



Tax Information Bulletin

STATE BOARD
OF EQUALIZATION

ISSUED QUARTERLY
December 2001

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What's Inside

1. New Legislation

Avoid the *I-didn't-know* excuse. Find out if there are any new laws that apply to your business operations.

2. Shipping and Handling Charges

With the holidays around the corner, you may want to brush up on this subject.

3. Safety of Board Employees

There are many ways to resolve disputes that don't involve threats. But if threats are used, they will be taken seriously.

4. BOE Employees Cannot Solicit Gifts

Gifts that are intended to influence the outcome of official decisions are strictly prohibited.

5. Fuel Tax Return Filers

Many of our seller's permit holders also file fuel tax returns. Article 5 provides some important new information.

6. Out of the Loop?

Here is how you can get previously published *Tax Information Bulletin* articles.

7. New and Revised Reference Material

1. New Legislation Takes Effect

The following summaries reflect legislative changes enacted in 2001 affecting the Sales and Use Tax Law and selected other tax laws administered by the Board. The changes are effective January 1, 2002, unless otherwise indicated. For copies of bills, please write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814, or access the Internet at www.leginfo.ca.gov/bilinfo.html.

Sunset date has been extended for the exemption for sales by specified thrift stores.

Assembly Bill 180 (Stats. 2001, ch. 383), extends until January 1, 2007, the existing exemption for sales of used clothing, household items, or other retail items by thrift stores operated for purposes of raising funds to provide specified services to AIDS patients.

Prepayment requirements of sales tax on fuel purchases have been changed. Assembly Bill 309 (Stats. 2001, ch. 429), sponsored by the Board of Equalization, moves the first point of retail sales tax prepayment on motor vehicle fuel, aircraft jet fuel, and diesel fuel to the rack to coincide with the imposition of the excise tax.

Sales of medicines to outpatient clinics are now exempt from tax. Assembly Bill 646 (Stats. 2001, ch. 706), provides that sales of medicines to clinics, as defined under Health and Safety Code 1200, for the treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, and podiatrist, are exempt from sales and use tax.

Certain sales and leasebacks of public passenger transportation vehicles are now exempt. Assembly Bill 984 (Stats. 2001, ch. 592), operative November 1, 2001, provides a sales and use tax exemption until January 1, 2004, for the sale and leaseback of public passenger transportation vehicles when sold or leased by a transit authority, special district, or governmental entity.

Documentary evidence for the exemption for new or remanufactured trailers or semitrailers has been modified. Assembly Bill 1472 (Stats. 2001, ch. 826), provides that, for purposes of the exemption for sales and purchases of new or remanufactured trailers or semitrailers with an unladen weight of 6,000 pounds or more purchased for out-of-state or interstate use, a purchaser's agent can furnish the necessary documents to support the exemption. AB 1472 further allows the purchaser's or lessee's United States Department of Transportation number or Single State

NOTE

Normally, the *Tax Information Bulletin* is sent with your tax return mailing. However, since we are unable to fit the December bulletin in the tax return mailings, we are sending it separately with the enclosed notice. You should receive your tax return and reply envelope in December or early January.

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Registration System filing as a substitute for written evidence if the vehicle is licensed under the permanent trailer identification plate program, and is used exclusively in interstate and/or foreign commerce.

California's Internet Tax Freedom Act is extended. Senate Bill 394 (Stats. 2001, ch. 343), provides that the Internet Tax Freedom Act, originally set to expire on January 1, 2002, will remain in effect until January 1, 2004, unless the California Commission on Tax Policy in the New Economy fails to submit a specified report, in which case the California Internet Tax Freedom Act will be repealed on January 1, 2003. The "California Internet Tax Freedom Act" was created by the Legislature in 1998 to prohibit the imposition, assessment, or attempt to collect any new local tax or fee on Internet access, online computer services, or the use thereof, except as specified. This prohibition does not include any existing tax, including any sales and use tax, business license tax, or utility user tax that is imposed in a uniform and nondiscriminatory manner, as specified. *Therefore, sales and purchases via the Internet continue to remain subject to sales or use tax.*

For more information, please read *Are Your Internet Sales Taxable?* (publication 109). You can obtain a copy online at www.boe.ca.gov, or you may call our Information Center to request a copy in the mail.

