Return to Business Taxes Law Guide Main Table of Contents

SALES AND USE TAX REGULATIONS

Return to Business Taxes Law Guide Main Table of Contents

Return to Business Taxes Law Guide Main Table of Contents

CONTENTS

Regulation	*Title*	*Page*
1500	Foreword	1457
Article 1.	*Service Enterprises*	
1501	Service Enterprises Generally	1458
1501.1	Research and Development Contracts	1459
1502	Computers, Programs, and Data Processing	1463
1502.1	Word Processing	1472
1503	Hospitals and other Medical Service Facilities, Institutions and Homes for the Care of Persons	1473
1504	Mailing Lists and Services	1476.1
1505	Morticians	1478
1506	Miscellaneous Service Enterprises	1481
1507	Technology Transfer Agreements	1485
Article 2.	*Contractors and Subcontractors*	
1521	Construction Contractors	1486.2
1521.2	Factory-Built Housing (Repealed December 12, 1979, effective December 31, 1979.)	
1521.4	Factory-Built Housing	1501
1521.5	Construction Contractor Exemption From Increase in Rate of State Sales and Use Taxes (Repealed May 4, 1982, effective August 19, 1982.)	
Article 3.	*Manufacturers, Producers, Processors*	
1524	Manufacturers of Personal Property	1504
1525	Property Used in Manufacturing	1505
1525.1	Manufacturing Aids	1507
1525.2	Manufacturing Equipment	1509
1525.3	Manufacturing Equipment—Leases of Tangible Personal Property	1524
1525.5	Manufacturing By-Products and Joint-Products	1525
1525.7	Rural Investment Tax Exemption	1527
1526	Producing, Fabricating and Processing Property Furnished by Consumers—General Rules	1528.8
1527	Sound Recording	1528.9
1528	Photographers, Photocopiers, Photo Finishers and X-Ray Laboratories	1530
1529	Motion Pictures	1534
1530	Foundries	1544
1531	Fur Dressers and Dyers	1545
1532	Teleproduction or Other Postproduction Service Equipment	1546
1533	Liquefied Petroleum Gas	1558
1533.1	Farm Equipment and Machinery	1558.8
1533.2	Diesel Fuel Used in Farming Activities or Food Processing	1558.18
Article 4.	*Graphic Arts and Related Enterprises*	
1540	Advertising Agencies, Commercial Artists and Designers	1558.26
1541	Printing and Related Arts	1565
1541.5	Printed Sales Messages	1572

CONTENTS (Contd.)

Regulation	*Title*	*Page*
1542	Signs, Show Cards, and Posters (Repealed June 7, 1973, Effective July 11, 1973. Added as Section (i) to Regulation 1541.)	
1543	Publishers	1579
Article 5.	*Installers, Repairers, Reconditioners*	
1546	Installing, Repairing, Reconditioning in General	1585
1547	Vehicle Engine Exchanges (Repealed December 1, 1984, effective June 8, 1984.)	
1548	Retreading and Recapping Tires	1587
1549	Fur Repairers, Alterers and Remodelers	1587
1550	Reupholsterers	1589
1551	Repainting and Refinishing	1590
1553	Miscellaneous Repair Operations	1591
Article 6.	*Specific Businesses Engaged in Retailing*	
1565	Auctioneers	1592
1566	Automobile Dealers and Salesmen	1592
1567	Banks and Insurance Companies	1594
1568	Beer, Wine and Liquor Dealers.	1596
1569	Consignees and Lienors of Tangible Personal Property for Sale	1596
1570	Charitable Organizations	1596
1571	Florists	1599
1572	Memorial Dealers	1599
1573	Court Ordered Sales, Foreclosures and Repossessions	1600
1574	Vending Machine Operators	1601
1583	Modular Systems Furniture	1607
Article 7.	*Specific Kinds of Property and Exemptions Generally*	
1584	Membership Fees	1608
1585	Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices	1609
1586	Works of Art and Museum Pieces for Public Display	1612
1587	Animal Life, Feed, Drugs and Medicines	1615
1588	Seeds, Plants and Fertilizer	1619
1589	Containers and Labels	1621
1590	Newspapers and Periodicals	1624
1591	Medicines and Medical Devices	1633
1591.1	Specific Medical Devices, Appliances, and Related Supplies	1645
1591.2	Wheelchairs, Crutches, Canes, and Walkers	1647
1591.3	Vehicles for Physically Handicapped Persons	1649
1591.4	Medical Oxygen Delivery Systems	1650
1592	Eyeglasses and Other Ophthalmic Materials.	1653
1593	Aircraft and Aircraft Parts	1655
1594	Watercraft	1662
1595	Occasional Sales—Sale of a Business—Business Reorganization	1669

CONTENTS (Contd.)

Regulation	*Title*	*Page*
1596	Buildings and Other Property Affixed to Realty	1678
1597	Property Transferred or Sold by Certain Nonprofit Organizations	1679
1598	Motor Vehicle and Aircraft Fuels	1684
1599	Coins and Bullion	1690.2
Article 8.	*Food Products*	
1602	Food Products	1693
1602.5	Reporting Methods for Grocers	1697
1603	Taxable Sales of Food Products	1704
Article 9.	*Special Provisions Affecting Vehicles, Vessels, and Aircraft*	
1610	Vehicles, Vessels, and Aircraft	1719
1610.2	Mobilehomes and Commercial Coaches	1727
Article 10.	*Matters Involving the Federal Government*	
1614	Sales to the United States and Its Instrumentalities	1734
1615	United States Contractors (Repealed February 4, 1976, effective April 1, 1976. Added to Regulation 1521.)	
1616	Federal Areas	1736
1617	Federal Taxes	1740
1618	United States Government Supply Contracts	1742
1619	Foreign Consuls	1744
Article 11.	*Interstate and Foreign Commerce*	
1620	Interstate and Foreign Commerce	1746
1620.2	Beverages Sold or Served by Carriers	1755
1621	Sales to Common Carriers	1756
Article 12.	*Matters Involving Transportation of Property*	
1628	Transportation Charges	1769
1629	Goods Damaged in Transit	1774
1630	Packers, Loaders, and Shippers	1774
1632	C.O.D. Fees	1777
Article 13.	*Credit Transactions*	
1641	Credit Sales and Repossessions	1777
1642	Bad Debts	1778
1643	Debit Card Charges	1785
Article 14.	*Exchanges, Returns, Defects*	
1654	Barter, Exchange, "Trade-ins" and Foreign Currency Transaction	1785
1655	Returns, Defects and Replacements	1788
Article 15.	*Leases of Tangible Personal Property*	
1660	Leases of Tangible Personal Property—in General	1791
1661	Leases of Mobile Transportation Equipment	1805

