

210.0000 DEMONSTRATION, DISPLAY AND USE OF PROPERTY HELD FOR RESALE—General—Regulation 1669

See also Vehicles.

(a) GENERAL

210.0012 Accommodation Loans of Rental Equipment. A company acquires electronic leveling equipment. It reports use tax measured by its rental receipts. Accommodation loans of the rental equipment are made to clients whose property is being repaired. If the repair work to be done is under warranty, a “no charge” invoice is prepared. If the repair work to be done is not under warranty, a \$100 fee is charged for the loaned equipment. Use Tax is not reported on either of these types of transaction. The company claims the \$100 fee is a re-calibration fee which covers recharging the instrument and preparing it for return to rental inventory.

It is clear that the company’s consistent policy where nonwarranty work is to be done is that the rental equipment will not be transferred without a flat rental fee of \$100.00. While it appears to be a reduced rent, it is mandatory consideration received for the transfer of tangible personal property. This mandatory fee fits the definition of consideration sufficient to support the finding of a “sale” and is subject to tax as part of the “sales price.” A loan in which no consideration passes is a “use” of ex-tax inventory inconsistent with holding the item for resale. When such use occurs, the measure of tax is the fair rental value. Since the company charges \$100 for the loans on nonwarranty repair items, the taxable fair rental value for the equipment used for accommodation loans for warranty repair is also \$100.00. 4/23/92.

210.0019 Aircraft. The use of an aircraft by an aircraft dealer to transport executives and other people, when these people are not potential purchasers, is not a use for demonstration and display under Regulation 1669. Such use is subject to tax as set forth in Regulation 1669(f)(1)(C). When the taxpayer elects to pay use tax based on the fair rental value of an aircraft held for resale but used for other purposes (as opposed to paying tax measured by the cost of the aircraft), the tax is applicable even if the aircraft is used outside California for purposes other than demonstration and display. 6/29/71.

210.0020 Aircraft. An airplane held for sale which is flown around the country to develop interest and which is used by the taxpayer to keep it in condition and to instruct himself in its proper use, held not subject to use tax. 8/10/65.

210.0041 Benchmark Testing. Computers and computer components withdrawn from an inventory of items purchased for resale solely for the purpose of demonstrating their performance levels by establishing benchmarks and then returned to inventory and held for sale in the regular course of business are considered to have been used for demonstration only. The establishment of benchmarks by laboratory testing allows customers to make comparisons among products and obviates the need for demonstrations for individual customers. The benchmark testing is not a taxable use of the product. 4/6/94.

210.0045 **Brood Mares—When Use Occurs.** The following are guidelines to determine if “use” is made of a brood mare held for resale.

(1) If a brood mare has two or more foals as a result of having been bred while owned by the person holding the mare for resale, the owner has made a taxable use of the horse as a brood mare since this is substantial evidence that the breeding was not a utilization either incidental or necessary to effect a sale.

(2) Generally, a taxable use will also be found if a brood mare, held for resale, has been capitalized and treated as a depreciable asset for federal and state income tax purposes.

(3) If a retailer of horses retains a brood mare for resale over two full years, regardless of whether it has ever foaled, the individual case would be suspect and presumed taxable.

(4) A mare having been bred in two successive breeding seasons or sold with a single foal at her side or sold while in foal and with a single foal at her side will not dictate a finding that there is a taxable use inconsistent with that of holding the brood mares for resale. 9/19/85.

210.0049 **Bumpers Used to Make Templates.** A company is engaged in the business of repairing and rechroming auto bumpers and parts on an exchange basis. In order to speed the replacement of a damaged bumper, the company maintains a stock of exchange bumpers. The customer will receive an exchange bumper of the same kind that is turned in. At the beginning of the model year, new bumpers are often purchased to have exchange stock ready. In order to repair dented bumpers to the proper dimensions before rechroming, dimension templates can and may be made from new bumpers or from bumpers with damaged finishes which have the original dimensions. In some instances, templates are made from new bumpers purchased from the exchange stock. Templates are made by placing the bumper on a sheet of paper or masonite and tracing the outline in pencil. The tracing takes a matter of minutes. No damage or change to the bumper results from this process. The template is used to compare reformed bumpers with the original dimensions.

