

Compliance Policy and Procedures Manual

Chapter 8

Consumer Use Tax



Business Tax and Fee Department
California State
Board of Equalization

This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda.

Please contact any Board of Equalization office if there are concerns regarding any section of this publication.

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COMPLIANCE POLICY AND PROCEDURES MANUAL

CONSUMER USE TAX**800.000****GENERAL****800.005**

The purpose of this chapter is to provide information regarding the functions, procedures, and responsibilities of the Consumer Use Tax Section (CUTS).

CUTS administers the Sales and Use Tax Law as it applies to the purchases of vehicles and mobilehomes from persons not licensed or certificated pursuant to the Vehicle Code or the Health and Safety Code. In addition, CUTS is responsible for applying the provisions of the Sales and Use Tax Law to purchases of vessels and aircraft when the seller is not required to hold a seller's permit by reason of the number, scope, and character of that person's sales. CUTS also monitors and issues tax determinations for transactions where tangible personal property is purchased in a foreign country and personally hand-carried through U.S. Customs by California residents.

The information provided in this chapter does not apply to other types of property purchased for use in California. See CPPM 215.000 for information on Consumer Use Tax and Certificate of Registration — Use Tax permits.

BACKGROUND**800.010**

CUTS administers statewide programs regarding use tax transactions pertaining to vehicles, vessels, aircraft, and mobilehomes by non-dealers, and the use tax due on out-of-state purchases hand-carried through U.S. Customs. However, the Centralized Collection Section (CCS) is responsible for the collection of final liabilities for CUTS accounts.

At this time, CUTS staff is charged with the responsibility of reviewing source leads, establishing accounts, encouraging voluntary compliance through the filing of returns, and issuing billings for the Taxable Activity Types (TATs) under CUTS' administration.

CUTS is part of the Headquarters Operations Division of the Sales and Use Tax Department of the Board of Equalization (BOE). CUTS reports to the Chief, Headquarters Operations Division, and is comprised of the following three teams:

1. Team A and Registration.
2. Team B and Files.
3. Team C and Special Projects.

SCOPE OF RESPONSIBILITY**800.020**

CUTS acts as a liaison with various county, state, and federal agencies and provides assistance to BOE staff in the district and Headquarters sections. In performing these activities, CUTS is responsible for reviewing and establishing accounts based upon source information that identifies potential use tax leads. Sources of use tax leads include, but are not limited to:

1. Department of Motor Vehicles (DMV).
2. Housing and Community Development (HCD).
3. U. S. Coast Guard (USCG).
4. Federal Aviation Administration (FAA).
5. Department of Homeland Security (Customs).
6. County Assessors' offices.
7. BOE district office referrals.
8. CUTS Foreign Registered Vessel and Aircraft Program (FRVAP).

CUTS encourages voluntary payment of use tax by providing returns, evaluating documentation submitted to support claimed exemptions, and providing advisory services by telephone or correspondence on the application of the laws and regulations to specific transactions. In the absence of voluntary compliance, CUTS issues tax deficiency determinations using available data and resources to support the assessment of taxes due.

STATUTE OF LIMITATIONS**800.025**

The BOE, through regular audits and other sources, locates information on and investigates sales of vehicles, vessels and aircraft for which tax has not been reported and paid. If a taxpayer has not filed a return, the BOE generally has eight years from the due date of the return in which to issue a billing. If a taxpayer has filed a return but has not paid the tax due, the BOE generally has three years after the due date of the return, or the date the return was filed, whichever is later, to issue a determination.

Note that issuing a determination and notifying the taxpayer of a use tax liability may take place after the due date by which the taxpayer is required to file a tax return and pay the use tax. Therefore, penalty and interest may be applicable to the amount determined to be deficient.

SOURCES OF INFORMATION**805.000**

The following agencies provide the majority of information pertaining to use tax liabilities:

DEPARTMENT OF MOTOR VEHICLES (DMV)**805.005**

DMV acts as an agent for the BOE by collecting the use tax due on private party transfers of vehicles, mobilehomes, commercial coaches, and undocumented vessels in California, when the transfer is registered by the purchaser. Each week, DMV provides information to CUTS pertaining to the registration and transfer of vehicles and undocumented vessels that meet certain criteria for potential use tax assessment.

DMV also registers undocumented vessels (as defined in CPPM 812.025) for the State of California as an agent for the Department of Boating and Waterways.

Collection of District Taxes by DMV

When processing registration for a purchaser of a vehicle from a private party, the DMV Automation system automatically calculates the tax rate based on zip code. DMV has implemented several options to ensure the correct tax rate is collected when a purchaser's address is not within the jurisdiction's boundaries but has a postal zip code that overlaps with a jurisdiction imposing a district tax.

When the purchaser actually resides outside the boundaries of the district tax jurisdiction, the district tax is not due. To allow DMV to process the registration without payment of the district tax, the purchaser may do any of the following:

- Provide a completed BOE-111, *Certificate of Vehicle, Mobilehome, or Commercial Coach Use Tax Clearance*, to the DMV at the time of registration.
- Complete DMV form REG-256, *Statement of Facts*.
- If the jurisdiction imposing the district tax is an incorporated city, provide a letter to DMV, obtained from the incorporated city on city letterhead, indicating the registration address is outside the boundaries of the incorporated city imposing the district tax.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD)**805.010**

HCD also acts as an agent for the BOE by collecting the use tax due on an original registration or the transfer of ownership of any mobilehome unit sold by any person other than a licensed California dealer. Applications received where there is a discrepancy in the purchase price or an indication of an intervening owner are flagged and forwarded to CUTS for further review.

FEDERAL AVIATION ADMINISTRATION (FAA)**805.015**

Each month, CUTS obtains all of FAA's month-end master registration files. Files are matched against the prior month and any changes made to aircraft registered to a California address are captured. The information is processed and added to CUTS' Source Information file where these leads are further reviewed and processed.

UNITED STATES COAST GUARD (USCG)**805.020**

CUTS also receives master registration files from USCG on a monthly basis. Records are compared to the prior month and any new transactions reflecting California purchasers or California hailing ports are identified for review.

DEPARTMENT OF HOMELAND SECURITY (CUSTOMS)

805.025

The United States Customs Service, operating under the Department of Homeland Security, is the resource for duty declarations completed by California residents returning to the United States from foreign destinations. See CPPM 814.000 for additional information.

COUNTY ASSESSORS' OFFICES — 58 OFFICES STATEWIDE

805.030

Counties where both documented vessels (as defined in CPPM 812.010) and aircraft are located provide the most recent property tax rolls to CUTS. These property tax rolls are compared to FAA and USCG information for any discrepancies in ownership information or indications that the taxpayer has provided the federal government with an address located outside of California. CUTS staff periodically visits these offices to obtain the information needed to send use tax inquiries.

MISCELLANEOUS LEADS

805.035

CUTS also obtains leads from other government agencies, district offices and from the public regarding any potential unpaid use tax relating to vehicles, mobilehomes, vessels, and aircraft.

REGISTRATION OF CONSUMER USE TAX ACCOUNTS 810.000**REGISTRATION DEFINED 810.005**

Registration is defined as those functions related to the on-line input of data from source documents and other information that results in the establishment of a Taxpayer Identification Number (TIN), a Source Information File (SIF) and/or a taxable activity account for all Taxable Activity Types (TAT) under the tax programs administered by CUTS.

SOURCE INFORMATION FILE SYSTEM (SIF) 810.010

The Source Information File System (SIF) is an electronic database exclusive to CUTS that is used as a pending registration system for investigation of potential use tax liabilities for vehicles, vessels, and aircraft. Information received from various sources is added to SIF, either electronically or manually, creating a source record for each potential taxable event. SIF allows for the gathering of additional information from sellers, DMV, FAA, or USCG required in the registration process, such as owner names, purchase dates, and selling prices used to determine if a possible use tax liability and financial obligation exist. If sufficient documentation is received that confirms no use tax liability exists, the source record is closed. If it is determined that a potential use tax liability exists, the source record is registered for a taxable activity, which creates a financial obligation.

TAXABLE ACTIVITY REGISTRATION — CONSUMER USE TAX (CUT) 810.015

CUTS is responsible for creating and maintaining on-line registration for taxable activities relating to purchases made from non-dealers of vehicles, mobilehomes, vessels, aircraft, and certain purchases of tangible personal property subject to use tax that are hand-carried into this state by California residents from outside this state.

In order for taxable activity registration to occur, the following information is required:

1. Taxpayer's name and address.
2. Purchase date.
3. Value — either an actual selling price reported by the seller confirmed by a bill of sale or similar document or an estimated market value from a value guide for the item (Kelley Blue Book, Aircraft Blue Book, etc.).
4. Identifying information of the property (e.g. license plate or VIN for vehicles; CF number or documentation number for vessels; and, tail or "N" number for aircraft).
5. County where vehicle, vessel or aircraft is stored, moored, or hangared (if different from the taxpayer's county of residence).

Optional information that is desirable but not required includes:

1. Taxpayer's telephone number.
2. Make, model and year.

Registration of CUTS accounts begins in the IRIS Client Taxpayer System (CTS) using the same process as sales and use tax registrations.

Access to CUTS information for field offices and other sections of the BOE is limited to "view only" and "adding comments." If a taxpayer wants to make a voluntary payment of use tax on a vehicle, vessel, aircraft, etc., taxable activity registration can only be done by CUTS. (Please refer to CPPM 840.005 for procedures on voluntary payments.)

Note: Arbitrary account numbers (SR XX 052-000000) are issued for payments received in the district offices that do *not* involve one of CUTS programs, such as a use tax payment received from a taxpayer for the out-of-state purchase of fixtures used in his or her business when that business is not required to hold a permit. (See CPPM 295.091)

TAXABLE ACTIVITY TYPE (TAT)**810.020**

The BOE has seven separate and distinct Taxable Activity Types (TATs) that represent use tax programs:

1. Consumer Use Tax Accounts. TAT SU (District responsibility.)
2. Certificate of Registration — Use Tax. TAT SC (District responsibility.)
3. One-Time Financial Obligation – Use Tax. TAT SD (Centralized Collections Responsibility.)
4. Vehicle and Mobilehome purchases from non-dealers. TAT SA (CUTS responsibility.)
5. Vessel purchases from non-dealers. TAT SB (CUTS responsibility.)
6. Aircraft purchases from non-dealers. TAT SP (CUTS responsibility.)
7. Purchases from outside the United States, prior to July 1, 2007, by a California resident that are hand-carried and declared through the Department of Homeland Security (U.S. Customs). TAT SI (CUTS responsibility.)

This chapter contains the guidelines for the TATs of *SA*, *SB*, *SP*, and *SI* that are the responsibility of CUTS. For information regarding TATs *SU*, *SC* and *SD*, refer to CPPM 205.050 and 215.010.

TAXABLE ACTIVITY TYPE INDICATORS**810.025**

This indicator identifies the source of the information received and is used to create the TAT and potential use tax liability. Certain TAT indicators are automatically assigned by the Source Information File (SIF) registration system. The majority are from various electronic sources of information (DMV, FAA, and USCG). Other indicators are manually selected during the registration process. These TAT indicators afford CUTS the ability to identify and establish the cost-benefit ratio of the various leads received. The TAT Indicator information is available in IRIS by using the F1 key under the TAT Field on the TAR MA screen.