CONTENTS (Contd.)

Regulation	*Title*	*Page*
Article 16.	*Resale Certificates; Demonstration, Gifts and Promotions*	
1667	Exemption Certificates	1808.2
1668	Sales For Resale	1809
1669	Demonstration, Display and Use of Property Held for Resale—General	1814.5
1669.5	Demonstration, Display, and Use of Property Held for Resale—Vehicles	1819
1670	Gifts, Marketing Aids, Premiums and Prizes	1824
1671	Trading Stamps and Related Promotional Plans	1825
Article 17.	*Payment and Collection of Use Tax*	
1683	"Engaged in Business" (Repealed May 4, 1982, effective August 19, 1982)	
1684	Collection of Use Tax by Retailers	1828
1685	Payment of Tax by Purchasers	1830
1686	Receipts for Tax Paid to Retailers	1830.1
1687	Information Returns	1831
Article 18.	*Administration—Miscellaneous*	
1698	Records	1832
1699	Permits	1838
1699.5	Direct Payment Permits	1842.3
1699.6	Use Tax Direct Payment Permits	1844
1700	Reimbursement for Sales Tax	1847
1701	"Tax-paid Purchases Resold"	1851
1702	Successor's Liability	1852
1702.5	Responsible Person Liability	1855
1702.6	Suspended Corporations	1856
1703	Interest and Penalties	1857
1704	Whole Dollar Reporting—Computations on Returns or Other Documents	1865
1705	Relief from Liability	1866
1705.1	Innocent Spouse Relief from Liability	1868
1706	Drop Shipments	1870.1
INDEX		1873

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1500. FOREWORD.

Reference: Section 7051, Revenue and Taxation Code.

(a) GENERAL. These regulations are issued by the State Board of Equalization pursuant to Section 7051 of the Revenue and Taxation Code, to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law, which is contained in Part 1 of Division 2 of the Revenue and Taxation Code. Also included in Subchapter 4 are regulations pertaining to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 of Division 2 of the Revenue and Taxation Code) and to local transit district transactions (sales) and use taxes (Part 1.6 of Division 2 of the Revenue and Taxation Code). The local sales and use taxes are collected by the Board with state sales and use taxes but are imposed under uniform local ordinances authorized by state law.

(b) REVISION. The State Board of Equalization beginning in 1969, undertook a complete revision and restructuring of the sales and use tax regulations. The series numbered as sections 1900 through 2206 have been replaced by a new series of sections numbered between 1500 and 1899. The provisions of the new codification insofar as they are substantially the same as previous rulings (regulations) relating to the same subject matter shall be construed as restatements and continuations and not as new interpretations.

(c) USE OF TERMS.

(1) The term ‘‘tax applies’’ as used in these regulations in reference to a sale or to an amount included in a sale, means, unless otherwise indicated, that either:

(A) The sales tax applies, measured by the gross receipts from the sale, or

(B) The use tax applies to the storage, use, or other consumption of the property sold, measured by the sales price.

(2) When it is stated that certain persons are ‘‘retailers’’ of tangible personal property it should be understood that they must comply with all requirements imposed upon retailers, including:

(A) Obtaining a seller’s permit for each place of business in this state.

(B) Filing returns and paying tax.

(C) Collecting use tax when applicable and remitting the tax with returns.

(D) Keeping records and giving resale certificates.

(3) When it is stated that certain persons are ‘‘consumers’’ of tangible personal property under stated conditions, it should be understood that the sales to such persons are retail sales in respect to which either the sales or use tax applies and that resale certificates should not be given by such consumers in purchasing the property.

(d) VIOLATIONS. Violation of any of the rules and regulations issued by the Board may subject a violator to the revocation or suspension of his seller’s permit. A person who engages as a seller without a permit or after a permit has been suspended is guilty of a misdemeanor.

Regulation 1500. (Contd.)

History: Adopted August 5, 1969, effective September 6, 1969.
Amended November 3, 1971, effective December 3, 1971.
Amended December 7, 1978, effective February 18, 1979. Removes language on tax reimbursement from subsection (c)(2)(D).

Regulation 1501. SERVICE ENTERPRISES GENERALLY

References: Sections 6006, 6015, Revenue and Taxation Code.

Persons engaged in the business of rendering service are consumers, not retailers, of the tangible personal property which they use incidentally in rendering the service. Tax, accordingly, applies to the sale of the property to them. If in addition to rendering service they regularly sell tangible personal property to consumers, they are retailers with respect to such sales and they must obtain permits, file returns and remit tax measured by such sales. If their purchases of tangible personal property are predominantly for consumption rather than for resale, they should not give resale certificates covering such purchases but should follow the procedure prescribed in the regulation governing ''Tax-Paid Purchases Resold.''

