

235.0000 FEDERAL TAXES—Regulation 1617

235.0020 **Contingent Reserve on Seller's Books.** A contingent reserve for an unpaid protested amount of exempt federal tax, pending litigation, is not deductible from the measure of sales tax. 7/31/51.

235.0025 **Environmental Taxes.** The federal taxes imposed by Public Law 95-510 (Statutes of 1980) which adds "Chapter 38, Environmental Taxes" (commencing with section 4611) to subtitle D of the Internal Revenue Code of 1954 (26 U.S.C. sections 4611, 4612), are environmental excise taxes imposed on importers or manufacturers within the meaning of Revenue and Taxation Code section 6012(c)(4), and are therefore includable within the definition of gross receipts. 4/22/81.

235.0030 **Federal Diesel Fuel Tax.** The 2.5 cents a gallon federal diesel fuel tax imposed by the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) is an excise tax and is included in the definition of "gross receipts." It is not one of the excise taxes to which refund allowances specified in the Internal Revenue Code may apply. Accordingly, the excise tax will always be included in the measure of tax of retail fuel sales on which the tax is imposed. 2/13/91.

235.0040 **Federal Excise Tax.** Section 4051 of the Internal Revenue Code imposes a tax on the first retail sale of certain items of tangible personal property (generally truck and trailer bodies and chassis of a kind used for highway transportation). The tax imposed under that section is not included in gross receipts subject to California tax. 2/18/94.

235.0060 **Fees on Imports.** Consular and brokerage fees on imports are includible in the measure of the use tax if they are part of the seller's expense of doing business. If, however, the seller obtains such services as the agent of the buyer and binds such buyer contractually to third parties for the payment of such fees, they are not includible in the measure of the tax. 3/16/54.

235.0070 **Federal Excise Tax on Heavy Trucks.** The 12% Federal Retailers' Excise Tax on Heavy Trucks (26 U.S.C. s 4051 et seq.) is a tax imposed on retail sales and excludable from the measure of California sales and use tax. 1/10/89.

235.0080 **Federal Transportation Tax** is part of gross receipts subject to sales tax if seller pays transportation tax to carrier, title passing to buyer at destination. 3/14/50.

235.0090 **Highway Revenue Act of 1982.** This Act, which is Title V of the Surface Transportation Assistance Act of 1982, amends or adds provisions to Title 26 United States Code (Internal Revenue Code of 1954) relating to fuel and other highway taxes. For sales and use tax purposes, the Act does not affect our present method of taxing sales of fuels or tires.

The Act does affect our method of taxing sales of trucks, tractors, and trailers. The old manufacturer's excise tax was properly included in the measure of the sales and use tax. However, under the Highway Revenue Act of 1982, the new 12 percent and the transitional 2 percent tax (operative 4/1/83) are excluded from the measure of our sales and use tax as these are taxes imposed on the retail sale or purchase of the taxed vehicles. 3/11/83.

235.0100 **Imports.** An excise tax imposed by the United States upon imports of coconut oil and paid directly to the United States by the importer and user, is not includible in the measure of the use tax. 3/4/54.

235.0105 **Luxury Tax.** Effective January 1, 1991, the United States has imposed a new retail excise tax, on the first retail sale of vehicles, boats, aircraft, jewelry and furs, to the extent that the price for such goods exceeds certain specified amounts. The rate of tax is 10 percent. The new tax is excludable from “gross receipts”, under Revenue and Taxation Code section 6012(c)(4)(A). The amount of any such tax is nontaxable under the Sales and Use Tax Law, whether imposed with respect to a sale involving a transfer of title or a lease transaction which is treated as a “sale” and “purchase” under Revenue and Taxation Code sections 6006 and 6010. 12/6/90.

[235.0110](#) **Luxury Tax—Nonqualifying Lease.** Where the lessor leases the vehicle under a nonqualifying lease, the first retail sale is the sale of the vehicle to the lessor and the federal luxury tax is imposed on that sale, not on the lease. A nonqualifying lease is a lease with a term of less than one year, such as a daily or other short term rental. Where the luxury tax is not imposed upon the transaction subject to sales or use tax, the luxury tax cannot be passed through to that subsequent taxable transaction and excluded from the gross receipts of that transaction. Thus, no amount of the rentals on daily or short term rentals is excludable from the measure of tax. 6/22/92.