TAX RATE**810.030**

The use tax rate is based upon the tax rate in effect on the date of purchase at the place of use for purchases hand-carried through U.S. Customs or at the location where the:

1. Vehicle/mobilehome is registered.
2. Vessel is principally used, stored, or otherwise consumed – including mooring or berthing.
3. Aircraft is hangared or tied-down.

The place of use determines the tax rate regardless of the location of the property when it is purchased. For example, in 2001 a resident of Sacramento (tax rate 7.50%) purchased a vessel in Santa Cruz (tax rate 8.00%) and moored it in a slip in San Mateo (tax rate 8%). The applicable tax rate charged is the rate in effect at the time of purchase for the location where the vessel is moored or berthed, which in this case is 8%, for San Mateo County.

TAX AREA CODES**810.035**

For CUTS accounts, the three-digit city code is assigned as “999” for the use tax to be apportioned among the county and all local tax jurisdictions within the county (the county code is determined by the two digits preceding the city code).

VEHICLES/MOBILEHOMES PROGRAM**811.000****SOURCE INFORMATION****811.005**

DMV routinely submits an electronic tape to CUTS pertaining to vehicle registration and transfers for potential use tax assessments. Information is loaded to the Source Information File (SIF) system and a hard copy source document is created for further investigation.

HCD refers all “Certification of Retail Value and Purchase Price” (HCD476.4) transactions to CUTS to review:

1. For the possibility of an intervening owner.
2. When there is question as to the purchase price/value of a mobilehome.

These transactions are identified by HCD by attaching a “Pull Notice” (HCD492.4) to the certification.

PERSONS REQUIRED TO FILE RETURNS**811.010**

Use tax on the storage, use or other consumption of vehicles and mobilehomes is due and payable by the purchaser at the time of first storage, use or other consumption of the property in California, unless specifically exempt. Registration of a vehicle with DMV or a mobilehome with HCD constitutes filing a return. The use tax will be collected if applicable, by DMV or HCD acting as agents for the BOE, at the time of registration. (RTC section 6292.)

Any person who purchases a vehicle (as defined in the Vehicle Code) or mobilehome (subject to annual license fees under the Health and Safety Code) for use in California from a person who is not licensed or certificated as a manufacturer, dealer, dismantler, or lessor-retailer, and who has **not** made application for registration with DMV or HCD, shall file a Combined State and Local Consumer Use Tax Return for Vehicles/Mobilehomes and pay the use tax to the BOE.

MEASURE AND DUE DATE**811.015**

Vehicles — The use tax due is measured by the total purchase price including cash, the market value of any property given in trade, and the payment or assumption of any loan or any other valuable consideration given to the seller.

Mobilehomes — Effective January 1, 1986, the use tax due is measured by the total contract price or the retail value as determined by a recognized value guide. Tax is due on or before the last day of the month following the month of purchase.

EXEMPTIONS AND EXCLUSIONS**811.020**

The following are the common types of exemption or exclusions for purchases of vehicles and mobilehomes (see CPPM 820.000):

1. Interstate or foreign commerce and 6 month test for commercial miles traveled.
2. Family transfer.
3. Not purchased for use in California.
4. Presumption of Use.
 - a. 90-day test (exclusive of time of storage for shipment and shipping) and six-month test. Effective prior to October 2, 2004 and from July 1, 2007 to September 30, 2008.
 - b. 12-month test (exclusive of time of storage for shipment and shipping). Effective from October 2, 2004 through June 30, 2007 and after September 30, 2008.
5. Gift.

ADDITIONAL INFORMATION

811.025

Sales Between Political Jurisdictions — Sales of vehicles between state agencies are not retail sales since the actual ownership remains the same. No tax is due upon application for transfer of registration in these cases. However, sales between a state agency and a political subdivision of the state are retail sales and are subject to use tax. (Example: A sale of a fire truck between the California Department of Conservation and the Willow Oak Fire Protection District is a taxable sale.)

Salvage Pool Vehicles — Wrecked total loss vehicles are not vehicles required to be registered under the Vehicle Code and sales of such wrecked vehicles are the responsibility of the district office as sales of tangible personal property in general.

VESSELS PROGRAM

812.000

SOURCE INFORMATION

812.005

The major sources of information on vessel transfers are DMV and USCG. DMV submits undocumented vessel registration and transfer information by electronic tape (as it does for the Vehicle program) and the information is loaded into the Source Information File (SIF) for further review.

Information received from USCG on documented vessels, in the form of a CD-ROM, is compared to the previous quarter's information and any new transactions showing either California purchasers or California hailing ports are flagged for review. If additional information is needed, Abstracts of Title can be ordered from USCG. Abstracts provide the chain of title and all owners' names, whereas the CD-ROM only provides the name and address of the current managing owner.

DOCUMENTED VESSEL

812.010

A documented vessel is a vessel for which the USCG has issued a valid marine certificate. "Documentation" is a world-wide registration system in lieu of all other registration requirements. Liberian registry or Panamanian registry are common terms used to describe the country of documentation under International Maritime Law.

All commercial vessels of at least five net tons displacement are required to be documented. However, pleasure vessels meeting the size requirement may be documented at the owner's option. Documented vessels normally exceed twenty-eight and one-half feet (28.5') in length. Any vessel that will be used in international waters (outside the three-mile limit of California waters) must be documented with the USCG.

(Note: Sales and Use Tax Regulation 1661 defines any vessel that is 30 feet and more in length as mobile transportation equipment for sales and use tax purposes.)

PERSONS REQUIRED TO FILE RETURNS FOR DOCUMENTED VESSELS

812.015

Any person who purchases a vessel documented by the USCG for use, storage or other consumption in California shall file a Combined State and Local Consumer Use Tax Return for Vessels (the tear-out panel in Publication 79 also may be used for this purpose) and pay the use tax to the BOE.

MEASURE AND DUE DATE**812.020**

The use tax due is measured by the total purchase price of the vessel, including cash, the market value of any property given in trade, the payment or assumption of any loan or any other valuable consideration given to the seller. The use tax rate is based on the district where the vessel is principally stored, used or otherwise consumed, such as the location where it is moored or berthed.

The return must be filed and tax paid (if applicable) by whichever period expires earlier:

1. On or before the last day of the calendar month following the month in which a return form is mailed or presented to the taxpayer, or,
2. The last calendar day of the twelfth month following the month in which the vessel was purchased.

Example: A vessel is purchased on January 15, 2008. Under number 1, a tax return mailed to the taxpayer on July 16, 2008 would have a tax due date of August 31, 2008. Under number 2 however, a tax return mailed to the taxpayer on May 12, 2008 would have a tax due date of January 31, 2009 (the last calendar day of the 12th month following the month the vessel was purchased) and penalty and interest would be due, even though the taxpayer did not receive the tax return until after the due date.

UNDOCUMENTED VESSEL**812.025**

Any vessel which is not required to have, and does not have, a valid marine certificate issued by the USCG is an undocumented vessel. Under the Federal Boating Safety Act, an undocumented vessel must be registered in the state where principally used on the waters. DMV registers undocumented vessels for the State of California as an agent for the Department of Boating and Waterways (CAL-BOAT). If a state does not have a registration requirement, the USCG performs the function.

All undocumented vessels are issued a registration number, which must be displayed on the vessel. Registration numbers start with an abbreviation of the state — California “CF,” Nevada “NV,” etc. Undocumented vessels registered in California should have numbers that read “CF XXXX XX”. The letters “CF” are followed by four numeric and two alpha characters.

PERSONS REQUIRED TO FILE RETURNS FOR UNDOCUMENTED VESSELS 812.030

Registration of an undocumented vessel with DMV constitutes filing a return. The use tax will be collected, if applicable, by DMV at the time of registration. (RTC section 6294.)

Any person who purchases an undocumented vessel for storage, use or other consumption in California from a person other than a vessel dealer holding a seller’s permit, and who has not made application to DMV, shall file a Combined State and Local Consumer Use Tax Return for Vessels and pay the use tax to the BOE.

MEASURE AND DUE DATE**812.035**

The use tax due is measured by the total purchase price of the undocumented vessel, including cash, the market value of any property given in trade, and the payment or assumption of any loan or any other valuable consideration given to the seller. The use tax rate is based on the district where the vessel is principally stored, used or otherwise consumed, such as moored or berthed. Tax is due on or before the last day of the month following the month of purchase.

CUTS makes every effort to send timely returns to the taxpayer thereby allowing the taxpayer to make payment of the use tax without delinquency charges. In most cases, the information is received from USCG and processed by CUTS before the later period identified above. However, in situations where the certification with the USCG is delayed or never completed, sending of returns with delinquency charges already due is unavoidable. Under these circumstances, as with any other late return, the taxpayer may request relief of penalty per RTC section 6592.

EXEMPTIONS AND EXCLUSIONS**812.040**

The following are common types of exemptions or exclusions for purchases of undocumented and documented vessels (see CPPM 820.000):

1. Commercial deep sea fishing.
2. Interstate and foreign commerce and 6 month test for nautical miles traveled.
3. Family transfer.
4. Not purchased for use in California.
5. Presumption of Use.
 - a. 90-day test (exclusive of time of storage for shipment and shipping) and six-month test. Effective prior to October 2, 2004 and from July 1, 2007 to September 30, 2008.)
 - b. 12-month test (exclusive of time of storage for shipment and shipping). Effective from October 2, 2004 through June 30, 2007 and after September 30, 2008.
6. Gift.

ADDITIONAL INFORMATION**812.045**

Floating Homes — A houseboat or “floating home” is a “vessel” within the meaning of RTC section 6273, if it constitutes personal property and is navigable. The use of the vessel as a residence, the granting of a Homeowner’s Exemption by the County Assessor to the owner, or the number or nature of connections to the vessel from shore do not alone exclude the sale, storage, use or other consumption of the vessel from sales or use tax.

If the property is permanently affixed to real property in such a manner as to become a permanent addition and the owner is either the owner of the real property or holder of a long-term lease comparable to the life of the houseboat or floating home, it is real property not subject to sales or use tax upon transfer. A houseboat or floating home that is not suitable for movement on the water is not a vessel.

COMPLIANCE POLICY AND PROCEDURES MANUAL

AIRCRAFT PROGRAM**813.000****SOURCE INFORMATION FILE****813.005**

Each month the master file from FAA of all aircraft registered in the United States is downloaded from the FAA Website and matched against the prior month's records. Information pertaining to changes to or additions of aircraft registered to a California address are then loaded to the Source Information File (SIF) system and a hard copy source document is created for further investigation by CUTS. The SIF is a pending registration system that allows CUTS the ability to obtain necessary background information required for taxable activity registration.

PERSONS REQUIRED TO FILE**813.010**

Any person who purchases an aircraft for use, storage, or other consumption in California from a person other than an aircraft dealer holding a seller's permit shall file a Combined State and Local Consumer Use Tax Return for Aircraft or the tear-out panel in Publication 79A and pay the use tax to the BOE.

MEASURE AND DUE DATE**813.015**

The use tax due is measured by the total purchase price of the aircraft, including component parts, unless specifically exempt. The use tax rate is based upon the tax rate in effect on the date of purchase for the district where the aircraft is principally used, stored or otherwise consumed, e.g., kept in a hangar or tied down.