The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service. If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred. For example, a firm which performs business advisory, record keeping, payroll and tax services for small businesses and furnishes forms, binders, and other property to its clients as an incident to the rendition of its services is the consumer and not the retailer of such tangible personal property. The true object of the contract between the firm and its client is the performance of a service and not the furnishing of tangible personal property. Similarly, an idea may be expressed in the form of tangible personal property and that property may be transferred for a consideration from one person to another; however, the person transferring the property may still be regarded as the consumer of the property. Thus, the transfer to a publisher of an original manuscript by the author thereof for the purpose of publication is not subject to taxation. The author is the consumer of the paper on which he has recorded the text of his creation. However, the tax would apply to the sale of mere copies of an author's works or the sale of manuscripts written by other authors where the manuscript itself is of particular value as an item of tangible personal property and the purchaser's primary interest is in the physical property. Tax would also apply to the sale of artistic expressions in the form of paintings and sculptures even though the work of art may express an original idea since the purchaser desires the tangible object itself; that is, since the true object of the contract is the work of art in its physical form.

When a transaction is regarded as a sale of tangible personal property, tax applies to the gross receipts from the furnishing thereof, without any deduction on account of the work, labor, skill, thought, time spent, or other expense of producing the property.

Regulation 1501. (Contd.)

Examples of service enterprises and regulations pertaining thereto will be found in regulations which follow.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered November 3,1969, effective December 5, 1969.

Regulation 1501.1. RESEARCH AND DEVELOPMENT CONTRACTS.

References: Sections 6006, 6009, 6010, 6011, and 6012, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) QUALIFIED RESEARCH AND DEVELOPMENT CONTRACT. A qualified research and development contract is a contract for a service where:

a. the service provided under the contract is undertaken for the purpose of discovering information which is technological in nature, the results of which are intended to be useful in the development of a new or improved product, process, technique, or invention, and

b. the contract calls for the delivery of a report detailing information developed by the contractor or other tangible personal property incidental to the true object of the contract, as defined in Regulation 1501 (18 CCR 1501).

A qualified research and development contract shall not include a contract for research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors. A qualified research and development contract shall also not include a contract for the design and production of a custom-made item as defined in subdivision (a)(5).

(2) RESEARCH. A planned search or critical investigation aimed at discovery of new knowledge with the hope that such knowledge will be useful in developing a new product or service (product) or a new process or technique (process) or in bringing about a significant improvement to an existing product or process.

(3) DEVELOPMENT. The translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use.

‘‘Development’’ includes the conceptual formulation, design, and testing of product alternatives, and construction of prototypes but does not include:

a. routine or periodic alterations to existing products, production lines, manufacturing processes, and other on-going operations even though those alterations may represent improvements, and

b. market research or market testing activities.

Regulation 1501.1. (Contd.)

(4) TANGIBLE PERSONAL PROPERTY. Tangible personal property transferred in a qualified research and development contract includes, but is not limited to the following:

a. Appearance model—a non-operating model of a design that is a physical representation of the design which is used to convey the image, texture and appearance of the design.

b. Prototype model—an operating model of a design the purpose of which includes:

1. validating design concepts,
2. validating design specifications,
3. demonstrating design integrity, or
4. demonstrating manufacturability of the design.

c. Prototype or temporary tooling—tooling produced and used in the development of prototypes.

(5) CUSTOM-MADE ITEMS. A custom-made item includes, but is not limited to the following:

a. Property the purchaser wants for its intrinsic value as an item, and for which the purchaser is not interested in the data developed in the course of the manufacture of the custom-made item.

b. Property the purchaser will use for purposes other than informational and testing purposes as defined in subdivision (a)(7).

c. Property purchased for use by the purchaser or for resale.

d. Production tooling—tooling produced and used for the manufacture of final production units.

(6) FUNCTIONAL USE. Use for which the property was designed which occurs after completion of the research and development. Custom-made items normally are intended for functional use and not for informational and testing use. Informational and testing use of a prototype by the contractor or its customer does not qualify as a functional use.

Examples of functional use include:

1. Use as test fixtures in manufacturing equipment.

2. Use as production tooling.

(7) INFORMATIONAL AND TESTING USE. Use by either the contractor or its customers including, but not limited to:

1. Testing for verification of a design to specifications.

2. Developing data, algorithms, ideas and/or knowledge to improve or perfect a design.

3. Determining alternative design features and implementations.

4. Validating testing of software and firmware embodied within a design.

Regulation 1501.1. (Contd.)

5. Demonstrating operation of a design for approval by a customer.

6. Quality assurance and performance testing to determine limitations and failure modes of the design.

7. Determining or improving interfaces to other equipment during the design process.

8. Determining or improving the processes for manufacture of the design.

9. Testing to design failure.

10. Evaluating numerous prototypes for the acceptability of the design and the manufacturability of such design. Qualifying evaluation does not include any functional use of the property in a normal business operations capacity.

11. Testing prototypes to assure that the design works to the specifications desired.

(8) PHASED CONTRACTS. A phased contract is a contract which provides for separate phases wherein the purchaser has the specific right to terminate the contract prior to commencement of the next phase without the delivery of tangible personal property required to be delivered in any subsequent phase specified in the contract and without further obligation except for compensation for work completed or cancellation fees.

A contract for the design and manufacture of a custom-made item shall be considered a "phased contract" when:

1. the purchaser has the specific right to terminate the contract prior to or upon completion of the design phase, or

2. there are two separate contracts: one for the design service and the other for the manufacture of the custom-made item.

(b) APPLICATION OF TAX.

(1) GENERAL. Persons engaged in the business of rendering services pursuant to a qualified research and development contract are consumers of tangible personal property which they use incidentally in rendering the service. Tax applies to the sale of the property to them. Tax does not apply to receipts derived from qualified research and development contracts except as provided below.

(2) PROTOTYPES. Prototypes transferred in a qualified research and development contract for informational and testing purposes, as defined in subdivision (a)(7), are not subject to tax regardless of the fact the research contract may place a value on the prototype. Prototypes transferred are for verification that a design meets the required technical specifications of the contract. No functional use, as defined in subdivision (a)(6), of the prototypes is made. Either the sales tax or the use tax applies with respect to sales of such tangible personal property to the contractor.

