



Tax Information Bulletin

Issued Quarterly

September 2007

California State Board of Equalization
P.O. Box 942879, Sacramento, CA 94279-0001

What's Inside . . .

- 1 **New regulation clarifies how tax applies to rebate and incentive payments**
- 2 **Do you pay your sales and use taxes by Electronic Funds Transfer(EFT) ? Florist regulation revised**
- 3 **When are restaurant tips taxable? Deductions for returned taxable merchandise Environmental fee expanded to include more than corporations in 2007**
- 4 **Know your rights Small business fairs We have moved New or revised reference material**

New regulation clarifies how tax applies to rebate and incentive payments

If you participate in rebate or incentive programs offered by manufacturers or vendors (or other third parties) to promote sales of specific products, you should be aware of how tax applies to the payments you receive. You should also be aware of new changes, effective October 1, 2007, that will apply to your business as a participant in these promotional programs. The newly adopted Regulation 1671.1, Discounts, Coupons, Rebates, and Other Incentives, has been approved by the Office of Administrative Law.

In general, third parties offer incentive programs where you offer a discount to your customer on specific products and the third party will compensate you directly for the price reduction. There are also programs in which you reduce the sales price in exchange for a discount on what you pay for the product.

For specific definitions and examples of the programs that are commonly offered to you by third

parties be sure to read Regulation 1671.1. You can find this at www.boe.ca.gov – just type in “1671.1” in the search box.

When is the rebate or incentive payment taxable?

Payments received from a third-party rebate or incentive program are taxable when all three of the following conditions exist:

1. The third party must require you to reduce the sales price of particular products in order to receive payment from the third party.
2. Conditions for receipt of payment must be certain, not dependent on other factors outside your control. (The term “certain” reflects conditions in the agreement that you have control over. For example, you will receive payment from the third party if you place product signs in your store). An example of a factor outside your control would be that you receive payment only if you meet a sales quota for the discounted products within a specific time period.
3. It must be for a like amount on a transaction-by-transaction

basis (payment must be tied to the specific sale of the particular product in the agreement. The third party reimburses you for the specified price reduction in the agreement).

If all of these conditions exist as part of the incentive program, the third-party payment is part of your taxable gross receipts. When reporting your sales, you must include the total amount you receive from your sales of the particular products – this includes the amount paid by the customer and the amount that will be paid by the third party as reimbursement for the price reduction.

What are the changes in promotional programs offered by third parties?

Beginning October 1, 2007, when you participate in a promotional program, the payments you receive from a person other than your customer are presumed taxable until you can present documentation to establish the payments as being non-taxable. Please see Regulation 1671.1 for additional examples of documentation that would be used to accomplish this.

BOARD
MEMBERS

Betty T. Yee
First District
San Francisco

Bill Leonard
Second District
Ontario/Sacramento

Michelle Steel
Third District
Rolling Hills Estates

Judy Chu
Fourth District
Los Angeles

John Chiang
State Controller

EXECUTIVE
DIRECTOR
Ramon J. Hirsig

Also beginning October 1, 2007, when you collect sales tax or if you are required to collect the use tax, you must let the customer know the amount they are paying tax on. This includes the amount of any taxable discounts, rebates, or incentives offered or paid to you by third parties. In other words, even though the customer buys an item at a discounted price, you collect tax for the full retail (pre-discounted) price. You may itemize this amount on the customer's receipt, sales invoice, or other proof of sale.

When applicable, you may also post in a location visible to your customer, or in advertisements or flyers or brochures sent to customers, a notice to the effect that "tax" will be added to the sales price of all items and that the tax includes the amount of any taxable discounts or rebates.

For More information

For more information regarding rebates, incentives, and other discounts and allowances, please see Regulation 1671.1 available at www.boe.ca.gov.

Do you pay your sales and use taxes by Electronic Funds Transfer (EFT)?

If so, try using the Automated Clearing House (ACH) debit method over the Internet.

Using the Internet is easy and convenient. The Internet option allows you to make your payment anytime and from anywhere you have access to a personal computer. It also provides the convenience of printing your confirmation page and viewing your payment history which displays up to a year or the last one hundred payments made by ACH debit.

Easy

To make your current payment and view past and scheduled EFT payments go directly to the payment website at www.govone.com/ca or follow the "Make a Payment" link found on our website at www.boe.ca.gov. After making your payment, click on the "Payment Inquiry" tab to view your payment transaction.

