enforcement personnel for further action.

There are many administrative procedures in place for resolving disputes and complaints. You are encouraged to take full advantage of those procedures. For example, you can call the Taxpayers’ Rights Advocate for help if you cannot resolve a problem (call 1-888-324-2798).

If you would like information on your rights as a taxpayer, please call the Information Center and request a copy of publication 70, *The California Taxpayers’ Bill of Rights*.

12. Get It In Writing!

Each year we receive many calls from businesses needing help with their tax questions. While we are always glad to provide help and guidance over the telephone, we would like to remind readers that it is always best to get tax advice in writing.

You may be relieved of tax, penalty, or interest charges if the Board determines you reasonably relied on written advice from us and in reliance upon that advice did not charge or collect sales

tax reimbursement or use tax from your customer or pay use tax on your storage or use of property you purchased. Such relief is not available for advice given over the telephone or in person.

This relief is available if the advice provided by Board staff was in response to a written request that identifies the taxpayer and fully describes the specific facts and circumstances of the activities or transaction for which the advice is requested. In describing the specific facts of a transaction, it would be helpful if you included in your letter copies of representative documents for your business transactions, such as sales contracts, purchase orders, and invoices.

13. Is Your Corporation Subject to the Environmental Fee?

Corporations authorized to do business in the state, including nonprofit corporations, “S” Corporations, and out-of-state corporations, must register with the Board and file environmental fee returns if they employ at least 50 employees who work more than 500 hours each in California during the calendar year. Corporations with fewer than 50 qualifying employees are not required to register and pay the fee.

The environmental fee is used for programs that oversee the treatment, storage, and disposal of hazardous waste in California and is administered by the Board Equalization on behalf of the Department of Toxic Substances Control. The annual fee is due to the Board on or before the last day of February and covers the previous calendar year and is based on the number of employees who each worked more than 500 hours in California during the year.

For more information and to register your corporation, call the Environmental Fees Division at (916) 323-9555 or write to

Environmental Fees Division MIC:57
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0057



14. 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

- 26 Tax Information Bulletin Index (June 2000)
- 44 Tax Tips for District Taxes (July 2000)
- 73 Your California Seller's Permit (July 2000)
- 110 California Use Tax Basics (May 2000)
- 113 Coupons and Sales Tax (April 2000)

Sales and Use Tax Regulations

- 1540 Advertising Agencies, Commercial Artists and Designers (effective April 23, 2000)
- 5200 Annotations (effective July 27, 2000)
- 1521 Construction Contractors (effective May 18, 2000)
- 1525.2 Manufacturing Equipment (effective July 7, 2000)
- 1587 Animal Life, Feed, Drugs and Medicines (effective May 18, 2000)
- 1661 Leases of Mobile Transportation Equipment (effective May 27, 2000)
- 1669 Demonstration, Display and Use of Property held for Resale (effective May 24, 2000)
- 1802 Place of Sale and Use for Purposes for Bradley Burns Uniform Local Sales and Use Tax (effective May 26, 2000)
- 1660 Leases of Tangible Personal Property – In General (effective May 25, 2000)

Special Taxes Publications

- 15 Cigarette Tax Regulations (June 2000)
- 16 Alcoholic Beverage Tax Regulations (June 2000)
- 84 Use Fuel Permit Requirements (June 2000)
- 93 Cigarette and Tobacco Products Tax (June 2000)

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.