Regulation 1501.1. (Contd.)

Sales of additional prototypes transferred in a qualified research and development contract for purposes other than informational and testing use, where a functional use occurs, are subject to tax. This includes prototypes transferred for the purpose of testing the aesthetic features of the product by independent third parties for marketing purposes, or used for the purpose for which the property was designed. The measure of tax is the stated value for such property in the contract, or if none is stated, at the computed fair market value as determined by applying a factor of three to the cost of direct materials used in the production of the prototype.

Tax applies to the transfer of title or possession of prototype tooling, in a qualified research and development contract, for functional use as defined in subdivision (a)(6), regardless of the form of the media, even if a separate charge is not made for these properties. The measure of tax is the amount provided for in the contract for duplicate or replacement sets of the property, or if no such amount is provided, the measure of tax will be equal to fair market value as determined by applying a factor of three to the cost of direct materials used in the production of the prototype tooling.

(3) CUSTOM-MADE ITEMS. A contract to design, develop, and manufacture a custom-made item is a contract to sell tangible personal property. Generally, custom-made items are intended for functional use and not for informational and testing use. Unless the sale of the property is a sale for resale, tax applies to the gross receipts from the sale of the property. Gross receipts includes the entire amount of the contract price, including charges related to research, design, and development activities. Tax applies to the entire contract price without regard to the fact that the research, design, and development charges may be separately stated. See subdivision (b)(4) if the contract qualifies as a phased contract.

(4) PHASED CONTRACTS. The research and development phase and the production phase of a phased contract shall remain as two separate contracts and shall be taxed as such. Items produced for functional use in the production phase of the contract shall be subject to tax unless the purchaser provides the contractor with a resale certificate or the transfer is otherwise exempt.

(5) APPLICATION TO SEMICONDUCTOR INDUSTRY. Production tooling, including a mask to be used in production, is a custom-made item and tax applies as outlined in subdivision (b)(3) or (b)(4) as applicable.

Pattern generation tapes, wafer probe test tapes, final test tapes, schematic diagrams for the probe board, and schematic diagrams for the final test load board are informational items, if transferred for archival or other informational purposes not involving a functional use. The contractor is the consumer of the direct materials.

History: Adopted November 28, 1995, effective March 22, 1996.

Regulation 1502. COMPUTERS, PROGRAMS, AND DATA PROCESSING.

Reference: Sections 995.2, 6006, 6007, 6010, 6010.9, 6011, 6012, 6015, and 6016, Revenue and Taxation Code.

(a) IN GENERAL. ''Automatic data processing services'' are those rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel, and computers.

Automatic data processing services may be provided by manufacturers of computers, data processing centers, systems designers, consultants, software companies, etc. In addition, there are banks and other businesses which own or lease computers and use them primarily for their own purposes but occasionally provide services to others. Businesses rendering automatic data processing services will be referred to herein as ''data processing firms.''

(b) DEFINITIONS OF TERMS.

Additional copies — See (d)(5)(F).

Application — The specific job performance by an automatic data processing installation is referred to as an application. For example, data processing for a payroll may be referred to as a payroll application.

Coding — The list, in computer code, of the successive computer instructions representing successive computer operations for solving a specific problem.

Computer — A computer is an electronic device (including word processing equipment and testing equipment) or combination of components, which is programmable and which includes a processor (central processing unit or microprocessor), internal memory, and input and output connections. Manufacturing equipment which incorporates a computer is a computer for purposes of this regulation. However, the term does not include manufacturing equipment which operates under the control of mechanical or electronic accessories, the attachment of the equipment of which is required for the machine to operate. An electronic device otherwise qualifying as a computer remains a computer even though it may be used for information processing, data acquisition, process control or for the control of manufacturing machinery or equipment.

Custom computer program and programming — A computer program prepared to the special order of the customer. A program prepared to the special order of the customer qualifies as a custom program even though it may incorporate preexisting routines, utilities or similar program components. It includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer.

Data Entry (including Encoding) — Recording information in or on storage media by punching holes or inserting magnetic bits to represent letters, digits, and special characters.

Regulation 1502. (Contd.)

Electronic or Digital Pre-Press Instruction	—	Within the printing industry, the transfer by computer disk or other electronic storage media of original information created by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press.
Input	—	The information or data transferred, or to be transferred, from storage media into the internal storage of the computer.
Keystroke Verifying	—	Use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in or transcribed on storage media during the key-punching operation has been entered properly. The machine signals when the punched hole and the depressed key disagree, or when the data on storage media differs from depressed keys.
Off-Line	—	Descriptive of a system and the devices in a system in which the operation of equipment is not under the control of a computer.
On-Line	—	Descriptive of a system and the devices in a system in which the operation of such equipment is under control of a computer.
Output	—	The information transferred from the internal storage of the computer to storage media or tabulated listing.
Prewritten Program	—	A program held or existing for general or repeated sale or lease. The term also includes a program developed for in-house use which is subsequently offered for sale or lease as a product.
Processing of Customer-Furnished Information	—	See (d)(5).
Program	—	The complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a problem; includes both systems and application programs and subdivisions such as assemblers, compilers, routines, generators, and utility programs.
Proof Listing	—	A tabulated listing of input.
Source Documents	—	A document supplied by a customer of a data processing firm from which basic data are extracted (e.g., sales invoice).
Storage media	—	Includes hard disks, floppy disks, diskettes, magnetic tape, cards, paper tape, drums and other devices upon which information is recorded.

(c) BASIC APPLICATIONS OF TAX.

(1) The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated, is a sale subject to tax.

Regulation 1502. (Contd.)

(2) Charges for producing, fabricating, processing, printing, imprinting or otherwise physically altering, modifying or treating consumer-furnished tangible personal property (cards, tapes, disks, etc.), including charges for recording or otherwise incorporating information on or into such tangible personal property, are generally subject to tax.