The return must be filed and tax paid (if applicable) by whichever period expires earlier:

1. On or before the last day of the calendar month following the month in which a return form is mailed or presented to the taxpayer,
- or,
2. The last calendar day of the twelfth month following the month in which the aircraft was purchased.

Example: An aircraft is purchased on January 15, 2008. A tax return mailed to the taxpayer on July 16, 2008 would have a tax due date of August 31, 2008. However a tax return mailed to the taxpayer on May 12, 2008 would have a tax due date of January 31, 2009 (the last calendar day of the 12th month following the month the aircraft was purchased) and penalty and interest would be due, even though the taxpayer did not receive the tax return until after the due date.

CUTS makes every effort to send timely returns to the taxpayer thereby allowing them to make payment of the use tax without delinquency charges. In most cases, the information is received from FAA and processed by CUTS before the later period identified above. However, in situations where the certification with the Federal Aviation Administration is delayed or never completed, sending of returns with delinquency charges already due is unavoidable. However, as in the case of any late return, the taxpayer may request relief of penalty per RTC section 6592.

EXEMPTIONS AND EXCLUSIONS

813.020

The following are the common types of exemptions or exclusions for purchases of aircraft (see CPPM 820.000):

1. Common carrier and 6 month test of commercial flight-time traveled.
2. Interstate or foreign commerce
3. Family transfer.
4. Not purchased for use in California.
5. Presumption of Use.
 - 90-day test (exclusive of time of storage for shipment and shipping) and six-month test. Effective prior to October 2, 2004 and from July 1, 2007 to September 30, 2008.)
 - 12-month test (exclusive of time of storage for shipment and shipping). Effective from October 2, 2004 through June 30, 2007 and after September 30, 2008.
6. Gift.

ADDITIONAL INFORMATION

813.025

Gliders, sailplanes, and balloons are not powered and are not aircraft as defined in RTC section 6274.

U.S. CUSTOMS PROGRAM — CUSTOMS DECLARATIONS FOR HAND-CARRIED ITEMS **814.000**

Since 1935, the use tax law has been in effect in California as a complement to the sales tax. The use tax serves two purposes:

1. It prevents California merchants from suffering a competitive disadvantage with respect to out-of-state merchants.
2. It assures that all persons in the state contribute fairly to the funding of state and local programs whether they choose to make purchases in California or outside the state.

In 1990, California's budget included funding for an enforcement program to collect use tax from residents based on declarations made to the U.S. Customs Service (Customs). Note: after September 11, 2001, Customs operates under the umbrella of the Department of Homeland Security.

Use tax applies to foreign purchases of tangible personal property brought into this state for storage, use, or other consumption, unless exempt by law or type of transaction (see CPPM 814.025 for exemptions). The Board of Equalization has the authority under RTC section 7054 to audit customs declarations that passengers fill out and report to Customs for property first entering into the United States. CUTS administers the review and assessment of use tax based on the declaration forms completed by travelers hand-carrying items into California.

SOURCE INFORMATION **814.005**

From July 1, 1990 through June 30, 2007, Customs gave CUTS access to customs declarations filed at various ports of entry throughout California. Unlike other CUTS programs, the customs information was not entered into the Source Information File system (SIF). After June 30, 2007, Customs modified the access to duty declarations to those instances where the BOE can identify the name of the traveler and the date traveled.

Note: This program, which uses Taxable Activity Type (TAT) SI, is not the same program as the Customs program administered by the Centralized Collection Section. That program is identified by TAT SD. See CPPM 215.010 for information about TAT SD.

TAXABLE ACTIVITY REGISTRATION **814.010**

The following information must be present in order to register travelers for taxable activity:

1. Purchaser's full name.
2. California address.
3. Total amount of purchases (in U.S. dollars).

RETURNS **814.015**

Each California resident who hand-carries merchandise purchased from a retailer outside the United States into this state for storage, use or consumption, unless specifically exempt, may be mailed a Combined State and Local Consumer Use Tax Return for Customs Declarations to pay the use tax to the BOE. The use tax may also be reported and paid by the taxpayer to the Franchise Tax Board with the annual income tax return filed by California taxpayers prior to an account being established by CUTS.

MEASURE AND DUE DATE**814.020**

The use tax due is measured by the total purchase price of property hand carried into California, less the allowable exemption per person (\$400 per person prior to January 1, 2007 and \$800 per person on or after January 1, 2007), not previously claimed within a 30-day period. Tax is due on or before the last day of the calendar month following the month a tax return form is mailed or presented to the taxpayer. (RTC sections 6246 and 6405.)

If a tax return is not provided to the taxpayer by the BOE, the tax is due on or before the due date of taxpayer's Franchise Tax Board income tax return for the year in which the merchandise was brought into California. For example, if a taxpayer returns to California and declares their merchandise through Customs on December 15, 2007, the use tax would be due on or before April 15, 2008. If the taxpayer entered California and declared their merchandise through Customs on January 1, 2008, the due date of the use tax would be April 15, 2009.

EXEMPTIONS AND EXCLUSIONS**814.025**

The following are common types of exemption and exclusions for purchases of tangible personal property from the customs program (See CPPM 820.000):

1. Effective January 1, 2008, the first \$800 per person of tangible personal property hand-carried into this state and reported on a single declaration. The exemption may be taken only once within any 30 day period (RTC section 6405). Prior to January 1, 2008, the exemption was applicable to the first \$400 per person of foreign purchases hand-carried into California within any 30 day period. This exemption does not apply to tangible personal property sent or shipped into this state.
2. All merchandise purchased for resale, provided there is documentation showing that the property was purchased for resale and that no personal use was made of the property prior to its resale, other than demonstration and display.
3. Items purchased for use outside California are not subject to tax if there is documentation showing that the ultimate destination and use will be outside this state.
4. Foreign purchases of property used outside California for more than 90 days before entering this state. Different rules apply to the purchase of vehicles, vessels, and aircraft. See Regulation 1620, *Interstate and Foreign Commerce*, for more information.
5. Gifts received while abroad are not subject to use tax. However, a signed letter from the donor describing the gift and verifying that no consideration was received is required to support this exemption. Items purchased to give as gifts are subject to use tax measured by the cost of such merchandise if it exceeds the exemption amount noted above.
6. Other exempt purchases such as food, prescription medicine/eyeglasses, or any other exempt transactions as allowed by the California Sales and Use Tax Law. Each claim for exemption must be clearly explained.

Note: Items which are exempt from federal duty may not be exempt from the use tax. Conversely, purchases of items which may be subject to federal duty, such as food products for human consumption (except alcoholic beverages and vitamins) or prescriptions medicines, may not be subject to the use tax.

ADDITIONAL INFORMATION**814.030**

Requests for amendments to duty declarations are handled by Customs and should be referred to the nearest customs office. If the amendment results in an adjustment of the total amount of purchases, documentation should be provided to CUTS.

California does not have a reciprocal agreement with other countries involved in the Value Added Tax (VAT) for refunding the sales or use tax paid on purchases made in this state.

**FOREIGN REGISTERED VESSEL AND
AIRCRAFT PROGRAM (FRVAP)**

815.000

The purpose of this program is to collect the use tax on the storage, use or other consumption of vessels and aircraft that are documented or registered to an out-of-state address, but are being assessed personal property tax in California. CUTS reviews property tax rolls in comparison with information obtained from the FAA and the USCG. Any discrepancies such as changes in ownership or addresses recorded both in and out of state are verified for use tax paid.

Although both undocumented and documented vessels are assessed personal property tax, CUTS does not pursue use tax arising from the purchase of undocumented vessels through FRVAP since DMV, acting as an agent for the BOE, collects use tax measured by the purchase price at the time of registration. See CPPM 812.025 for information on undocumented vessels.

SOURCE INFORMATION

815.005

CUTS compares the Federal Aviation Administration and the USCG information with personal property information obtained from various county assessors. The compilation results in a list of possible leads, which are further investigated by CUTS staff. County assessor records are reviewed for specific information regarding sales or use tax paid on the purchase.

RETURNS

815.010

Refer to CPPM 812.015 and 813.010 for documented vessels and aircraft.

MEASURE AND DUE DATE

815.015

Refer to CPPM 812.020 and 813.015 for documented vessel and aircraft due dates.

EXEMPTIONS AND EXCLUSIONS

815.020

Refer to CPPM 812.040 and 813.020 for vessel and aircraft exemptions and exclusions.

ADDITIONAL INFORMATION

815.025

RTC section 220.5 allows for an exemption from personal property taxation of an “aircraft of historical significance.” This exemption does not apply to use tax.

The Servicemember’s Civil Relief Act also exempts military personnel from personal property taxation in specific circumstances, but is “inapplicable to one-time transactions taxes, such as sales and use taxes.”

COMPLIANCE POLICY AND PROCEDURES MANUAL

**EXEMPTIONS AND EXCLUSIONS:
VEHICLES, VESSELS, AND AIRCRAFT**

820.000

Purchases of vehicles, vessels, and aircraft for use in California are subject to either the sales or use tax unless a specific exemption or exclusion applies. Under certain circumstances purchases of vehicles, vessels, and aircraft may be exempted or excluded from tax. Any claim that the purchase is not subject to tax must be supported by satisfactory documentary evidence. Even though the evidence may vary considerably in each case, there must be sufficient documentation to substantiate the claim. The following section explains the exemptions and exclusions most common to consumer use tax programs. General provisions for use tax can be found under RTC sections 6202 and 6241. For specific exemptions, see the applicable law or regulation cited within the specific section.

PRESUMPTION OF PURCHASE FOR USE IN CALIFORNIA

820.005

A vehicle, vessel, or aircraft purchased outside of California which is subsequently brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. “Functional use” means use for the purposes for which the property was designed. Vehicles, vessels, and aircraft designed for personal use are “functionally used” when merely driven, sailed, or flown. Vehicles, vessels, and aircraft designed for a commercial or other special purpose are not “functionally used” until used for the purposes for which they were designed.

For vehicles, vessels and aircraft purchased outside of California, first functionally used outside of California, and then brought into California, Regulation 1620, *Interstate and Foreign Commerce*, contains the presumptions for application of the use tax. When a California retailer delivers and transfers title to a purchaser out of state and does not charge tax, the use tax may still be due from the purchaser.

Due to changes in the law, there are two different tests established for determining whether a vehicle, vessel, or aircraft purchased and first functionally used outside California is considered to have been purchased for use in this state.

A vehicle, vessel, or aircraft purchased and first functionally used outside of California will be subject to either the “90-Day and Six-Month Principal Use Test,” or the “12-Month Test” depending upon the purchase date. The following table illustrates the application of each of the two test periods based on the purchase date:

Purchase Date	Test Period
October 2, 2004 – June 30, 2007	12-Month Test
July 1, 2007 – September 30, 2008	90-Day Test
On or after October 1, 2008	12-Month Test

Note: If a binding purchase agreement was completed prior to October 2, 2004, or between July 1, 2007, and September 30, 2008, the purchase will be subject to the “90-day test.” The test period will commence on the date of purchase, generally the date of out-of-state delivery.

APPLICATION OF TEST PERIODS**90-Day Presumption and Six-Month Principal Use Test**

When a vehicle, vessel, or aircraft is purchased and first functionally used outside of California, the vehicle, vessel, or aircraft will be presumed to have been purchased for use in California if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless the vehicle, vessel, or aircraft is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into California.