The making of a template is essentially a measuring process which is not inconsistent with the company’s holding the items for resale and under these conditions is insignificant. No substantial use is made of the bumpers. No tax liability arises out of such limited use. 7/28/67.

[210.0055](#) **Candles.** A candle retailer who has purchased candles for resale partially burns some of them to show the designs such candles form after they are burned. The partially burned candles are left on display. Although the candles have been used only for demonstration and display, they are no longer being held for resale in the regular course of business, and the candle retailer has made a taxable use of the partially burned candles. 8/2/67.

210.0057 **Carpet Samples.** Carpet wholesalers purchase samples ex-tax for resale and later resell them to retail dealers. The only use made of the samples prior to sale is demonstration and display. Since carpet wholesalers regularly sell the samples to their dealers, the demonstration and display use is being made while the samples

are being held for sale in the regular course of business. This position is consistent with the treatment of vehicles used only as demonstrators but being regarded as being held for sale in the regular course of business even though not actually offered for sale until a later date. There is no use tax liability resulting from the purchase and use of the sample.

The subsequent sale of the samples to dealers who have submitted resale certificates for “carpeting and rugs,” may also be nontaxable if the samples are of a size that could be used as throw rugs or mats, and the dealers’ use is limited to demonstration and display. Samples larger than 22”x 18” would meet this size standard. All samples size 22”x 18” or smaller, all samples bound in sample books, and all samples having holes with metal grommets inserted would be considered not sold for resale unless the dealer had submitted, and the wholesaler had accepted in good faith, a resale certificate specifically describing them. 7/17/67.

210.0058 Carpet Samples. When a carpet dealer purchases samples with a definite intention of eventually selling them, after their use for demonstration and display has ended, the sale of the samples to the dealer qualified as a sale for resale and is not subject to tax. However, samples of a size so small as to prevent any practical use being made of them are not normally intended to be resold. 10/6/82.

210.0060 Charge for Demonstration. If an aircraft is used solely for demonstration or display purposes while being held for sale, the dealer will not incur liability for use tax simply because he makes a charge to the prospective customer to whom the plane is demonstrated but who fails to purchase the plane, provided the charge is no more than the actual expense incurred in the demonstration. Notwithstanding the making of the charge, it does not appear that the law requires application of the tax if no actual use of the article other than demonstration while being held for sale is made. 6/21/57.

210.0065 Clearing House for Nonprofit Agencies. A clearing house, which is a nonprofit corporation, accepts goods and services as donations to charity. When received, a value is placed on the donation for distribution purposes. Credits are given to member agencies who could exchange the credits for the donated goods and services. In this way, the goods are distributed under a fair system among member agencies. No sale is involved in exchanging credits for goods or services and no tax is due.

The clearing house also accepts donations of goods that cannot be used by member agencies and trades them to retailers or distributors for goods that member agencies can use. The transfer of nonusable goods by the clearing house is a sale for resale and tax would not apply. However, the transfer of goods to the clearing house is a retail sale. The transferor is liable for sales tax and could charge tax reimbursement to the clearing house. 4/24/95.

210.0068 Clothing Samples. Clothing samples purchased from a clothing manufacturer by its salesmen and which are subsequently sold to retailers for sale at retail may be nontaxable as sales for resale.

This conclusion is based upon the finding that the merchandise was held for sale, was subsequently sold to retailers for sale at retail by the salesmen, and that no use other than demonstration and display was made of the merchandise while holding it for sale. 1/15/63.

210.0085 Demonstration to Sales and Service Personnel. Demonstration of equipment to sales and service personnel and compatibility testing to determine whether the property is compatible with other equipment is “demonstration and display” under the sales and use tax law. 2/5/90.

210.0095 Distribution of Partnership Share of Horse. A partnership was formed by two corporations for the purpose of purchasing a thoroughbred stallion for syndication and subsequent sale of 40 equal shares. The horse was acquired from an owner in Ireland and put to stud on a California farm. Each partner made an initial capital contribution of \$1,000 and co-signed a purchase money note to the bank for \$425,000.

The partnership agreement provided that any syndicated shares not sold by a specific date were to be divided equally between the two corporate partners. When the final twenty shares of the syndicate could not be sold, they were distributed equally between the two corporate partners.