(3) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, including property on which or into which information has been recorded or incorporated, is generally a sale subject to tax. However, if the contract is for the service of researching and developing original information for a customer, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.

(4) Charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output. Examples include artwork, graphics, and designs. However, the transfer by the seller of the original information created by electronic or digital pre-press instruction is not subject to tax if the original information is a custom computer program as explained in (f)(2)(F).

(5) Charges for processing customer-furnished information (sales data, payroll data, etc.) are generally not subject to tax. (For explanation and specific application of tax, see (d) below.)

(6) Leases of tangible personal property may be subject to tax under certain conditions. (See Regulation 1660 for application of tax to leases.)

(7) Charges made for the use of a computer, on a time-sharing basis, where access to the computer is by means of remote telecommunication are not subject to tax. (See (i) below.)

(8) Generally data processing firms are consumers of all tangible personal property, including cards and forms, which they use in providing exempt services unless a separate charge is made to customers for the materials, in which case tax applies to the charge made for the materials.

(d) MANIPULATION OF CUSTOMER-FURNISHED INFORMATION AS SALE OR SERVICE.

(1) GENERAL. Generally tax applies to the conversion of customer-furnished data from one physical form of recordation to another physical form of recordation. However, if the contract is for the service of developing original information from customer-furnished data, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.

(2) DATA ENTRY AND VERIFICATION. This section covers situations where a data processing firm's agreement provides only for data entry, data verification, and proof listing of data, or any combination of these operations. It does

Regulation 1502. (Contd.)

not include contracts under which these services are performed as steps in processing of customer-furnished information as discussed under (d)(5).

Agreements providing solely for data entry and verification, or data entry, providing a proof list and/or verifying of data are regarded as contracts for the fabrication of storage media and sales of proof lists. Charges therefor are taxable, whether the storage media are furnished by the customer or by the data processing firm.

Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax application is the same regardless of which type of storage media is used in the operation.

(3) ADDRESSING (INCLUDING LABELS) FOR MAILING. Where the data processing firm addresses, through the use of its computer or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for addressing. Similarly, where the data processing firm prepares, through the use of its computer or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for producing the labels, regardless of whether the data processing firm itself affixes the labels to the material to be mailed. (Sale of mailing list by proprietor of such list, as a sale of tangible personal property or as an exempt addressing, see Regulation 1504 ''Mailing Services'')

(4) MICROFILMING AND PHOTORECORDING. Tax applies to charges for microfilming or photorecording except, as provided in paragraph (d)(5), where the microfilming or photorecording is done under a contract for the processing of customer-furnished information. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting and/or line drawings, and put on microfilm or photorecording paper.

(5) PROCESSING OF CUSTOMER-FURNISHED INFORMATION.

(A) ''Processing of customer-furnished information'' means the developing of original information from data furnished by the customer. Examples of automatic data processing processes which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such processes also include the updating of a continuous file of information maintained by the customer with the data processing firm.

(B) ''Processing of customer-furnished information'' does not include: (1) an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing, (2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters, (3) the mere converting of data from one medium to another, (4) an agreement under which a person undertakes to prepare artwork, drawings, illustrations or other graphic material unless the provisions of (f)(2)(F) apply regarding digital or electronic pre-press instruction and custom computer programs. Additionally, graphic material furnished incidentally to the

Regulation 1502. (Contd.)

performance of a service is not subject to tax. For example, graphics furnished in connection with the performance of architectural, engineering, accounting or similar professional services are not subject to tax. With respect to typography, clip art, combined with text on the same page is considered composed type as explained in Regulation 1541.

(C) Contracts for the processing of customer-furnished information usually provide that the data processing firm will receive the customer's source documents, record data on storage media, make necessary corrections, process the information, and then record and transfer the output to the customer.

Where a data processing firm enters into a contract for the processing of customer-furnished information, the transfer of the original information to the customer is considered to be the rendition of a service. Except as described in (c)(8) above and (d)(5)(E) below, tax does not apply to the charges made under contracts providing for the transfer of the original information whether the original information is transferred on storage media, microfilm, microfiche, photorecording paper, input media for an optical character recognition system, punched cards, preprinted forms, or tabulated listing. The breakdown of the total charge into separate charges for each operation involved in processing the customer-furnished information will not change the application of tax.

(D) The furnishing of computer programs and data by the customer for processing under direction and control of the data processing firm will not alter the application of tax, notwithstanding that charges are based on computer time.

(E) Taxable Items. Where a data processing firm has entered into a contract which is regarded as a service contract under paragraph (d)(5)(C) above and the data processing firm, pursuant to the contract, transfers to its customer tangible property other than property containing the original information, such as: duplicate copies of storage media; inventory control cards for use by the customer; membership cards for distribution by the customer; labels (other than address labels); microfiche duplicates; or similar items for use, tax applies to the charges made for such items. If no separate charge is made, tax applies to that portion of the charge made by the data processing firm which the cost of the additional computer time (if any), cost of materials, and labor cost to produce the items bear to the total job cost.

(F) Additional Copies. When additional copies of records, reports, tabulation, etc., are provided, tax applies to the charges made for the additional copies. ''Additional copies'' are all copies (other than carbon copies), whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared the tax will be measured by the charge made by the data processing firm to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any), the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multi-lithing, or by other means are subject to tax.

Regulation 1502. (Contd.)

(e) TRAINING SERVICES AND MATERIALS. Data processing firms provide a number of training services, such as data entry and verification, programming and specialized training in systems design.

(1) Charges for training services are nontaxable, except as provided in (g) below where the training services are provided as part of the sale of tangible personal property. The data processing firm is the consumer of tangible personal property which is used in training others, or provided to trainees without a separate charge as a part of the training services.