Convenient

Out of the office on the due date? Warehouse your payment. Warehousing allows you to select a future date for your payment, up to sixty days in advance. The payment will transfer out of your account on the date you selected.

Sign up today!

To change to the ACH debit method, you will need to complete form BOE-555-EFT, *Authorization Agreement for Electronic Funds Transfer*. This form can be found online at www.boe.ca.gov. If you are already registered to pay by ACH debit, visit www.govone.com/ca to make your payment.

Helpful hints and reminders....

- Don't forget to file your return form and have it postmarked by the return due date.
- Remember, if you are an EFT account on a quarterly prepayment basis, you will no longer need to submit prepayment forms, simply make your payment.
- If you are making an ACH debit payment, the current date may not be selected. A timely debit date is one banking day following the due date. Payments made on the due date must be completed by 3:00 p.m. Pacific time.

- Avoid penalties - If you are a mandatory EFT participant you must pay by EFT. Cash, check, or credit cards are not acceptable methods of payments.

To learn more about EFT

Refer to publication 80, *Electronic Funds Transfer Information Guide* (May 2006). A copy can be found at the Board's website at www.boe.ca.gov. Click on the E-Services tab, then "Electronic Funds Transfers" to Sales and Use Tax EFT/General Information. If you need further assistance contact the EFT Helpline at 916-327-4229. The helpline is accessible 24 hours a day with representatives to assist you 7:30 a.m. – 4:30 p.m., Monday through Friday, excluding state holidays.

Florist regulation revised

Regulation 1571, *Florists*, has been revised to define "florist" to include traditional florists who send out-of-town orders to, and receive and fulfill orders from, other florists using a floral delivery association (e.g., FTD, Teleflora). These florists should continue to report tax as they currently do, following the special rules for florists provided in Regulation 1571.

In general, other retailers of flowers who do not meet the definition of "florist" (such as internet retailers who do not maintain an inventory of flowers and thus do not fulfill other florists' orders) should report tax like retailers of other merchandise. For more information, see Regulation 1571, *Florists*, available on our website. You can find this at www.boe.ca.gov – just type in "1571" in the search box.

When are restaurant tips taxable?

Regulation 1603, *Taxable Sales of Food Products*, was recently amended to clarify how tax applies to tips. Tips or gratuities are not taxable if they are paid by customers on an entirely voluntary (optional) basis and are retained by your employees. Tips received by your employees directly from customers at the end of a meal without any prearrangement are considered voluntary.

On the other hand, mandatory or required tips are taxable. Any amount you add to the bill as a tip, gratuity or service charge is presumed to be mandatory and subject to tax, unless you provide documented evidence that the customer specifically requested and authorized the gratuity be added to the amount billed.

If you negotiate a tip amount with the customer in advance of serving a meal, food, or drinks, the tip is considered mandatory. When you add the tip to the bill without first obtaining the customer's approval or allow the customer the option to write in the tip amount of his or her choice, the amount is taxable regardless of any statements on the menu that say the tip is "optional."

To get a copy of the amended Regulation please visit our website at www.boe.ca.gov or request a copy from our Information Center at 800-400-7115.

Deductions for returned taxable merchandise

In general, you are entitled to a deduction for taxable merchandise returned to you by your customers if the deduction meets the requirements of Regulation 1655, *Returns, Defects and Replacements*. The conditions include:

- The original sale was included in reported taxable sales.
- The full sales price, including sales tax, is refunded either in cash or credit to your customer.
- In order to obtain the refund, the customer is not required to purchase other merchandise at a price greater than the amount charged for the property returned.

Restocking Fees

The charge for restocking returned merchandise is a charge for service and is not subject to tax. You must refund the full amount of sales tax which was reported and paid to the state, not merely the tax on the net amount of the credit after the restocking charge.

The amount withheld from the refund to your customer for rehandling and restocking charges may not exceed the actual cost of rehandling and restocking the merchandise. Actual cost may include, but is not limited to your direct costs of the following:

- Inspection of the merchandise after the request has been made for its return.
- Issuance of authorization for return of the merchandise after the request has been made for its return.
- Freight or delivery charge for shipment of the merchandise from the customer to the retailer.
- Returning the merchandise to stock, and
- Direct "paper work" involved in the return of merchandise such as preparation of credit memos, accounts receivable corrections, inventory record adjustments, etc., to the extent that it is possible to determine these cost.