When the partnership distributed the twenty shares to the corporate partners, a taxable use of that 50 percent interest in the horse took place since the horse had been purchased for resale. Consequently, the partnership is liable for use tax based on one half the cost of the horse. 9/02/92.

210.0110 Equipment Loans. A company purchases, under a resale certificate, surveying equipment of a kind which it routinely resells at retail. A portion of this equipment is allocated to a rental pool inventory. The taxpayer has elected to pay tax based on the rental receipts method. The company gratuitously loans equipment from the rental pool inventory to purchasers if any equipment that the company previously sold breaks down and needs repair. The company believes that the equipment loans to customers for which no rental receipts were generated were accommodation loans and exempt from tax. The company relies on its election to pay tax on rental receipts as the basis to assert that no tax is due. It reasons that no rental receipts were obtained from the accommodation loans and, by paying tax on rental receipts, it meets all of its tax obligation related to the equipment.

Rather than imposing use tax on the full purchase price of property purchased under a resale certificate and then used for “accommodation loans,” the legislature has provided that tax will be measured only by fair rental value for the period of such loans provided the property is otherwise held for resale. There is no provision in the Sales and Use Tax laws that would allow a purchaser to acquire equipment ex-tax for exclusive use as loaners. Only items held for resale may be acquired ex-tax. Loans of ex-tax inventory are taxable regardless of whether the loans are for personal purposes or for accommodation loans. The express statutory mandate in the Code requires taxes on accommodation loans measured by fair rental value. 2/19/92; 5/19/92.

210.0116 Erroneous Taking of Depreciation. The taking of depreciation on property for income tax purposes is generally regarded as evidence that the property was not purchased for resale. However, where the depreciation was taken in error, tax will not always apply. Tax will not apply if (1) the depreciation deduction was taken in error and the taxpayer did not realize a tax advantage therefrom, (2) there is convincing evidence that the property was purchased for purposes of resale, and (3) the taxpayer made no taxable use of the property while holding it for resale. 1/5/94.

210.0120 Examination Copies of Text Books Furnished to School. In negotiating for the sale of text books to a school, a publisher furnishes examination copies. After the sale, the school retains the examination copies for use as desk copies. Under such circumstances, the examination copies are regarded as having been used for demonstration and display and the selling price for the total order is regarded as including the desk copies. Accordingly, no additional tax is due with respect to the examination and desk copies. 5/11/67.

210.0140 Exhibit in Museum. Works of art purchased solely for the purpose of lending them to public museums for exhibition are not exempt from the sales and use tax since the works of art were not purchased for resale. The works were exhibited to the public, not to facilitate the sale of the art but to benefit the public, and this is a taxable use of tangible property by its owner. 4/11/69.

210.0152 Furniture Use in Model Mobile Homes. When a mobile home dealer also sells the furniture displayed in its mobile homes, such furniture is generally regarded as being held for resale by the dealer. While the furniture may enhance and, thus, demonstrate the interior of a mobile home, it is also being displayed for sale. The fact that it enhances another item being sold would not result in a taxable use. It is similar to displaying a lamp on a wood table, both of which are being held for resale. 3/20/81.

210.0160 “Held for Sale.” If a machine is used exclusively for demonstration purposes and is later sold, it is properly regarded as being held for sale even though it may be intended for use as a demonstrator and not actually offered for sale until usefulness as a demonstrator has ended. 6/29/56.

210.0170 Intervening Use. Tax applies to any intervening use of property purchased for resale even though the property is subsequently sold as “new” within a reasonable period of time. (Regulation 1669 and section 6094.) 2/5/90.

210.0180 Jewelry Worn by Actress. The gratuitous furnishing of expensive jewelry, not imitation or costume jewelry, to a motion picture studio for the use of an actress while making a motion picture is a demonstration. There is no depreciation in the value of the jewelry and the jeweler is seeking to sell his merchandise. 5/13/59.

210.0194 Leased Equipment Held For Resale by Lessee. Taxpayer manufactures and sells specialized equipment. The taxpayer sold a piece of this equipment to a Financial Institution (FI) and leased it back. The lease agreement was for 36 months with an option to purchase the equipment for \$251, consisting of an “option price” of \$1 and a “termination fee” of \$250. The purchase price exceeds the limits for a purchase option to be considered “nominal” under

Regulation 1660 and therefore the contract is a true lease. The FI did not issue a resale certificate nor was sales tax paid at the time of the sale to the FI. The FI billed the taxpayer use tax on the monthly lease amount, but the taxpayer refused to pay the use tax contending that the equipment is held for resale and is used specifically for nontaxable demonstration purposes.