(2) Tax applies to charges for training materials, including books, furnished to trainees for a charge separate from the charge for training services.

(3) Where a person sells tangible personal property, such as computers or programs, and provides training materials to the customer without making an additional charge for the training materials, this is a sale of the training materials. The selling price of the training materials is considered to be included in the sales price of the tangible personal property.

(f) COMPUTER PROGRAMS.

(1) PREWRITTEN (CANNED) PROGRAMS. Prewritten programs may be transferred to the customer in the form of storage media or by listing the program instructions on coding sheets. In some cases they are usable as written; however, in other cases it is necessary that the program be modified, adapted, and tested to meet the customer's particular needs. Tax applies to the sale or lease of the storage media or coding sheets on which or into which such prewritten (canned) programs have been recorded, coded, or punched.

(A) Tax applies whether title to the storage media on which the program is recorded, coded, or punched passes to the customer, or the program is recorded, coded, or punched on storage media furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded or punched by the customer, or by the lessor on the customer's premises, is a lease of tangible personal property. The tax applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax with respect to the property.

(B) Tax applies to the entire amount charged to the customer. Where the consideration consists of license fees, all license fees, including site licensing and other end users fees, are includable in the measure of tax. Tax does not apply, however, to license fees or royalty payments that are made for the right to reproduce or copy a program to which a federal copyright attaches in order for the program to be published and distributed for a consideration to third parties, even if a tangible copy of the program is transferred concurrently with the granting of such right. Any storage media used to transmit the program is merely incidental.

(C) Maintenance contracts sold in connection with the sale or lease of prewritten computer programs generally provide that the purchaser will be entitled to receive, during the contract period, storage media on which prewritten program improvements or error corrections have been recorded. The maintenance contract

Regulation 1502. (Contd.)

also may provide that the purchaser will be entitled to receive, during the contract period, telephone or on-site consultation services.

If the purchase of the maintenance contract is not optional with the purchaser, then the charges for the maintenance contract are taxable, including charges for consultation services, as part of the sale or lease of the prewritten program.

If the purchase of the maintenance contract is optional with the purchaser, but the purchaser does not have the option to purchase the consultation services in addition to the sale or lease of storage media containing program improvements or error corrections, then the charges for the consultation services are taxable as part of the sale or lease of the storage media. If, however, the purchaser may, at its option, contract for the consultation services for a separately stated price, in addition to the charges made for the storage media, then the charges for the consultation services are nontaxable.

(D) The sale or lease of a prewritten program is not a taxable transaction if the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer and the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. Likewise, the sale of a prewritten program is not a taxable transaction if the program is installed by the seller on the customer's computer except when the seller transfers title to or possession of storage media or the installation of the program is a part of the sale of the computer.

If the transfer of a prewritten program is a nontaxable transaction, then the seller is the consumer of tangible personal property used to produce written documentation or manuals (including documentation or manuals in machine-readable form) designed to facilitate the use of the program and transferred to the purchaser for no additional charge. If a separate charge is made for the documentation or manuals, then tax applies to the separate charge.

(E) The transfer of a prewritten program on storage media is not a sale for resale when the storage media, or an exact copy, will be used to produce additional copies of the program.

Charges for testing a prewritten program on the purchaser's computer to insure that such a program operates as required are installation charges and are nontaxable.

(2) CUSTOM PROGRAMS

(A) Tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. Nor does the tax apply to the transfer of a custom program, or custom programming services performed, in connection with the sale or lease of computer equipment, whether or not the charges for the custom program or programming are separately stated.

(B) However, charges for custom modifications to prewritten programs are nontaxable only if the charges for the modifications are separately stated. Otherwise, the charges are taxable as services part of the sale of the prewritten program.

Regulation 1502. (Contd.)

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program was previously marketed, the new program will qualify as a custom program, if the price of the prewritten program was 50% or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program, if the charge made to the customer for custom programming services, as evidenced in the records of the seller, was more than 50% of the contract price to the customer.

(C) Any written documentation or manuals designed to facilitate the use of a custom computer program by the customer are nontaxable, whether or not a separate charge is made for the documentation or manuals. The vendor of the custom computer program is the consumer of the written documentation or manuals, or of any tangible personal property used by the vendor in producing the written documentation or manuals.

(D) A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The copies, however, are taxable as prewritten computer programs. The later sale or lease of such copies does not affect the nontaxability of the original custom computer program.

(E) A computer program prepared to the special order of a customer to operate for the first time in connection with a particular basic operating system is a custom computer program even though a different version currently operates in connection with an incompatible basic operating system.

(F) The transfer by the seller of original information created by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press is not subject to tax when transferred by computer disk or other electronic storage media and the original information is a custom computer program. Such a process, currently termed ‘‘electronic or digital pre-press instruction,’’ creates a new program which shall be considered a custom computer program as defined under Revenue and Taxation Code section 6010.9 of the Sales and Use Tax Law and is not subject to tax if the electronic or digital pre-press instruction is prepared to the special order of the customer. The electronic or digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a ‘‘canned’’ or prewritten computer program which is held or existing for general or repeated sale or lease, even if the electronic or digital pre-press instruction was initially developed on a custom basis or for in-house use.

(g) SERVICE CHARGES. The following activities are service activities. Charges for the performance of such services are nontaxable unless the services are performed as a part of the sale of tangible personal property.

(1) Designing and implementing computer systems. (e.g., determining equipment and personnel required and how they will be utilized.)

Regulation 1502. (Contd.)

(2) Designing storage and data retrieval systems. (e.g., determining what data communications and high-speed input-output terminals are required.)
(3) Consulting services. (e.g., study of all or part of a data processing system.)
(4) Feasibility studies. (e.g., studies to determine what benefits would be derived if procedures were automated.)
(5) Evaluation of bids. (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial.)
(6) Providing technical help, analysts and programmers, usually on an hourly basis.
(7) Training Services.
(8) Maintenance of equipment. (See Regulation 1546 for application of tax to maintenance contracts.)
(9) Consultation as to use of equipment.