12-Month Test

When a vehicle, vessel, or aircraft is purchased and first functionally used outside of California and is brought into California within 12 months from the date of its purchase, it is *rebuttably* presumed that it was acquired for storage, use, or other consumption in California, and subject to use tax if any of the following occur:

- The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the California Vehicle Code (effective January 1, 2010, a California resident is defined to include a closely held corporation if 50 percent or more of the shares are held by shareholders who are California residents, and effective January 1, 2011, to include, but is not limited to, a closely held limited liability company if 50 percent or more of the membership interests are held by members who are California residents), or
- In the case of a vehicle, the vehicle was subject to registration in California under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership, or
- In the case of a vessel or aircraft, the vessel or aircraft is subject to property tax in this state during the first 12 months of ownership, or
- If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

This presumption may be rebutted if the purchaser can provide satisfactory documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside California during the first 12 months of ownership. This evidence may include, but is not limited to, proof of registration of the vehicle, vessel, or aircraft with the proper out-of-state authority. In determining whether the presumption has been rebutted, all relevant evidence should be considered in its entirety. Other possible evidence that *may* indicate that the property was not purchased for use in California may include, but is not limited to:

- Proof of payment of property tax to another state,
- Apartment lease, rental agreement, or other evidence showing residence in another state,
- Proof of change in employment status, or
- Anything else that will reasonably establish that at the time of purchase, the purchaser did not intend to use the vehicle, vessel, or aircraft in California.

In some instances, the purchaser may claim that at the time of purchase, the intent was not to use the vehicle, vessel, or aircraft in California, but subsequent circumstances changed the purchaser's original intent (e.g. change in job assignment). To overcome the presumption that the vehicle, vessel, or aircraft was purchased for storage, use or other consumption in this state, the following two factors must be present: (1) at the time of purchase, the purchaser did not contemplate bringing the property to California for use in the state, and (2) the subsequent change of intent was beyond the control of the purchaser.

In addition, a vessel or aircraft the purchase of which is subject to the 12-month test that is brought into California for the exclusive purpose of repair, retrofit, or modification shall not be deemed to have been acquired for storage, use, or other consumption in this state provided either of the following apply:

- in the case of a vessel, the work is performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or
- in the case of an aircraft, the work is performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

The presumption for vehicles may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying the dates of travel to and from the warranty or repair facility.

Generally, when a taxpayer claims that a vehicle or undocumented vessel was not purchased for use in California and the applicable test period has not yet expired, it is Board of Equalization (BOE) policy to permit registration with the Department of Motor Vehicles (DMV) without the payment of California use tax. In this situation, the BOE issues a BOE-111, *Certificate of Vehicle, Mobilehome or Commercial Coach Use Tax Clearance*, or BOE-111-B, *Certificate of Vessel Use Tax Clearance*. Clearance certificates are issued subject to certain documentary requirements, with the understanding that the taxpayer is required to provide additional documentation to the BOE to support his or her claim at the end of the test period. See CPPM section 825.000.

For questions regarding the qualifying period for "Not Purchased for Use in California" claims, contact CUTS.

USE IN INTERSTATE OR FOREIGN COMMERCE**820.010**

Under certain conditions, the purchase of a vehicle, vessel, or aircraft used in interstate or foreign commerce may be exempt from the use tax. Regulation 1620, *Interstate and Foreign Commerce*, provides that use tax does not apply to the use of property purchased for use and used in interstate or foreign commerce *prior* to its entry into this state, and thereafter used *continuously* in interstate or foreign commerce both within and outside California and not exclusively in California.

In addition, if a vehicle, vessel, or aircraft is presumed to have been purchased for use in California based on either of the tests discussed in CPPM section 820.005, the purchaser may rebut the presumption by providing satisfactory documentary evidence that the vehicle, vessel, or aircraft was first functionally used outside of California and was primarily used in interstate or foreign commerce during the six-month period immediately following its entry into the state. The following are the criteria that must be met to establish this exclusion for use tax:

- If the property is a vehicle, the use tax will not apply if *one-half or more* of the miles traveled by the vehicle during the six-month period immediately following its entry into this state are commercial miles traveled in interstate or foreign commerce.
- If the property is a vessel, the use tax will not apply if *one-half or more* of the *nautical miles* traveled by the vessel during the six-month period immediately following its entry into the state are commercial miles traveled in interstate or foreign commerce.
- If the property is an aircraft, the use tax will not apply if *one-half or more* of the flight time traveled by the aircraft during the six-month period immediately following its entry into the state is commercial flight time traveled in interstate or foreign commerce.

For the purposes of the regulation, the term “commercial” applies to business uses and excludes personal use. The term is not limited to *for-profit* businesses. To establish that a particular trip was for a business purpose, the taxpayer must show that the principal purpose of the trip was business rather than personal. For examples of what constitutes interstate commerce for vehicles, vessels, and aircraft, see Regulation 1620(b)(7) examples 1 to 13.

WATERCRAFT**820.011**

Watercraft used principally (more than one-half of the time) for the purpose of transporting persons or property for hire in interstate or foreign commerce are exempt from the use tax. The test period is the 12-month period following the first operational use of the watercraft. If the purchaser does not own the watercraft for 12 consecutive months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the watercraft will be considered. “Operational use” means the actual time during which the watercraft is operated and does not include storage, modification, repair, or replacement.

It is presumed that the watercraft is not regularly used in the transportation for hire of property or persons if the annual gross receipts from such use of the watercraft, or gross receipts from the lease of the watercraft used in this manner, do not exceed ten percent (10%) of the cost of the watercraft to the person using or leasing it, or twenty-five thousand dollars (\$25,000), whichever is less. This presumption may be rebutted by contrary, verifiable evidence that the watercraft is regularly used in the transportation for hire of property or persons.

The exemption may also apply to barges and ferry boats that operate entirely within the state and are principally used to transport passengers or cargos moving in interstate or foreign commerce, or tugs that operate entirely within the state and are principally used to convoy or aid the departure or arrival of vessels to or from points outside the state, or water-taxis that are engaged in the transportation of harbor pilots to or from vessels for the purpose of navigating or aiding those vessels in the completion or commencement of their voyages to or from points outside of California.

COMMERCIAL DEEP SEA FISHING**820.015**

The storage, use, or other consumption in this state of watercraft principally used in commercial deep sea fishing operations outside the territorial waters of California by persons who are regularly engaged in commercial deep sea fishing are exempt from the use tax. Regulation 1594 establishes a two-step test to determine if the exemption applies.

First, the watercraft must be used by persons who are regularly engaged in commercial deep sea fishing. Second, the watercraft itself must actually be used principally in commercial deep sea fishing operations outside the territorial waters of this state, using a test period of 12 consecutive months beginning with the first operational use of the watercraft. If the purchaser does not own the watercraft for 12 consecutive months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the watercraft will be considered. "Principal use" means that over 50 percent of the time spent in total operation must involve commercial fishing outside the territorial waters of this state. There is a rebuttable presumption that a person is *not* regularly engaged in the business of commercial deep sea fishing if the person has gross receipts from commercial deep sea fishing operations that total less than \$20,000 a year.

Note: It is not material to the application of tax whether a vessel is documented with the USCG or undocumented and registered with DMV.

TRANSPORTING PERSON OR PROPERTY TO OFFSHORE DRILLING PLATFORMS**820.016**

Watercraft used in transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state may be exempt from the use tax, provided the watercraft is functionally used 80 percent or more of the time in such transportation activities. Only the functional use of the watercraft during the first 12 months commencing with the first operational use of the watercraft will be considered. If the purchaser does not own the watercraft for 12 consecutive months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the watercraft will be considered.

AIRCRAFT SOLD TO COMMON CARRIERS**820.020**

Generally, tax does not apply to aircraft sold to persons who use the aircraft in operation as a common carrier of persons or property, or who lease the aircraft to a lessee who will use the aircraft in operation as a common carrier under authority of the laws of this state, of the United States, or any foreign government provided the aircraft is used as a common carrier for more than one half of the operational use during the first twelve consecutive months commencing with the first operational use of the aircraft (see Regulation 1593, *Aircraft and Aircraft Parts*).

The term "common carrier" is defined as any person who engages in the business of transporting persons or property for hire or compensation and who offers the services indiscriminately to the public or to some portion of the public. Documentation must establish that the principal use of the aircraft was as a common carrier during the first twelve months of operational use.

There is a rebuttable presumption that a person is not engaged in business as a common carrier, unless the yearly gross receipts from such activity exceed 20 percent of the purchase price of the aircraft, or \$50,000, whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the Board showing that the aircraft is used principally as a common carrier of persons or property for hire.

If the first twelve months have not expired by the due date of the use tax return, any available documentation should be submitted and the remaining required documentation submitted once the test period has expired. If the purchaser does not own the aircraft for twelve consecutive

AIRCRAFT SOLD TO COMMON CARRIERS**(CONT.) 820.020**

months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the aircraft will be considered.

FAMILY TRANSFERS**820.025**

There is an exemption from the use tax when the person selling a mobilehome, commercial coach, vehicle, vessel, or aircraft is a parent, grandparent, grandchild, child, or spouse of the purchaser or, on or after January 1, 2005, is the registered domestic partner of the purchaser as defined in Family Code section 297, or the brother or sister of the purchaser if both are minors (under the age of 18) and related by blood or adoption; and the seller is not engaged in the business of selling the type of property for which the exemption is claimed.

This exemption does not extend to stepparents, step-grandparents, step-grandchildren, stepsiblings, or stepchildren. There must be a legal adoption for these relations to fall under this specific tax exemption. Claimants must provide documentation to show proof of the relationship and age (if the transfer is between minors).

Department of Housing and Community Development (HCD) or DMV may allow the transfer of vehicles, mobilehomes, vessels, or aircraft between qualified family members without requiring a use tax clearance from the BOE (See CPPM section 825.035).

GIFT**820.030**

The gift of a vehicle, vessel, or aircraft is not subject to use tax. To qualify as a gift, the transfer of a vehicle, vessel, or aircraft must be made without any consideration being exchanged in order to obtain the vehicle, vessel, or aircraft. Examples of consideration include cash, credits, receipts, the fair market value of any trade, including trades of equal value, or the assumption of any liability. All relevant evidence supporting the gift should be considered. Although not determinative, the applicant's statement that it was a gift should be supported by a signed statement from the previous owner, or, in the case of a corporation, corporate minutes.

Under certain circumstances, an individual may wish to transfer registration of a vehicle or vessel from a company or corporate name to his or her own. The individual may or may not own the entity in question. Fully depreciated vehicles no longer needed by the company or transfers for insurance purposes are among the most common reasons for transfer. In all cases, these transfers must meet the criteria of a transfer without consideration before an exemption can be granted.

PURCHASES FOR RESALE**820.040**

Property purchased for resale may be purchased without payment of tax, provided the purchaser makes no use of the property except retention, demonstration, or display while holding it for sale in the regular course of business. When the purchase is made from a licensed retailer, the burden of proving that a sale of tangible personal property is a sale for resale is upon the person who makes the sale unless the retailer timely accepts, in good faith, a valid resale certificate from the purchaser. Where a retailer is unable to produce a timely, valid resale certificate, the retailer will be relieved of liability for the tax only where the retailer proves the sale was in fact a sale for resale by submitting evidence to establish that the property was resold by the purchaser without intervening use, that the purchaser still holds the property for resale without intervening use, or that the purchaser paid the applicable tax to BOE.