Under these specific facts, the taxpayer has used this method for financing what amounts to a part of its resale inventory. Whether the contract between the taxpayer and the FI is a lease or not, under these specific facts the taxpayer is holding the equipment for resale. Thus, no tax applies until the taxpayer sells the equipment. The taxpayer may properly issue a resale certificate to the financing company for the equipment. 12/29/95.

210.0200 Loans of Video Tapes to Employees. As an employee benefit, employees of a video tape sales and rental business are allowed to “rent” tapes purchased for resale for free. These rentals to the employees are taxable and the measure of tax is the fair rental value for the period of such use, as provided in Regulation 1669(f)(1)(B). 8/18/94.

210.0280 Measure of Tax—Fair Rental Value. Where out-of-state manufacturers sell goods to California customers and loan equipment to the customers until delivery of the property purchased, tax applies to the fair rental value of the property for the duration of the loan. The benefits of sections 6094 and 6244 apply to out-of-state sellers as well as California sellers. 11/19/68.

[210.0300](#) **Model Homes.** A home developer who purchases furniture to place in model homes may not purchase that furniture ex-tax for resale. The intended purpose of the furniture is not merely for demonstration and display but for promoting the sale of the homes. 9/30/64.

[210.0320](#) **Model Kitchen.** Where a utility purchases appliances for use in a model kitchen, the purchase is for a purpose other than resale, i.e., use in promoting the sale of electrical energy. Such use constitutes a use other than demonstration or display, and is subject to tax. 6/17/55.

210.0340 Musical Instruments. Demonstrating to a customer is not a taxable use. However, the use of an instrument in giving a lesson for which a charge is made is a taxable use. 1/11/55.

210.0380 New Machine. A demonstration results when a dealer, pursuant to the manufacturer’s policy, loans a new business machine to the owner of an old machine while the owner is traveling away from home, the purpose being to demonstrate the superiority of the new machine over the older machine. 7/13/59.

[210.0420](#) **Out-of-State Customers.** A manufacturer of gas lasers loans them from stock and delivers them outside this state to out-of-state buyers who have contracted to buy other lasers which are not ready for delivery. When the manufacturer sends the laser that the customer ordered, the loaned laser is in all cases returned to the California manufacturer, who then checks, calibrates, and returns it to stock to be sold as new equipment. Sometimes the returned laser will be loaned again under like circumstances. Held: The manufacturer will not be considered to be making a

taxable use of the loaned laser by virtue of the use of the out-of-state customer. 2/2/65.

210.0430 Personal Use of Video Tapes. A lessor of video tapes, video cassettes, and video discs lends these items to its employees at no charge. The lessor is considered to be holding these tapes for demonstration and display and is actually selling them (in continuing sales). Its use of the tapes by lending them to its employees is not inconsistent with its continued resale of them. Thus, pursuant to Regulation 1669(f)(1)(B), the lessor owes tax measured by the fair rental value when lending tapes to its employees. The fair rental value would be the amount the lessor would charge a nonemployee for rental of the tape. 12/30/93.

210.0445 Photography of Original Art. A taxpayer purchases original art ex-tax under resale certificates. All rights of reproduction are purchased with the works of art. The artwork is photographed and lithographs are prepared from the photographs. The lithographs are sold. The original art is ultimately also sold. The photography of the artwork for purposes of preparing lithographs constitutes a use of the artwork which is beyond demonstration, display or retention while holding it for sale in the regular course of business. Tax applies to cost of the artwork to the taxpayer. 7/14/94.

210.0450 Property Used for Demonstration and Other Purposes. A software developer sells a software program to customers most of whom already have the hardware to operate the software program. Occasionally, the developer will sell a complete system which includes hardware and software. The developer does not have a showroom, but potential customers can come to its premises for software demonstrations. In some transactions, the developer will bring the hardware and software to the potential customer's place of business. The developer uses hardware which was acquired ex-tax from out-of-state vendors or under resale certificates to test and refine its software and to demonstrate its software to potential customers. Such usage constitutes taxable use. The issue is whether the developer's liability is measured by the full purchase price of each piece of hardware or by the fair rental value of the hardware for the periods during which it was being used for testing and demonstration of the software.