Taxpayers will now be reimbursed for third party charges caused by a Board error. Senate Bill 1185 (Stats. 2001, ch. 543), sponsored in part by the Board of Equalization, authorizes the Board to reimburse taxpayers for any third party charges (such as dishonored check charges) that are incurred as a result of the Board's issuance of an erroneous levy or notice to withhold.

Partial diesel fuel tax exemption for diesel fuel emulsions. Assembly Bill 86XX (Stats. 2001, ch. 8 of the second extraordinary session), as of October 3, 2001, specifically excludes from the diesel fuel tax the water portion of a diesel fuel/water emulsion.

New sales and use tax exemptions. Assembly Bill 426 (Stats. 2001, ch. 156). Effective September 1, 2001, qualified sales and purchases of the following items are exempt from the state por-

tion of the sales and use tax rate: farm equipment and machinery; timber harvesting equipment and machinery; and diesel fuel used in farming activities and food processing. Qualified sales and purchases of liquified petroleum gas (LPG) are exempt from the full sales and use tax rate when purchased for agricultural and household use, as specified in the legislation. The Board mailed a special notice in August explaining the new exemptions and the qualifying conditions that apply. If you did not receive a copy, please visit our website for more information, <http://www.boe.ca.gov/sutexempt.htm>. Or call our Information Center to request a copy of the notice.

2. Are Shipping and Handling Charges Subject to Tax?

Separately stated charges for shipping taxable merchandise are generally not taxable if they meet both of the following conditions:

- The charges are for shipping the merchandise directly to the purchaser using the U.S. mail, an independent contract carrier, or common carrier; *and*
- The amount charged is the actual cost of the transportation.

What if I charge more than the actual shipping cost?

The amount in excess of the cost of transportation should be included in your taxable sales. In other words, any mark-up applied to the actual cost of the transportation is taxable.

How do I determine the nontaxable amount?

The actual transportation costs should be determined on a transaction-by-transaction basis. You will need to keep records showing the actual cost of transportation for each transaction.

How do I treat "handling" charges?

If a separate charge is designated "postage & handling" or "shipping & handling," only the portion that represents your actual postage or shipping cost may be excluded from the measure of tax. Charges that are designated as "handling" or "handling charges" are not separate statements of transportation charges. Tax applies to the entire amount of the handling charge.



What if I deliver with my own vehicles?

Tax applies to your delivery charges if you use your own vehicle, whether or not those charges are separately stated on the invoice.

Exception. Tax does not apply to delivery charges using your own vehicles if there is a written contract of sale, signed before delivery, that transfers ownership of the property to the purchaser prior to delivery.

What about shipping and handling charges on nontaxable sales?

Transportation and handling charges for nontaxable transactions are also nontaxable.

For more information about how tax applies to delivery-related charges, you may wish to obtain a copy of our publication 100, *Shipping and Delivery Charges*, and Regulation 1628, *Transportation Charges*.

3. Safety of Board Employees

Paying taxes seldom comes under the category of "pleasurable things to do." Although dealing with the deadlines and legal requirements is not always easy, most people make an effort to carry out these responsibilities calmly and without much friction.

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 a 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. Taxpayers are encouraged to take full advantage of those procedures.

For more information on your rights as a taxpayer, please call the Information Center and request a copy of Publication 70, *The California Taxpayer's Bill of Rights*. If you have a problem you have been unable to resolve, you can contact the Taxpayers' Rights Advocate at 1-888-324-2798.

4. Policy Regarding Employee Solicitation or Acceptance of Gifts

It is against Board policy for an employee to solicit or accept – either directly or indirectly – any gift, favor, entertainment, or any other thing of monetary value from a person whom the employee knows or has reason to believe

- Has, or is seeking to obtain, contractual or other business or financial relations with the Board of Equalization; or
- Conducts business or other activities that are monitored by the Board, under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee in his or her official actions or was intended as a reward for any official actions performed by the employee.