In lieu of using the actual cost for each transaction, the amount withheld for the rehandling and restocking may be a percentage of

the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle, (generally one year).

You must also maintain adequate records, documenting the percentage used, which may be verified by audit.

Environmental fee expanded to include more than corporations in 2007

As of January 1, 2007, Assembly Bill (AB) 1803 (Stats. 2006, ch.77) expanded the environmental fee (Health and Safety Code, Section 25505.6) to include general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and sole proprietorships, in addition to corporations. Prior to the passage of this legislation, the environmental fee was assessed only on qualifying corporations.

In general, the fee applies to businesses that have 50 or more employees who are employed more than 500 hours in this state in a calendar year. These businesses must pay an annual environmental fee if they use, generate, or store hazardous materials or conduct activities related to those materials.

The Department of Toxic Substances Control (DTSC) has determined that most businesses fall into this category. We are responsible for collecting the fee, which provides revenues for hazardous wastes cleanup and pollution prevention programs administered by the DTSC. The fee for all qualified businesses in calendar year 2007 is due the last day in February 2008. Returns will be mailed out to all registered fee payers in January 2008.

Continued on next page

More information about this program can be found in publication 90, *Environmental Fee*. To learn more about other environmental fee programs we administer or to obtain a publication or application, please visit our webpage: www.boe.ca.gov.

Know your rights

As a taxpayer, you have many rights under the law, including the right to:

- Receive information and assistance to help you comply with the law
- Be treated fairly and courteously, and receive prompt service
- Appeal a decision or claim a refund as allowed by law

Of course, along with those rights, you have certain responsibilities, including the responsibility to:

- Keep informed about tax laws and regulations
- Report and pay taxes and fees when due
- Maintain adequate records

For more information order publication 70, *Understanding Your Rights As a California Taxpayer*.

Small Business Fairs

To help you with the ins and outs of running your business, we've developed a FREE "one-stop-shop" event for small business owners. Representatives from government agencies and community organizations will be there to assist you in learning how to manage a successful business.

The dates and locations for the Fall 2007 Small Business Fairs are as follows:

September

- 18 Santa Clarita
- 21 Riverside
- 26 East LA/West Covina

October

- 11 San Leandro
- 19 San Diego
- 26 Torrance

November

- 27 Marysville/Yuba City

To register for an event in your area, visit our website at www.boe.ca.gov/sutax/tpsched.htm or contact us at 916-341-7389.

We have Moved!

The Rancho Mirage Board of Equalization Office has moved to:

35900 Bob Hope Drive, Suite 280
Rancho Mirage, CA 92770-1768

Phone: 760-770-4828

Fax: 760-770-6876

Our hours of operation are 8:00 a.m. – 5:00 p.m. Monday through Friday (except state holidays).

Please make a note of our new address, telephone number and fax number.

We look forward to providing Board services to your business.

New or revised reference material

Revised Publications

- 21 State Board of Equalization 5-07
- 48 Property Tax Exemptions for Religious Organizations 4-07
- 71 California City and County Sales and Use Tax Rates 4-07
- 79b California Use Tax 4-07
- 108 When is Labor Taxable? 6-07
- 109 Are Your Internet Sales Taxable? 5-07
- 142 California State Board of Equalization Hearings: An Introduction 5-07
- 142a Your Appeals Conference 6-07
- 143 Your Board Member Appeals Hearing 5-07
- 145 California Taxpayer Advocates (BOE, EDD, FTB, IRS) 4-07
- 151 Contribution Disclosure Statements 5-07
- 331 E-File Flyer 5-07

New Translated Publications

33-CRN (Croatian), Making Sales in California

Revised Translated Publications

18-S, Tax Tips for Non Profit Organizations 4-05

For More Information

All telephone numbers are toll-free

Internet

www.boe.ca.gov ■ www.taxes.ca.gov

Information Center

800-400-7115 ■ TDD/TTY: 800-735-2929

Requests for Fax Copies

800-400-7115 (Choose automated services)

Seller's Permit Verification

888-225-5263 ■ www.boe.ca.gov

Taxpayers' Rights Advocate

888-324-2798 ■ www.boe.ca.gov

Tax Evasion Hotline

888-334-3300

State Legislation

www.leginfo.ca.gov/bilinfo.html