Unless the developer frequently demonstrates the hardware itself, the measure of tax is the full purchase price of the hardware and not its fair rental value. A taxpayer may be regarded as frequently demonstrating property purchased for resale even though the same use has a dual purpose, e.g., demonstration of the property itself and demonstration of other property (in this case software). Where most of the developer's customers already own the hardware necessary to run the developer's software programs, most of the developer's demonstrations are for the sole purpose of demonstrating the software and not for the purpose of demonstrating the hardware in an effort to make a sale of the hardware. As such, the hardware is not frequently demonstrated and the measure of tax is the full purchase price of each piece of hardware. 9/19/94.

210.0470 Sample. Yardage goods were purchased ex-tax by an apparel manufacturer specifically for use in the designing and production of style samples. These samples are shown to buyers (major retail chains) who order from the selection.

All samples produced are eventually sold through the manufacturer's own retail outlets, which specialize in seconds.

The labeling of an item as "samples" and the fact that the samples are sold as seconds are not criteria for the imposition of the use tax. The main criterion is whether there has been an intervening use "other than retention, demonstration, and display while holding it for sale in the regular course of business." In the above situation, the purpose of the manufacturer's ex-tax purchase was to utilize the yardage by incorporating it into the manufactured article, i.e., the samples. The samples were then used solely for demonstration or display while holding them in the regular course of the manufacturer's business. Such a use is nontaxable. 7/1/77.

210.0480 Samples. A manufacturer of women's apparel which purchases garments of other manufacturers to use as style samples is liable for use tax on the cost of the samples, as well as for sales tax on gross receipts derived from their subsequent sale. The manufacturer's use of the garments in designing its own products is a use other than retention, demonstration or display while holding the garments for resale. 10/14/64.

210.0485 Samples vs. Marketing Aids—Carpets. The term samples should be used only in reference to area rugs or carpets which are held for demonstration and display and are subsequently sold to customers. On the other hand, carpet remnants that are bound together to form swatch books are regarded to be marketing aids, and the rules explained in Regulation 1670 apply. Thus, a person such as a manufacturer or wholesaler is the consumer of a swatch book which the person transfers for less than 50 percent of that person's purchase price. For the manufacturer, the purchase price is generally the purchase price of the materials it incorporates into the marketing aid. A person is the seller of the marketing aids which it transfers for 50 percent or more of that person's purchase price and sales or use tax applies to the sales price charged the customer for the swatch book. 9/26/95.

210.0506 Swatches. When material is purchased to be used as swatches and there is no intent on the part of the purchaser to make any resale of this material, the swatches are not for retention, demonstration, or display while holding them for sale and, therefore, the sale to the retailer-purchaser is subject to tax. However, when a retailer purchases swatches which he plans to eventually sell for use as pillow cases, slip covers, or hot pads, the use of these to demonstrate or display a selection of materials occurs while holding them for sale and is not subject to tax. The distinction between the two cases is that in the former the retailer has no definite, concrete plan to sell the materials, while in the latter there is such a plan. 2/7/61.

210.0510 Testing of Printers. Printers are sold to a purchaser for testing to determine whether the printers meet the standards of the purchaser who is a vendor of printers. The printers are tested for approximately two months and are either sold or destroyed if unable to be sold. Under these facts, the testing is a use of the printers other than solely for demonstration or display while being held for sale in the regular course of business. 6/30/93.

210.0560 Testing, Training, Use for. The following uses of items or equipment, withdrawn from inventory, constitute nontaxable demonstration and display:

- (1) Equipment used to train prospective buyers.
- (2) Equipment used for testing to determine whether they meet quality standards.
- (3) An item tested to determine whether that item will function with other equipment as a part of an equipment system.
- (4) Equipment used to train sales personnel and familiarize service personnel in the use and operation of equipment to be sold. The following uses of equipment withdrawn from inventory are not within the meaning of demonstration or display, and are subject to use tax:

- (1) Equipment drawn from a production line and used to test other equipment.
- (2) Equipment used in actual repair training. 11/9/90. (Am. 2004-2).