If a Board employee violates this policy, it should be reported to Ms. Darlene Allen, Chief, Internal Security and Audit Division. Call (916) 445-2918.

5. Fuel Tax Return Filers

If you have questions regarding this article, please call the Fuel Taxes Division at 916-322-9669, or call our Information Center, 1-800-400-7115.

International Fuel Tax Agreement (IFTA) / Interstate User Diesel Fuel License

The excise tax you normally report and pay with your quarterly fuel tax return for diesel fuel that you purchase outside California and use in the state has been increased to 28.2 cents per gallon for the period January 1, 2002 through December 31, 2002.

The 28.2 cents per gallon reflects

- 18 cents per gallon of diesel fuel tax and
- An additional excise tax of 10.2 cents per gallon

You may claim a credit of 28.2 cents per gallon for the gallons of tax-paid diesel fuel purchased in California and used outside the state.

Excise Tax on Motor Vehicle Fuel Assembly Bill 2114, Stats. 2000, ch. 1053

Effective January 1, 2002, the excise tax on motor vehicle fuel will be due when the fuel is removed from a terminal rack or imported.



The tax is also due when a nontaxable product is blended with tax-paid motor vehicle fuel below the rack and the resulting combination of products is motor vehicle fuel.

The new law will require that bulk common carriers, terminal operators, and position holders report their detailed accountable transactions to the Board of Equalization on a monthly basis. The Fuel Taxes Division will be advising businesses of the specific reporting and filing changes that are needed to accommodate this legislative change.

6. Do You Receive the *Tax Information Bulletin* on a Regular Basis?

If you file tax returns only once a year, you do not receive each quarterly *Tax Information Bulletin*. As a result, you may miss some important news, such as information on law changes, regulation revisions, e-filing, the Board's settlement program, and more. If you would like to receive each quarterly issue, write to us and ask to be added to Mailing List #15. Write to: Addressing Systems, MIC: 12; Board of Equalization; P.O. Box 942879; Sacramento, CA 94279-0012. You can send us an e-mail and ask to be added to List 15 by going to <http://www.boe.ca.gov/contact.htm#email>. You can also read and download the *Tax Information Bulletin* online, or you can request previous copies from our Information Center.

7. 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—English

- 79 Documented Vessels and California Tax (August 2001)
- 80 Electronic Funds Transfer Program (October 2001)

Sales and Use Tax Publications—Translations

- 33-JE Making Sales in California (Japanese)

70-C, K, S, V The California Taxpayer's Bill of Rights (Chinese, Korean, Spanish, Vietnamese)

73-C, K, S, V Your California Seller's Permit, (Chinese, Korean, Spanish, Vietnamese)

109-S Are Your Internet Sales Taxable? (Spanish)

Sales and Use Tax Regulations

1574 Vending Machine Operators (effective 10-20-01)

1684 Collection of Use Tax by Retailers (effective 08-01-01)

1699 Permits (effective 09-07-01)

1705.1 Innocent Spouse Relief from Liability (effective 10-20-01)

Correction: Fixed-Price Contracts

Please see the enclosed special notice for information regarding the tax rate to use for fixed-price contracts if there is an increase in the state sales and use tax rate. The notice corrects information that was printed in the September 2001 *Tax Information Bulletin*. The notice is also available on our website, <http://www.boe.ca.gov/other.htm>. Click on "Important and Special Notices."

For More Information

Information Center

1-800-400-7115

Telephone devices for the deaf

1-800-735-2929 (TDD) • 1-800-735-2922 (voice)

Internet

www.boe.ca.gov

www.taxes.ca.gov

Seller's Permit Verification

Visit our website, or call toll-free, 1-888-225-5263.

Taxpayers' Rights Advocate

Call toll-free, 1-888-324-2798.

Tax Evasion Hotline

Call toll-free, 1-888-334-3300.

Legislative Bills

www.leginfo.ca.gov