[235.0115](#) **Luxury Tax—Qualifying Lease.** Revenue and Taxation Code section 6012 excludes taxes imposed by the United States upon or with respect to retail sales. The federal luxury tax is a tax on retail sales which includes leases. When a lessor of a qualifying lease elects to pay the luxury tax up front, he or she is paying a federal excise tax on the lease which is a retail sale. Qualifying lease is a lease with a term of one year or more. Thus, the luxury tax on the lease is a tax imposed by the United States upon or with respect to retail sale, and is excluded from gross receipts. Assuming that the lease is a continuing sale and purchase, the amount excluded is a portion of each rental payment which, if the rental payments are equal, is calculated by dividing the total amount of the luxury tax by the number of rental payments due under the initial term of the lease.

Where the luxury tax is imposed on rental payments, the amount of the luxury tax on each rental payment is excludable from the measure of tax whether the luxury tax is separately stated or included in the rental payments set forth in the lease. Also, if the lessor elects to pay the luxury tax up front and the lessee reimburses the lessor for the tax at the beginning of the lease, the reimbursement is not included in the measure of tax. 6/22/92.

235.0116 **Federal Luxury Tax—Repeal of.** A federal luxury excise tax was imposed on certain sales of vehicles, boats, yachts, aircraft, jewelry and fur articles from January 1991 to December 31, 1992. The tax was excluded from “gross receipts,” whether imposed with respect to a sale involving transfer of title or a lease transaction which was treated as a “sale” and “purchase.”

The luxury tax applied to the “first retail sale” which was defined as the first sale, for a purpose other than resale, after manufacture, production, or

importation. No luxury tax was due on a sale to a lessor who leased the property under a “qualified lease” (a lease with a term of one year or more). If the lease was not treated as the first retail sale, and unless an election was made to pay the total luxury tax up front, the luxury tax was imposed on each lease payment. Where the luxury tax was imposed on rental payments, the amount of the luxury tax on each payment was excludable from the measure of tax whether the luxury tax was separately stated or included in the rental payments set forth in the lease.

Thus, a refund of the luxury tax involving sales of vehicles used in “qualified leases” will not require a refund of any sales or use tax.

In a “nonqualified lease” (a lease with a term of less than one year), the sale to the lessor was the first retail sale and the lessor was required to pay luxury tax on that sale. While the amount of the luxury tax may presumably be passed through to the lessee, it is treated for use tax purposes as any other overhead expense passed on to the lessee. In order to file a claim for refund of the luxury tax with the IRS, the lessor must either return the amount of the luxury tax collected from the lessee or certify that it was not collected from the lessee. In limited circumstances, a refund of the use tax paid (measured by the amount of the luxury tax cost reimbursement included in “rentals payable”) will be required. Thus, the only sales or use tax implication would be with respect to a lease of a passenger vehicle in a nonqualifying lease where the lessor repays the amount collected for the luxury tax to the lessee. Such repayment would be treated as a prior adjustment to the lease contract. 10/21/93; 10/27/93.

235.0120 Ozone-Depleting Chemicals. The federal excise tax, effective January 1, 1990, imposed by section 4681 of the Internal Revenue Code on ozone-depleting chemicals is a manufacturers’ tax and is included in gross receipts subject to sales tax and the sales price subject to use tax. Section 4681 imposes a tax on any ozone-depleting chemicals sold or used by the manufacturer, producer, or importer thereof, and on any imported taxable product sold or used by the importer thereof.

The federal excise tax imposed by section 4682 of the Internal Revenue Code on any ozone-depleting chemical held on January 1, 1990, by other than a manufacturer, producer or importer thereof is not subject to California use tax. The use tax is measured by the purchase price and the federal excise tax imposed after the sale, self declared and paid directly to the United States on tangible personal property is not subject to the use tax. Section 4682(h) imposes a tax on any ozone-depleting chemical which is held by any person, on January 1, 1990, for sale or for use in further manufacture.

Section 4681 is also imposed on any imported taxable product sold or used by the importer hereof. The amount of the tax is the estimated value deemed to represent the cost of any ozone-depleting chemical used as material in the manufacture of the product and is paid directly to the United States. This self-declared federal excise tax is not to be included in the purchase price subject to California use tax if the product is used by the importer, as the consumer. However, if the product is sold and the federal excise tax is recovered as an expense, tax will apply whether

the excise tax is separately stated or included in the selling price. 4/17/90;
6/28/91.

235.0140 **Photographic Apparatus.** Federal excise tax on photographic apparatus is a manufacturer's excise tax and is included in gross receipts subject to sales tax. 10/24/50.

235.0180 **Tires and Tubes.** The tax on tires and tubes is a manufacturer's excise tax and is not deductible from gross receipts subject to sales tax. 4/20/50.