When a vehicle, vessel, or aircraft is purchased from a private party not required to hold a seller's permit by reason of the number, scope, and character of its sales, the applicable tax is the use tax, imposed on the purchaser. Therefore, the purchaser has the burden of proving the purchase was for resale. This does not apply to sales of vessels and aircraft when a broker arranges the sale and collects the applicable tax.

MILITARY PERSONNEL**820.045**

A member of the armed forces on active duty who purchases a vehicle prior to the effective date of his or her discharge, shall not be deemed to have purchased the vehicle for use in this state unless, at the time of purchase, he or she intended to use it in this state (see Regulation 1610).

Additionally, when a member of the armed forces on active duty, contracts to purchase a vehicle outside California before the member receives orders transferring him or her to California, no use tax is due.

However, the member will be considered to have made the determination to use the vehicle in California if he or she contracts to purchase the vehicle after receipt of official orders transferring him or her to California. Unless the use is otherwise not subject to tax, the use tax will apply.

The member will be considered to have made the determination to use the vehicle in California without regard to the time of receipt of official orders of transfer, if at the time he or she contracts to purchase the vehicle, arrangements are made to take receipt of the vehicle in California. This applies when purchase arrangements are made any time during a scheduled deployment, regardless of the date of orders to return to California.

All the foregoing have no application to mobilehomes and commercial coaches, as they are covered in Regulation 1610.2, *Mobilehomes and Commercial Coaches*. Mobilehomes located on military bases or installations are required to be annually registered, and the purchase by resident or non-resident military is subject to tax.

PURCHASES BY AMERICAN INDIANS**820.050**

In general, except as provided below, use tax applies to the use in this state by an Indian purchaser of tangible personal property (including vehicles, vessels, and aircraft) from an off-reservation retailer for use in this state.

Use tax does not apply to purchases of vehicles, vessels, and aircraft by Indian purchasers who reside on an Indian reservation, if

- the property is delivered and ownership transfers to the Indian purchaser on the reservation, and
- the property is thereafter used on the reservation 50 percent or more of the time during the first 12 months after the purchase.

This exemption also applies to purchases by “Indian organizations” and “Indian couples” as defined below.

“Indian organization” includes Indian tribes and tribal organizations, including tribes that incorporate pursuant to section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. § 477). Partnerships qualify as “Indian organizations” for California sales and use tax purposes only when all of the partners are Indians. Corporations and limited liability companies qualify as Indian organizations only if they are organized under tribal authority and wholly owned by Indians. If an organization does not meet these criteria, it does not qualify, even when owned or operated by Indians.

“Indian couples” includes a married couple or a registered domestic partnership for exemption purposes when it consists of two Indians or of an Indian and a non-Indian that have entered into officially recognized family relationships under California law or tribal law. This generally includes a married couple or a domestic partnership entered into under the Domestic Partner Rights and Responsibilities Act of 2003. Tribes have the authority to establish their own laws and regulations regarding such unions. Tribal laws include not only written laws, but may also include tribal customs and practices. However, such customs and practices must be that of the

PURCHASES BY AMERICAN INDIANS**(CONT.) 820.050**

tribe, not of an individual tribal member. Therefore, if either California law or tribal law recognizes the family relationship, and at least one member of the couple is an Indian, the couple qualifies as an Indian couple.

For property purchased for use in tribal self-governance, the sale will not be subject to sales or use tax if:

- The tribal government does not have a reservation, or the principal place the tribal government conducts tribal business cannot be on the reservation because it lacks a building or lacks one or more essential utility services, such as water, electricity, gas, sewage, telephone service, or mail service from the US Postal Service;
- The property is purchased by the tribal government for use in tribal self-governance, including governance of tribal members, the conduct of inter-governmental relationships, and the acquisition of trust land; and
- The property is delivered to the tribal government and ownership of the property transfers to the tribal government at the principal place where tribal business is conducted.

The purchase will not be subject to the above exemption if the property is used for purposes other than tribal self-governance more than it is used for tribal self-governance within the first 12 months following delivery.

For more information see Regulation 1616, *Federal Areas*, and publication 146, *Sales to American Indians & Sales in Indian Country*.

PURCHASES FROM U.S. GOVERNMENT**820.055**

All purchases of tangible personal property from any unincorporated agency or instrumentality of the U.S. Government are exempt from the use tax, except purchases from the Surplus Property Board or its successor agency and property included in any contractor's inventory. As such, the following types of transactions are not subject to the use tax.

- A purchase of property from a U.S. Marshal pursuant to an order of a Federal Court. (See Annotation 560.0260)
- A purchase of property in accordance with the provisions of Title 40 U.S.C.A. section 481(c) from any executive agency authorized by the Office of Federal Procurement Policy. Any transaction carried out under the authority of this section must be evidenced in writing by the Office of Federal Procurement Policy.
- Surplus property from the U.S. Government transferred to any state, county or local government entity without consideration, except for what is called a "nominal service charge."

Note: Sales made under the authority of Title 40 U.S.C.A. section 484 or IRC section 6335 are taxable (See RTC section 6402 and Business Taxes Law Guide Annotations 560.0174 and 560.0170).

FOREIGN MISSIONS AND CONSULS**820.060**

In general, neither sales nor use tax applies to the sale or use of tangible personal property sold to foreign missions or representative offices, foreign consular officers, employees, or members of their families identified by a Tax Exemption Card issued by the U.S. Department of State, Office of Foreign Missions (OFM) or the American Institute in Taiwan (AIT). Tax does apply to sales of property to foreign missions or representative offices, foreign consular officers, employees, or members of their families who do *not* hold a Tax Exemption Card. The purchase or lease of a vehicle by a foreign mission or representative office, foreign consular officer, employee, or member of their family will be exempted from the sales and use taxes if the purchaser provides a valid Tax Exemption Card or protocol identification card to the retailer AND a letter is furnished directly to the retailer by the OFM or the AIT stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax. (Regulation 1619, *Foreign Missions and Consuls*)

INVOLUNTARY TRANSFERS**820.065**

Tax does not apply to a repossession of property by a seller from a purchaser who has not completed repayment. In order to receive the exemption, the applicant must provide documentation, such as a certificate of repossession.

CORPORATE, PARTNERSHIP, AND LLC DISSOLUTION**820.070**

Receiving property as part of the final distribution of corporate, LLC, or partnership assets is normally a nontaxable transfer if the distribution is in proportion to the individual's ownership interest in that entity and the entity receives no consideration. The entity will be deemed to have received consideration when the individual assumes the outstanding liability still owed on the property. The amount of the assumption would be the measure of tax. The taxpayer should provide a statement from the lender which identifies the outstanding balance at the time of assumption. As proof of ownership interest, supporting evidence in the form of partnership agreements or corporate dissolution papers should be provided.

TRANSFERS TO COMMENCING CORPORATIONS, LLC'S, OR PARTNERSHIPS**820.080**

The contribution of property to a commencing corporation, LLC, or partnership solely in exchange for an interest in the LLC, partnership or corporate stock is not a sale and not subject to tax. If consideration is received in the form of another asset in exchange, or the assumption of indebtedness, the transfer would be subject to tax. Evidence in the form of partnership agreements or articles of incorporation will be needed to verify the exemption.

CAPITAL CONTRIBUTIONS**820.085**

The contribution of property to a corporation by a shareholder is exempt if the corporation merely credits a donated capital or other capital account. The transfer is regarded as a contribution of capital and it is immaterial that the value of the shares held by the person contributing the property may be enhanced. Copies of the corporation's journal entries should be provided to verify that a capital account is credited.

TRANSFERS TO TRUSTS**820.090**

Transfers of vehicles, vessels, aircraft, or mobilehomes to revocable trusts are exempt under certain circumstances. The majority of living trusts are revocable and the following rules would apply. In order to qualify for this exemption, all of the following must occur:

1. The seller has an unrestricted power to revoke the trust.
2. The sale does not result in any change in the beneficial ownership of the property.
3. The trust provides that upon revocation the property will revert wholly to the seller.
4. The only consideration for the sale is the assumption by the trust of an existing loan for which the tangible personal property being transferred is the sole collateral for the assumed loan.

TRANSFERS TO TRUST**(CON.T) 820.090.**

For those trusts that are not revocable or if the transfer does not meet the above criteria, there is no special exemption for property transferred merely because the transferor (settlor) is both the creator of the trust (trustor) and administrator of the trust (trustee). A trust is a “person” under the Sales and Use Tax Law and any transfer to the trust for a consideration would normally be subject to tax.

To properly document transfers to a trust, you will need to obtain copies of the trust agreement which identify:

- the parties involved and their signatures.
- the property being transferred. If the property is not clearly identified in the trust agreement, a statement (including the I.D. number) should be obtained that describes the property included in the transfer.
- the assumption of liabilities.
- whether or not the trust is revocable.

FARM EQUIPMENT AND MACHINERY**820.091**

Under Regulation 1533.1, *Farm Equipment and Machinery*, purchases of vehicles designated as an implement of husbandry in Chapter 1, Division 16 of the Vehicle Code may qualify for a partial exemption from the sales and use tax. To qualify for the partial exemption, a qualified person must use the qualifying vehicle exclusively in agricultural operations.

When a qualified person purchases a new or used qualifying vehicle from a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, remanufacturer, dealer or dismantler (dealer), the qualified person should give a partial exemption certificate to the dealer. However, when a qualifying vehicle is purchased from a seller other than a dealer, for example, an out-of-state vehicle dealer or an in-state non-dealer, and the purchaser does not have a seller’s permit, the purchaser must pay the use tax when they register the qualifying vehicle with the DMV or self-report the use tax to the Consumer Use Tax Section (CUTS) or local district office. If the qualified purchaser has a seller’s permit they can report and pay the use tax on their sales and use tax return when the property is not subject to registration with DMV.

QUALIFYING PERSONS

Persons who qualify for the partial exemption provided by Regulation 1533.1 must be engaged in an agricultural operation described in Standard Industry Classification (SIC) Codes 0111 to 0291 or perform activities described in SIC Codes 0711 to 0783 in addition to being engaged in a line of business described in SIC Codes 0111 to 0291. A qualified person also includes someone that assists qualified persons by performing an agricultural service, as described in Major Group 7 of the SIC Codes, as an employee or on a contract or fee basis. SIC Codes 0111 to 0291 describe businesses that are engaged in farming and ranching. SIC Codes 0711 to 0783 describe businesses that are engaged in agricultural services to be limited to soil preparation, crop services, veterinary services, animal services, farm labor and management services, and landscape and horticultural services.

A qualified person does not include a person operating a garden plot, orchard, or farm for their own use. Any vehicles or equipment purchased for these applications are not considered purchased for a qualifying use and should not receive the partial exemption from tax.