(h) PICK-UP AND DELIVERY CHARGES. If the data processing firm's billing is for nontaxable processing of customer-furnished information, the tax will not apply to pick-up and delivery charges. If pick-up and delivery charges are made in conjunction with the sale of tangible personal property or the processing of customer-furnished tangible personal property, the tax will apply to the pick-up charges. Tax will apply to the delivery charges to the extent specified in Regulation 1628 "Transportation Charges."

(i) RENTAL OF COMPUTERS. A lease includes a contract by which a person secures for a consideration the use of a computer which is not on his premises, if the person or his employees, while on the premises where the computer is located operate the computer, or direct and control its operation. A lease does not include a contract whereby a person secures access by means of remote telecommunication, to a computer which is not on his premises, if the person or his employees operate the computer or direct and control its operation by means of remote telecommunication. (See Regulation 1660 for application of tax to leases.)

History: Adopted February 17, 1972, effective March 25, 1972.
Amended November 18, 1987, effective March 4, 1988. In subdivision (b), amended the regulation to conform several definitions with industry standards. In subdivision (c), amended the regulation to make clear and specific the basic application of tax. In subdivision (f), amended the regulation to make clear and specific the application of tax to prewritten computer programs.
Amended June 24, 1998, effective January 29, 1999. Subdivision (b) amended to delete last sentence and add new second sentence. Subdivision (f)(1)(D) amended to add new last sentence of first paragraph.
Amended September 1, 1999, effective December 3, 1999. Subdivision (b)—definition "Electronic or Pre-Press instruction" added. Language added to subdivision (c)(4) and to (d)(5)(B)(4) emphasizing that only the sale of digital pre-press instructions that qualify as custom computer programs may be non-taxable. Also added to the last sentence in subdivision (d)(5)(B), language to harmonize Regulation 1502 with a simultaneous change to Regulation 1541 concerning customer furnished information; also added an example that with respect to typography, clip art and text combined on the same page is considered composed type. New subdivision (f)(2)(F) added.

Regulation 1502.1. WORD PROCESSING.

References: Section 6006, 6010, 6011, 6012, 6015, 6016, Revenue and Taxation Code.

(a) GENERAL.

Tax does not apply to charges for furnishing original letters or documents, or carbon copies produced simultaneously with the original, prepared by using a typewriter or word processing equipment. Where the word processing company provides only an original letter or document, or carbon copies produced simultaneously with the original, the true object of the contract is the performance of a service and not the furnishing of tangible personal property. The word processing company is the consumer of tangible personal property used in providing the service.

Tax applies to charges for producing multiple copies of letters, manuscripts, or other documents using word processing equipment. Multiple copies include form letters produced with a slight variation which personalizes essentially the same letter. Tax applies to the entire charge without deduction for charges for setting up the machine, keyboarding, or assembling the material. Charges for providing additional copies are subject to tax regardless of whether the original was prepared using a typewriter or word processing equipment and regardless of whether the copies are produced by computers, word processors, copying machines, or other methods.

Tax does not apply to charges made by a word processing company for keyboarding original names and addresses, setting up and sorting, and for printing the names and addresses onto mailing labels. (See Regulation 1504 for an explanation of how tax applies to mailing services).

Tax does not apply to charges made when a word processor is used to produce copy which is acquired and used exclusively for reproduction purposes since Revenue and Taxation Code section 6010.3 excludes typography from the definition of sale or purchase.

(b) EXAMPLES OF THE APPLICATION OF TAX UNDER SPECIFIC CIRCUMSTANCES.

(1) PREPARATION OF STANDARD LETTERS AND ENVELOPES FOR MAILING. A word processing operator keyboards and records an address list and standard letter on magnetic media. The letter is then automatically typed to each person on the address list. The prerecorded address list is then used to address envelopes inserted into the machine. The charges made for setting up the machine, keyboarding the material and typing out the letters are taxable. The charges made for addressing the envelopes are nontaxable if separately stated (See Regulation 1504).

(2) MANUSCRIPTS. An author brings a manuscript to a word processing company. The operator keyboards the material and records it on magnetic media. A draft copy of each page of the recorded material is printed out (typed automatically) and given to the author to proof-read. The author makes corrections and changes on the draft and returns it to the operator. The operator makes the necessary changes using a word processor. A final copy is then printed out for the author to submit to a publisher. The charges made for the original keyboarding of the manuscript, printing out the draft copy, editing, and printing out a final copy are nontaxable. Tax does not

Regulation 1502.1. (Contd.)

apply to charges for carbon copies prepared at the same time as the original copy; however charges for photocopies are taxable.

(3) ASSEMBLING FINAL PRODUCT FROM A PARAGRAPH LIBRARY. An attorney brings several paragraphs to a word processing company which uses word processing equipment to keyboard and record the paragraphs on magnetic media to form a "paragraph library." The attorney then notifies the company to select certain stock paragraphs, for example paragraphs 1, 8, 11, 29, 16, 12, 87, 100, 56, and 57 in that order, to create a will for his client. The attorney provides variable information to be inserted into proper position in the paragraphs, such as: make of the will, maker's spouse, maker's children and their date of birth, city and county of residence. The operator instructs the machine (with keyboard commands) to assemble those specified paragraphs with the necessary variable client information and to print out (automatically type) a will. All of the charges made for keyboarding original paragraphs, printing out a draft of all paragraphs for the attorney's use, assembling the paragraphs as requested, and printing out individual wills (and any carbon copies of the original) are nontaxable. Charges for photocopies are taxable.