210.0580 Transportation of Executives—Or Engineering Tests. Aircraft to transport executives and other people on one-way trips, such people not being potential purchasers, or use of aircraft extensively for engineering tests, do not constitute “demonstration or display” and are taxable uses. 1/12/55.

210.0588 Use of Aircraft. An aircraft is withdrawn from resale inventory nine times for use prior to its sale. Three times it is leased, three times it is used for personal purposes, and three times it is used for air taxi operations involving common carriage of persons or property. Tax is due on the fair rental value for the personal purposes and the leasing but is not due on the fair rental value for the use of the aircraft in common carrier operations since such use is exempt under section 6366. Also, tax applies to the fair rental value of the other uses only during the time the aircraft is within California. 11/4/80.

210.0593 Use of Equipment Prior to Lease. An out-of-state taxpayer sold a laser photoplotter to Corporation A who also is located out of state. The taxpayer was instructed to ship the equipment to Corporation B located in California. The equipment was shipped from an out-of-state point to Corporation B in February 1989.

Corporation A and Corporation B signed an agreement on May 15, 1989 in which Corporation B could use the equipment at no charge until October 1, 1989. Corporation B had an absolute right to terminate the agreement until September 30, 1989. The lease and the monthly rental payments, in the amount of \$4,840, were to commence October 1, 1989 with final payment due on September 30, 1999. There was no provision or option for Corporation B to purchase the equipment after the lease had terminated.

Corporation A had an arrangement with Corporation B whereby Corporation B was to be allowed to use the photoplotter on an experimental basis for the first seven or eight months (equipment delivered in February 1989) to determine if Corporation B was able to find enough customers in California to lease the equipment. Also, Corporation A was hopeful of obtaining customers for its circuit board business from Corporation B’s activities. Corporation A and Corporation B depended on each other for support in case either of its machines broke down.

The issue of this case is whether the sale was a sale for resale or was a retail sale. During the period from February 1989 through September 30, 1989, Corporation A was using the equipment in California by loaning it to Corporation B. Corporation A's intent at the time of purchase was to give Corporation B an opportunity to use the equipment on a trial basis for about eight months with an option of leasing it after September 30, 1989. The purpose was to get customers through Corporation B and to have a back up when Corporation A's own photoplotter broke down. Therefore, the use of the photoplotter in the form of a loan to Corporation B was a taxable use, not demonstration or a display. Thus, sales or use tax applies to the sale of the equipment to Corporation A because there was a retail sale. The taxpayer was correct in charging and collecting tax from Corporation A. 2/13/91.

210.0593.125 Use of Stallions and Mares. The test breeding of a stallion five or six times, in a year during which it was being held for resale, with no fee being charged to the owner of the mares, is consistent with nontaxable demonstration and display. The use of a stallion as breeding stock would involve much more frequent breeding during a one year period and would, of course, produce a fee for each effort.

Similarly, the breeding of mares to demonstrate their fertility is not a taxable use. A mare sold while "in foal" or "with foal at side" does not necessarily lead to the conclusion the owner made a taxable use of the mare unless the owner has held ownership for two years or more. Other evidence of taxable use would be ownership for two years even if the mare has not foaled during that time, or the production of two foals during the period of ownership. 2/21/68.

210.0593.500 Wine Tasting. The use of wine by a vintner for wine tasting does not constitute demonstration and display. The vintner has made use of the wine as defined under section 6009 and is, therefore, the consumer. 2/28/94. (Am. 2000-1).

(b) LOANS TO SCHOOLS AND SCHOOL DISTRICTS—FOR EDUCATIONAL PURPOSES

(Note: Section 6404, extends exemption to loans, under certain conditions, of motor vehicles to the California State Colleges, the University of California, private or parochial secondary schools, and certain institutions instructing disabled veterans in the operation of specially equipped vehicles.)

210.0630 Loan of Boats to University. The loan by a retailer of property other than a motor vehicle to the California State University does not qualify for exemption from use under Revenue and Taxation code section 6404. 6/7/94.

210.0660 Parochial Schools. Use tax exemption extended to school districts for loan by retailers of tangible personal property for educational purposes does not extend to parochial schools because parochial schools are not "school districts" within the meaning of the law. School districts are public corporations while parochial schools are not. 12/2/69.

210.0680 Private Schools. Since private schools are not school districts, property loaned to them is not exempt from use tax under section 6404. 3/8/68.