Please Note: The enacting statute for the partial exemption on sales of farm equipment and machinery, Revenue and Taxation Code section 6356.5, requires the SIC Codes be used to define a qualified person. To ensure consistency with the statutory requirement, Regulation 1533.1 also uses SIC Codes to define a person that assists a qualified person. However, SIC Codes are no longer used on federal income or state franchise tax returns to code a business activity. The standard is now the North American Industry Classification System (NAICS). Any current state franchise or federal income tax return provided by a person as documentation of being engaged in a farming activity will use the NAICS code to describe the person's business activities. (See the Proof of Exemption section.) If staff has questions concerning the eligibility of a NAICS code, a cross-reference between the SIC and NAICS codes can be found at www.census.gov/eos/www/naics/concordances/concordances.html.

The following examples illustrate the concept of “qualified persons.”

Example 1: Farmer Bob grows tomatoes on his 2,000-acre farm and is a qualified person for purposes of Regulation 1533.1. Farmhand Jake is Farmer Bob's employee and assists Farmer Bob in planting and harvesting tomatoes. Farmer Bob is very busy so he sends Farmhand Jake, on his behalf, to buy a used qualifying vehicle from Farmer Steve. Farmhand Jake is a person that qualifies for the partial exemption because he is a person that assists a qualified person as he performs agricultural services as described in SIC Codes 0711 to 0783, as an employee of Farmer Bob.

Example 2: Farmer Bob decides he is not going to do his own fertilizing this year. Farmer Bob contacts The Giant T'Mater Fertilizing Company and contracts with them to fertilize his tomatoes this year. This is a big contract for The Giant T'Mater Fertilizing Company, so they decide to buy a new qualifying fertilizer applicator rig from an out-of-state retailer for use exclusively in agricultural operations. The Giant T'Mater Fertilizing Company performs agricultural services described in SIC code 0711, soil preparation services, and therefore qualifies as a person that assists a qualified person.

Example 3: Farmer Bob's mom is ill, so next year he will contract out the management of the tomato fields, including cultivating and harvesting, with Bestfriend Farm Management Co. Bestfriend Farm Management Co. buys a used qualifying vehicle for use exclusively in getting around on the farm property and to check irrigation machines. Bestfriend Farm Management Co. is a person that assists a qualified person (SIC 0762) and therefore qualifies for the partial exemption.

Example 4: Citizen Jeff works a vegetable patch in his extra-large backyard. He consumes most of the vegetables but occasionally sells produce at a roadside stand. He does not report such sales and expenses on his federal income tax return. Citizen Jeff's purchases do not qualify for the partial exemption because he is not a qualified person. He is growing produce for his own use and is not engaged in a business for purposes of Regulation 1533.1.

QUALIFYING VEHICLES

Regulation 1533.1 states that an “implement of husbandry” is a vehicle used exclusively in the conduct of agricultural operations. It also states that an “implement of husbandry” does not include vehicles designed primarily for transportation of persons or property on the highway, unless specifically designated as such by provisions of the Vehicle Code.

Vehicle Code section 36005 provides a list of vehicles that qualify as “implements of husbandry.” This list is attached to Regulation 1533.1 as Appendix A. Assuming the person claiming the partial exemption can document they are a qualified person, staff should allow the partial exemption for the types of vehicles listed when used exclusively in the conduct of agricultural operations or as otherwise indicated

There are occasions when vehicles not specifically identified in Appendix A may qualify as farm equipment and machinery for the purposes of the partial exemption. For example, while the Vehicle Code states that, in general, vehicles designed to transport persons or property on a highway are not qualifying vehicles, such vehicles are included in Vehicle Code section 36005 as implements of husbandry. It should be noted that this section limits their on-highway use to short distances that are incidental to farming, not for compensation, and no more than two (2) miles. Additionally, the DMV will occasionally qualify vehicles not listed in Vehicle Code section 36005 as implements of husbandry. This determination is made by the DMV's Special Processing Unit and is based on a review of the vehicle's use and equipment requirements.

Depending on their use, unlisted vehicles such as All Terrain Vehicles (ATV) and agricultural aircraft (crop dusters) may be considered qualified vehicles if used exclusively in an agricultural operation to traverse an agricultural property to check fencing, round up livestock, check cattle and crops, examine watering and irrigation systems, or similar activities required in an agricultural operation. When used exclusively for these purposes, the purchase of the ATV qualifies for the partial exemption provided all other requirements of Regulation 1533.1 are met. Similarly, crop dusters used exclusively for seeding, fertilizing, and crop protection will qualify for the partial exemption.

PROOF OF EXEMPTION

When a qualifying vehicle is purchased from a person registered with the BOE to collect tax, the purchaser must complete a partial exemption certificate in support of a claimed partial exemption. A sample of the recommended partial exemption certificate can be found in Appendix B of Regulation 1533.1. The purchaser is not required to use the recommended partial exemption certificate as long as the certificate provided by the purchaser has all of the elements for the partial exemption certificate outlined in Regulation 1533.1.

Purchasers that report use tax to, or claim a refund from, the BOE must also provide evidence of being engaged in one of the required SIC codes. Acceptable documentation includes current federal income or state franchise tax returns which include Schedule F. If the purchaser did not file a Schedule F, staff should check the NAICS code on the return to ensure it matches one of the activities qualifying for the partial exemption. (Refer to Regulation 1533.1.)

It is possible that a person who assists a qualified person will not have a NAICS code that matches one of the activities qualifying for the partial exemption. If the purchaser cannot provide a Schedule F or appropriate NAICS code, other documentation, such as employment or service contracts, may be accepted.

DEPARTMENT OF MOTOR VEHICLE (DMV) CUSTOMERS

DMV cannot process partial payments of the use tax on behalf of the BOE. Therefore, purchasers have two options for reporting and paying use tax:

OPTION 1: Pay the non-exempt portion of the tax to the BOE (CUTS/district office) and obtain a BOE-111, Certificate of Tax Clearance, to present to DMV to allow registration.

OPTION 2: Pay the full amount of use tax to the DMV and apply for a refund of the state exempt portion directly from the BOE.

PROCEDURES**District Offices**

If a taxpayer is claiming the partial tax exemption, direct them to register electronically using the kiosk. When the taxpayer electronically registers, a source information file (SIF) number is generated, which will be used by CUTS to create an account.

After the taxpayer electronically registers, they will still need to submit their claim by completing the BOE-106 as normal. Staff should ensure the BOE-106, Vehicle/Vessel Use Tax Clearance Request, is completed with all pertinent information as outlined in CPPM section 840.005, Voluntary Payments. The clearance (BOE-111) should be issued only if the purchaser provides supporting documentation that the purchaser is engaged in agricultural operations. District office staff should forward the documents to CUTS and reference the SIF number created during the online registration process.

The partial exemption should generally not be allowed for a vehicle designed to haul persons or property on a highway, but not specifically listed in Vehicle Code section 36005. A vehicle whose existing design is primarily for the transportation of persons or property on a highway, such as a pickup truck, trailer, truck tractor or truck tractor and semi trailer combination, does not qualify for the partial exemption, unless such a vehicle is otherwise specified as an implement of husbandry in the Vehicle Code Section 36005. To qualify for the partial exemption, the purchaser must obtain a determination from the DMV that the vehicle qualifies as an implement of husbandry. A registration slip showing this determination must be presented to the BOE when the tax is paid or the refund is claimed.

District staff must also check IRIS to see if there is an existing CUTS SIF or account number (SA/SB UT XX-XXXXXX). To search for an existing CUTS account, go to the *CUT SS* screen in IRIS. Enter either the *Vehicle Identification Number (VIN)* or *vehicle license plate number* in the appropriate field and press enter. To search for an undocumented vessel, use the *hull ID number* or *vessel license number*.

Requests involving aircraft and documented vessels (vessels registered with the USCG) should be referred to CUTS for review. BOE-111's are not issued on transactions involving aircraft or documented vessels.

Consumer Use Tax Section (CUTS)

If the taxpayer is claiming the partial tax exemption, accept the payment of tax less the amount of the partial exemption, then process the BOE-111, Certificate of Tax Clearance, request as normal. Staff should ensure the BOE-106, Vehicle/Vessel Use Tax Clearance Request, is completed with all pertinent information as outlined in CPPM section 840.005, Voluntary Payments. The clearance should be issued only if the purchaser provides documentation that the purchaser is engaged in agricultural operations.

CUTS staff must also verify whether there is an existing SIF or account number as instructed above

OTHER EXEMPTIONS**820.095**

In addition to the above, there are other types of exemptions or exclusions that can be claimed with the required documentation. The exemption or exclusion claimed should be explained upon registration at DMV or HCD or on the use tax return under "Other exemptions."

INTERVENING OWNERS**820.100**

A vehicle may change ownership or possession from the original user in whose name it is registered to several subsequent owners before a request is made for clearance and transfer of registration. Whenever this occurs, the tax liability of each person having subsequent ownership of the vehicle, other than the person to whom the vehicle is to be transferred, must be determined.

If any person other than the registered owner had ownership of the vehicle prior to the time of transfer, obtain information concerning the names and addresses of the intervening owners and determine whether or not a tax liability has been incurred. If there were sales of vehicles between private parties and use tax would be applicable, sufficient information should be obtained so the proper amount of tax can be assessed against and collected from each purchaser.

A memo, along with any supporting documentation obtained, should be sent to CUTS to investigate possible intervening owners. The following information should be included:

- Owner(s) name, address, and telephone number,
- Purchase date,
- Purchase price,
- Registration number (vehicle license plate number, vessel CF number), and
- Make, model, and year.

REFINANCING OF VEHICLES**820.105**

The addition or change of a legal owner or filing of a chattel mortgage on a vehicle does not constitute a transfer of registration, and consequently, the DMV does not require a tax clearance certificate for such transactions.

The BOE will not furnish tax clearance certificates for the purpose of refinancing equipment. Should any finance company having an interest in a vehicle of the user insist upon assurance that the user is not delinquent in the payment of the tax, the finance company should be informed by letter with respect to the taxes due from the user.

**CERTIFICATE OF USE TAX CLEARANCE
(BOE-111 AND BOE 111-B)**

825.000

**BOE-111 (VEHICLES/MOBILEHOMES/
COMMERCIAL COACHES) AND BOE-111-B (VESSELS)**

825.005

When a registrant claims exemption from the use tax on a transfer of a vehicle/mobile home/commercial coach or undocumented vessel, the Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD) may require a BOE-111/111-B, *Certificate of Use Tax Clearance*, to complete registration without payment of the use tax. The BOE-111/111-B is issued by the BOE in the following situations:

- The registrant claims an exemption and provides sufficient documentation to confirm that use tax is not due.
- The registrant claims an exemption that may qualify, but the qualifying period for the exemption has not expired. The registrant must provide documentation that shows delivery/ possession took place out of state to proceed with this claim.
- The registrant pays the use tax to the BOE.
- The registrant has requested an Installment Payment Agreement and will be paying the use tax under that agreement.

A BOE-111/111-B is never issued for a documented vessel or an aircraft because their registration is handled by the US Coast Guard or the Federal Aviation Administration, respectively and neither federal entity acts as an agent of the BOE to collect use tax.

DMV/HCD PROCESSING

825.010

Initial contact with the taxpayer may occur when the taxpayer presents the application for registration of a vehicle/mobilehome or undocumented vessel to DMV/HCD. Sales tax transactions are recognized by the presence in the registration documents of a vehicle dealer's Report of Sale or a Vessel Dealer or Manufacturer's Sales Tax Certification (DMV form BOAT110). On non-dealer transactions, the DMV/HCD interviewer must make a decision as to the applicability of the use tax. If the DMV/HCD interviewer determines the use tax is due and the taxpayer disagrees, the taxpayer is instructed to request a Certificate of Use Tax Clearance from the BOE. Requests of this type are filed using a BOE-106, *Vehicle/Vessel Use Tax Clearance Request*. This is a fill-in form available on the BOE website to persons making claims. The form is also available in publication 52, *Vehicles and Vessels: How to Request a Use Tax Clearance for DMV Registration*.

If the registrant has purchased a vessel/trailer combination and does not have a breakdown of the purchase price for each item, DMV will allocate \$1.00 in use tax to the trailer with the balance applied to the vessel.

CUTS PROCESSING**825.015**

Requests for a *Certificate of Use Tax Clearance* received by CUTS are assigned a source information file (SIF) number in pending registration for review and recommendation.

All requests claiming exemption for the principal use test are monitored by CUTS at the end of the test period. For each “Test Period Not Yet Expired” BOE-111/111-B packet received in CUTS, a Taxable Activity Registration (TAR) account will be created. CUTS assigns each TAR account a status code that will prompt further action at the end of the “12-month Test” period or at the end of the “90-Day or 6-Month Principal Use Test” period.

If the documentation provided by the taxpayer at the end of the test period supports the claimed exemption, the taxpayer will be notified that his or her claim has been granted. If the taxpayer fails to provide sufficient documentation, or the documentation indicates the taxpayer has not qualified for the exemption from use tax, a Notice of Determination will be issued.

DISTRICT OFFICE PROCESSING**825.020**

Requests by mail, fax, or in person for a *Certificate of Use Tax Clearance* should be resolved in the district office and should not be forwarded to CUTS for a decision. If necessary, district staff may obtain assistance from CUTS by phone or email.

If the taxability cannot be determined at the time of the request (e.g. test period not yet expired or pending receipt of additional documentation), staff should encourage the taxpayer to pay the use tax. The use tax due may be paid either directly to the BOE to obtain a BOE-111/111-B, or to DMV to complete the registration process. However, if a claim for exemption will be pursued by the taxpayer at the end of the test period, the taxpayer should be informed to file a timely claim for refund on the payment. Taxpayers who pay the use tax have six months from the date of overpayment, or three years from the due date of the tax return (when use tax is paid with the tax return) in which to file a claim for refund.

If the transaction is taxable and payment is made in the district office, please refer to CPPM section 840.005, Voluntary Payments, for processing instructions.

District Responsibilities under 90-Day Presumption and 6-Month Principal Use Test:

District office staff must require the registrant to provide documentation that shows delivery/possession took place out of state (i.e., copy of purchase agreement, an out-of-state delivery statement, and any additional supporting documentation) and that the vehicle or vessel was first functionally used out of state to proceed with the claim. If the applicable test period has expired, it is the responsibility of the district to review the appropriate documentation and make the determination as to the taxability of the transaction before issuing a use tax clearance.

If the applicable test period has not yet expired, a copy of the BOE-111/111-B and the entire packet, clearly flagged “Test Period Not Yet Expired” should be forwarded to the CUTS with the district contact’s name and phone number included. District office staff should continue to follow established procedures with regard to security and retention of the BOE-106, BOE-111/111-B, and supporting documentation.

District Responsibilities under 12-Month Test:

District office responsibilities for issuance of a use tax clearance under the 12-Month Test are generally the same as for purchases subject to the 90-Day Test, with one major exception: **Do not issue a BOE-111 for a “Test Period Not Yet Expired” request if:** (1) the claimant is a California resident, and (2) the vehicle has entered California within the first 12 months of ownership (unless it is a claim for the interstate and foreign commerce exemption, e.g., semi-trailer). If the vehicle or undocumented vessel has been brought into the state, the taxpayer should be advised the transaction is taxable and the use tax should be remitted to the DMV at the time of registration.

For claims of “Not Purchased for Use in California” under the 12-month test period, if the taxpayer is a California resident, the BOE-106 should include the taxpayer’s statement that the vehicle/undocumented vessel will not enter California during the first 12 months of ownership. If the taxpayer is not a California resident, the request should include the reason the vehicle/undocumented vessel is being registered in California (since registration in California presumes the vehicle/undocumented vessel is for use in California and subject to the use tax) and a statement that the vehicle/undocumented vessel will not be used in California more than one-half of the time during the first 12 months of ownership. Exemption claims for vehicles/undocumented vessels “not purchased for use in California” by a taxpayer that is not a California resident, even if approved by the district office, should be forwarded to CUTS for referral to the appropriate state in which the vehicle was claimed for use.

If the BOE-111 is issued for a “Test Period Not Yet Expired” for a 12-month test period, the district office staff must provide to the taxpayer a BOE-111-AT (vehicle cover letter) or BOE-111-AT-B (undocumented vessel cover letter). These letters are available on eBOE and advise taxpayers that they will be required to provide documentation to support their claim for exclusion at the end of the 12-month test period. A copy of the BOE-111 and the entire packet, clearly flagged “Test Period Not Yet Expired” should be forwarded to CUTS with the district contact person’s name and phone number included. District office staff should continue to follow established procedures with regard to security and retention of forms BOE-106 and BOE-111, and supporting documentation.

**PREPARATION OF FORM BOE–106,
VEHICLE/VESSEL USE TAX CLEARANCE REQUEST****825.025**

When a request for a certificate of use tax exemption is received, a BOE–106, *Vehicle/ Vessel Use Tax Clearance Request*, should be prepared for each request. The front of the form is completed by the taxpayer. The back of the form is to be completed by staff and approved by a supervisor or designee.

The completed form should indicate that the documentation required to verify the exemption has been provided, and copies of the documentation should be attached to the request.

For “Test period Not Yet Expired” clearance requests, the designated checklist on the back of the BOE-106 must be completed. The issuance of this clearance is to allow registration at DMV, and does not grant an exemption or exclusion or relieve the taxpayer of any tax that may later be found due.

REFERRALS TO CUTS**825.030**

Taxpayers should not be told to contact CUTS directly unless a CUTS account number (SA, SB, SP, or SI indicator) has been assigned. Districts should refer BOE-111 packets to CUTS under the following circumstances:

- A BOE-111 or BOE-111-B was issued for registration purposes, but tax was not collected because the test period has not yet expired. CUTS will follow up at the end of the test period to obtain documentation to support the claim. In these circumstances, the taxpayer must be provided with BOE-111-AT, *Certificate of Use Tax Clearance Cover Letter* or BOE-111-AT-B, *Certificate of Use Tax Clearance Cover Letter for Vessel*, along with the BOE-111 or BOE-111-B.
- Information from a request discloses a multiple transfer in which the prior owner did not register the vehicle or vessel after a prior sale (intervening owner). Copies of documentation on all parties involved should be forwarded to CUTS.
- A *Certificate of Use Tax Clearance* was issued pursuant to an installment payment agreement.

Referrals should include a complete copy of the BOE-111/111-B packet, along with a brief explanation and the district contact's name and phone number. The packet should also contain copies of any documentation submitted by the taxpayer.

EXEMPTIONS NOT REQUIRING A CERTIFICATE OF CLEARANCE**825.035**

DMV may complete the transfer and registration of vehicles and undocumented vessels without payment of use tax or presentation of a BOE-111/111-B in certain circumstances, such as:

- **Family transfers** – These types of registration transactions should not be forwarded by DMV to BOE. If the family transfer is between members that are not exempt (e.g., siblings over the age of 18), DMV will collect the tax.
- **Gift transactions** – Gift transfers between individuals do not require an exemption form. The word “gift” entered on the back of the title or *Statement of Facts* (REG-256) is acceptable.
- **Deceased** – *An Affidavit for Transfer Without Probate* (REG-5) is used by DMV when the transfer is to the next of kin upon the owner's death.
- **Questionable bill of sale** – Regardless of the purchase amount stated on the bill of sale, DMV will accept these at face value and complete the registration. A partial safeguard is already in place that allows the seller to report the proper sales price.
- **Transfers to revocable trusts** – An exemption form is not required when the current registered owner transfers a vehicle/vessel into his/her own trust, regardless of whether there is a lienholder. A transfer out of a trust, as long as there is no consideration, will also not require an exemption form.
- **Tax paid to another state** – DMV policy is to give credit for tax paid to another state and complete the registration process.
- **Special taxing jurisdictions** – In cases where a zip code may be both within and outside of a special taxing jurisdiction, DMV has been authorized to accept a statement of facts that the address of the registrant is outside of the jurisdiction's boundaries.

EXEMPTIONS NOT REQUIRING A CERTIFICATE OF CLEARANCE

(CONT.) 825.035

Each claim for exemption should be well documented, with the understanding that the evidence submitted to substantiate a claim may vary. Please refer to CPPM section 820.000 for specific information on exemptions.

If DMV is unsure of the taxability of the transaction, that agency will refer the applicant to the local BOE office to request a Certificate of Use Tax Clearance. There will also be times when a customer comes directly to the BOE, or is erroneously referred to a BOE office by DMV staff. In providing good customer service, staff will not send the customer back to DMV; a clearance should be issued if the transaction is exempt. If there is a consistent pattern of misdirected customers, staff should provide the customer and vehicle information to CUTS staff who will contact the DMV field office.

PREPARATION OF THE BOE-111 OR BOE-111-B

825.040

The BOE-111 and BOE-111-B are press-numbered for control purposes. Voided forms will be retained for three years. The forms should be maintained and accessible only to the Receipts Custodian and the District Administrator or CUTS Supervisor.

The use tax clearance certificate is prepared only in original and is delivered to the person requesting the clearance. The certificate is to be typewritten. If an error is made, a new form must be prepared. Any alteration or erasure voids the certificate.

The *Certificate of Use Tax Clearance* is completed to show the following:

1. Name of the applicant as it will appear on the vehicle/vessel, mobilehome or commercial coach registration records.
2. Make/year and model of the vehicle or vessel.
3. License/decal or CF number.
4. Vehicle/hull identification number or serial number.
5. Date of issuance.
6. Issuing office.

The BOE-111 and BOE-111-B are issued by field office staff or staff in CUTS authorized by the District Administrator or CUTS Supervisor. A list of employees authorized to sign and issue certificates must be maintained in each office. The person who approves the BOE-106 is also authorized to sign the BOE-111. However, if an authorized person prepares and approves the BOE-106, a different authorized person must sign the BOE-111. Rubber stamp signatures will not be used.

A single BOE-111/111-B may be issued for bulk transfers. The following should be noted on the BOE-111/111-B (under year model and VIN areas): "See Attached Schedule" and attach the schedule to the BOE-111/111-B.

After the BOE-111/111-B is issued, the press-number of the form and the name of the employee who signs the form are entered on the respective lines of the BOE-106.

In those situations where the use tax is collected when the BOE-111 or BOE-111-B is issued, the certificate press-number should be entered on the tax return below the name and address of the taxpayer.

COMPLIANCE POLICY AND PROCEDURES MANUAL

DETERMINATIONS, DEMANDS AND STATEMENTS

830.000

A notice of determination (NOD), demand or statement is issued by CUTS when information reveals a use tax liability exists. In general, notices issued by CUTS are handled in the same manner as for sales tax accounts. In order to issue a NOD, taxable activity registration must be established.

PENALTY AND INTEREST

830.005

Interest and/or penalties apply to the use tax where:

1. A purchaser is delinquent in transferring registration of the vehicle, undocumented vessel, or mobilehome through DMV or HCD. The purchaser is subject to penalty, and/or interest when application for registration with DMV or HCD is not made within 30 days of the change in ownership, even if the change in ownership was never registered with DMV or HCD, as in the case of some multiple transfers (RTC section 6484 and 6485).
2. A purchaser is late in filing a return with the BOE (RTC section 6591).
3. A purchaser underpaid or failed to pay the tax to DMV, HCD or the BOE (RTC section 6511).
4. A purchaser of a vehicle, vessel, or aircraft registers it outside the State of California for the purpose of evading the payment of taxes. A 50 percent penalty of any tax determined to be due on the sales price of the vehicle, vessel, or aircraft may be assessed (RTC section 6485.1). All elements of fraud must be proven to assess this penalty.

Note: In certain cases involving brokers of vehicles, vessels and aircraft, a 40% penalty may apply under specified criteria (see RTC section 6597).

REQUEST FOR RELIEF OF PENALTY AND/OR INTEREST

830.010

Taxpayers may request relief from any penalty assessed on use tax by filing a written request signed under penalty of perjury, stating the facts upon which the claim for relief is based.

Taxpayers may request relief of interest under either of the following conditions:

1. If subject to a catastrophic event as defined in RTC section 6593.
2. Under the provisions of RTC 6593.5, which provides that the BOE may relieve all or any part of the interest imposed:
 - a. Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the BOE acting in his or her official capacity.
 - b. Where failure to pay use tax on a vehicle or vessel registered with the DMV as the direct result of an error by the DMV in calculating the use tax.

If the taxpayer has made a late application with DMV/HCD, the penalty is collected at the time of registration. A request for relief of the penalty can be made at DMV/HCD after which the completed request is forwarded to CUTS for processing. (RTC sections 6592, 6593.5, 6596.)

PETITIONS

830.015

Petition requests are received and tracked by the appropriate CUTS team then forwarded to the Petitions Section for processing. Petition requests received in district offices should be forwarded to CUTS.

REFUNDS

830.020

Requests for refunds of use tax and/or penalty under taxable activity types SA, SB, SP or SI are to be forwarded to CUTS for preliminary review prior to forwarding to the Audit Determination and Refund Section.

COLLECTIONS**830.025**

The Centralized Collection Section (CCS) is responsible for the collection of use tax due on final liabilities involving any of the CUTS programs. This also includes skip tracing, requests for relief from penalty and Installment Payment Agreements.

CANCELLATION**830.030**

The Board previously delegated to the Sales and Use Tax Department (SUTD), the authority to cancel or redetermine to zero all vehicle, vessel, and aircraft determinations (billings) in excess of \$50,000, while those in excess of \$100,000 required Board approval. Effective March 1, 2016, approval authority to refund, cancel, or redetermine to zero all determinations was delegated by the Board to the Deputy Director or designee.

Those items above \$50,000 that are refunded, canceled or redetermined to zero must be made a public record and those public records are to be retained in the Board Proceedings Division.

PROCEDURES

Approval for all cancellations of consumer use tax billings on vehicles, vessels, and aircraft will no longer be heard on the Board's non-appearance Consent Calendar. The Petitions Section will coordinate sending all such cancellations in excess of \$50,000 to the Deputy Director or designee for approval. In general, the current review process and workflow related to such cancellations of CUTS billings in excess of \$50,000 will remain unchanged.

The following is a breakdown of Headquarters responsibilities for CUTS billing cancellations in excess of \$50,000:

- Deputy Director or Designee
The Deputy Director or designee shall approve cancellations of all vehicle, vessel, and aircraft billings in excess of \$50,000 when tax is determined not to be due. The approval becomes effective ten days after the cancellation is made available as a public record.
- Petitions Section
The Petitions Section will coordinate approval of cancellations of all vehicles, vessels, and aircraft CUTS billings in excess of \$50,000. The Petitions Section will forward for approval to the Deputy Director or designee all such CUTS cancellations in excess of \$50,000 when tax is determined not to be due. The Petitions Section will continue to review cancellation recommendations received from the Centralized Collection Section (CCS) or received pursuant to petitions for redetermination. Case files of pending approvals are to be maintained in the Petitions Section.

The Petitions Section will process approved cancellations on the Integrated Revenue Information System (IRIS) and issue appropriate notices or statements to taxpayers to reflect the cancellation of billings following the ten day public record period and approval of the cancellation.

The Petitions Section will notify the Audit Determination and Refund Section (ADRS) when approved cancellations involve a resulting refund in excess of \$50,000 following the ten day public record period.

- Audit Determination and Refund Section
When cancellation of the billing results in a refund of payments in excess of \$50,000, the refund will continue to require approval by the Deputy Director or designee. The Petitions Section will forward cancellations resulting in a refund in excess of \$50,000 to ADRS for further processing. ADRS is responsible for the issuance of the approved refund.

- Centralized Collection Section
The CCS will forward all recommendations to approve CUTS billing cancellations over \$50,000 to the Petitions Section for final approval and cancellation.
- Consumer Use Tax Section
The CUTS will issue the original use tax billing, and will refer claims for refund, including refunds in excess of \$50,000, to ADRS for processing.

DISTRICT OFFICE RESPONSIBILITIES**840.000****VOLUNTARY PAYMENTS****840.005**

If a taxpayer wishes to make a voluntary payment of use tax on any CUTS program prior to receiving a return from CUTS, he or she should not be told to wait for a notice from the BOE before making payment. Such a delay could result in penalty and/or interest charges incurred. Any payment, when offered, should be accepted along with a completed use tax return signed by the taxpayer. If a return form is not available, include as much of the following information as possible in writing, along with payment:

1. Taxpayer's name, address and daytime phone number.
2. Purchase date.
3. Purchase price and a copy of the bill of sale.
4. Registration number (license plate number, CF number, USCG documentation number, tail or "N" number).
5. Make, model, year, serial number or VIN, or Name (documented vessel).
6. Item location/situs (where it is registered, moored/berthed, tied down/hangared).
7. Any available information on the seller.

Staff should confirm the correct tax rate is used. The applicable tax rate for vehicles and mobilehomes is the rate in effect on the date of purchase or the date the property entered California for the district in which the taxpayer's address is located. For documented vessels and aircraft, the applicable tax rate is the rate in effect in the district of actual situs. (Refer to the appropriate CUTS program section for due dates.)

For on-line remittances, district staff should create a Taxpayer Identification Number (TIN) and add a comment on the TIN record identifying:

1. Amount of payment received.
2. Remittance ID number.
3. Information regarding transaction as outlined above. (This information is necessary for the creation of taxable activity registration by CUTS.)

A copy of the On-Line Remittance Tally Report should be forwarded to CUTS, MIC: 37. Attach a printout of the Client Maintenance screen and any documentation presented by the taxpayer (e.g. bill of sale, etc.) for each payment. The tear-out portion of Publication 79 and 79A for vessels and aircraft, respectively, can also be used. Attach the completed portion to the Client Maintenance screen print and a comment identifying the amount and remittance ID number.

REFERRAL OF ACCOUNTS TO DISTRICTS

840.010

CUTS may refer information to district offices to assist in the investigation of possible use tax leads that may involve retailers who hold or are required to hold seller's permits. In certain situations, the district may also assist in the investigation of established accounts if requested.

Brokers — Effective January 1, 1996, a person making a vessel or aircraft purchase from another person through a broker, may be relieved of the use tax liability if they establish sales or use tax was paid to the broker, by providing a copy of the receipt from the broker showing payment of tax.

If the broker does not have a seller's permit but documentation shows tax has been collected, a memo is to be sent to the appropriate district office (having responsibility for the address of the broker) with the name, address, phone number of the broker and all pertinent information involving the transaction (e.g. purchase date, purchase price, amount of tax, etc.) for investigation. Results of the investigation are to be sent back to CUTS.

If the broker has a seller's permit and documentation shows that tax was collected, copy of the documentation is sent to the audit staff in the appropriate district office for future audit selection purposes.

Dealers — CUTS will notify the appropriate district when it is determined that an aircraft or vessel was purchased from a dealer with an active seller's permit and the purchaser provides proof they paid sales tax reimbursement to that dealer. This information is provided for use in the district's audit selection process.

Taxpayer Requests — When requested by the taxpayer, CUTS accounts can be referred to the appropriate district office along with copies of pertinent file information and CUTS guidelines related to the particular exemption the taxpayer is seeking. A face-to-face meeting with the taxpayer in the district office often provides staff with the opportunity to quickly resolve the issues. Upon completion of the assignment, district office staff provides CUTS with a written recommendation regarding the exemption along with the number of hours spent on the case.

COMPLIANCE POLICY AND PROCEDURES MANUAL

MISCELLANEOUS INFORMATION

850.000

INSTALLMENT PAYMENT AGREEMENTS

850.010

Effective January 2, 2001, RTC section 6832.6 requires the BOE to notify purchasers who have incurred a use tax liability that they have the option to enter into installment payment agreements. CUTS includes the notice BOE-126, *“Your Consumer Use Tax Account May Qualify for an Installment Payment Agreement,”* with any tax return mailed. If a Notice of Determination/Redetermination or Demand for Immediate Payment is issued, the billing should also include the same notification.

Staff should advise taxpayers inquiring about the installment payment agreement option to:

1. Complete the return form, including calculating the amount of use tax due. Also, include a copy of the bill of sale or statement from the seller that verifies the declared purchase price.
2. Prepare a letter or completed Form BOE-126, outlining the specific dates and amounts of payment to be made.
3. Send the completed return, a letter outlining the payment proposal, and include the first payment on or before the due date on the return. If the due date has already passed, advise taxpayer to send payment within (20) days of the date of the contact with the taxpayer.

NOTE: If the taxpayer has received a Notice of Determination or a Demand Notice, a tax return is not required.

When a tax return is received by CUTS indicating an installment payment agreement is being requested, a demand or statement is issued and the information forwarded to CCS for evaluation.

REQUEST FOR DMV INFORMATION

850.015

If there is a dispute as to whether the use tax was paid to DMV by a taxpayer on a purchase of a vehicle or vessel, BOE staff can request information from CUTS to resolve those disputes. CUTS has authorization to access DMV vehicle/vessel registration, use tax payment information, and any additional information stored on microfilm.

Staff requesting DMV registration or use tax payment information should send or fax requests to CUTS with as much of the following information as possible:

1. Purchaser name and address.
2. Vehicle Identification Number (VIN) or Vessel Hull Identification Number (HIN).
3. Make and Year Model.
4. License plate number or CF number.

Staff should allow up to four weeks routine processing time for such requests.

MAIL ORDER PROGRAM

850.020

Use tax payments for out-of-state purchases made by California residents through the mail are not handled by CUTS. Taxpayers can make payment at any BOE office by completing a return or by completing the tear-out panel in Publication 79B, which is also available on the BOE’s website. Alternatively, a taxpayer may also report its use tax liability on its California income tax return and remit payment to the Franchise Tax Board, and such payment will be forwarded to the BOE.

COMPLIANCE POLICY AND PROCEDURES MANUAL