(4) ADDRESSING MAILING LABELS. A client has a list of 2,000 names that he is going to use monthly for a mailing. Every month the list has to be sorted into zip code sequence, typed on labels to be applied to envelopes which are then mailed. The word processing company keyboards the names and addresses and records them on magnetic media. The machine is instructed (using keyboard commands) to sort the names into correct zip code sequence before the list is finally stored on the magnetic media. Each month the equipment is set up and, with an operator in attendance (giving keyboard commands), the names are printed (automatically typed) onto continuous form labels. The charges made by the word processing company for keyboarding original names and addresses, for setting up and sorting, and for the monthly setting up and printing of names onto labels are all nontaxable charges for addressing.

History: Adopted August 1, 1984, effective June 8, 1985.

Regulation 1503. HOSPITALS AND OTHER MEDICAL SERVICE FACILITIES, INSTITUTIONS AND HOMES FOR THE CARE OF PERSONS.

References: Sections 6006, 6007, 6015, 6016, 6051, 6359 and 6363.6, Revenue and Taxation Code.

(a) MEALS.

(1) There are exempt from sales and use tax the sale of meals and food products to and the use of meals and food products by the following institutions when furnished or served to and consumed by their residents or patients:

(A) A health facility as defined in Section 1250 of the Health and Safety Code, which holds the license required pursuant to Section 1253, or is exempt from the license requirement pursuant to subdivision (a) of Section 1270, or is operated by the United States.

Regulation 1503. (Contd.)

(B) A community care facility as defined in Section 1502 of the Health and Safety Code, which holds the license required by Section 1508, or is a residential facility selected by a licensee pursuant to Section 1506 and exclusively used for the reception and care of persons placed by such licensee, or is exempt from the license requirement pursuant to subdivision (f) of Section 1505, or is operated by the United States.

(C) A residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, that holds the license required by Section 1569.10 of the Health and Safety Code or is exempt from the license requirements pursuant to Section 1569.145 of the Health and Safety Code, or is operated by the United States.

(D) Any house, retirement home or similar establishment supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older, and any housing that primarily serves older persons and that is financed by state or federal programs. For purposes of this regulation, the term "exclusively" is defined to mean that no more than four persons under 62 years of age are in residence during any calendar quarter.

(E) An alcoholism or drug abuse recovery or treatment facility, as defined in Section 11834.02 of the Health and Safety Code, which holds the license required by Section 11834.30 of the Health and Safety Code.

(2) "Meals," for purposes of this subdivision, include any of the following:

(A) Carbonated beverages furnished or served as part of the meals.

(B) Food provided to the patient or resident by way of enteral feeding, Total Parenteral Nutrition (also called TPN), and Intradialytic Parenteral Nutrition (also called IDPN), as each is defined in Regulation 1591, provided these forms of nutrition are furnished or served to and consumed by a resident or patient of an institution specified in this subdivision (a).

(C) Nonreusable items that become components of the meals. These include straws, paper napkins, and plastic eating utensils. These also include bags and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, each of which is used to dispense enteral feeding as meals to the patient or resident including: gastrostomy tubes (also called G tubes) which are used to deliver the nutrition directly into the stomach; jejunostomy tubes (also called J tubes) which are used to deliver the nutrition directly into the intestinal tract; and nasogastric tubes (also called NG tubes) which are used to deliver the nutrition directly through the nasal passage to the stomach. Needles, syringes, cannulas, bags, and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, used to dispense TPN or IDPN as meals to the patient or resident are also regarded as components of those meals provided each of these items is used primarily to dispense the TPN or IDPN.

(b) GENERAL.

(1) SALES TO MEDICAL SERVICE FACILITIES. "Medical service facilities" for purposes of this subdivision are those institutions specified in subdivision (a) of this regulation as well as surgery centers and similar medical

Regulation 1503. (Contd.)

service facilities whether patients are accepted for periods of less than or more than twenty-four hours. For example, dialysis centers, AIDS centers, and cancer centers are medical service facilities. Operative April 1, 2001, except as provided in subdivision (b)(2) of this regulation, medical service facilities are service providers to their patients and residents and are the consumers of tangible personal property furnished in connection with those services, whether separately itemizing charges for the services and for the tangible personal property or billing in lump sum, and sales of that tangible personal property to the medical service facilities are taxable retail sales unless specifically exempted.

(2) SALES BY MEDICAL SERVICE FACILITIES. When a medical service facility is the retailer of property furnished, tax applies to its charge for that property unless the sale is exempt from tax. A medical service facility is the retailer of property furnished for a charge to persons other than residents and patients.

A medical service facility is the retailer of tangible personal property for which it makes a separately itemized charge if the property is furnished to a patient or resident with the intent that the patient or resident remove the property from the premises of the medical service facility for use by the patient or resident. Examples of such items include crutches or a wheelchair provided upon release from the medical service facility and discharge kits for new mothers (which might include formula, diapers, etc.). Notwithstanding subdivision (b)(1) of this regulation, a medical service facility is the retailer of any property furnished in connection with its medical services if its contract with the medical service facility's resident or patient or other customer specifically provides that title to the subject tangible personal property passes to the resident or patient or other customer. When the contract has a provision passing title to the subject tangible personal property to the resident or patient or other customer, the medical services facility may purchase such property for resale, and tax applies to the charge by the medical services facility unless its sale is otherwise exempt from tax.

(3) LABORATORY CHARGES. Laboratory charges, such as charges for blood-counts, are not taxable. Tax does not apply with respect to purchases, sales or donations of whole blood or blood plasma for use in transfusions.

History: Amended January 9, 1963.
Amended September 18, 1963.
Amended June 20, 1967.
Amended October 8, 1968, applicable on and after October 1, 1968.
Amended and renumbered March 24, 1970, effective April 29, 1970.
Amended December 15, 1971, applicable on and after December 15, 1971.
Amended February 16, 1972, effective March 25, 1972.
Amended May 10, 1972, effective June 18, 1972.
Amended February 20, 1974, effective March 28, 1974.
Amended October 8, 1974, effective October 10, 1974. Changed definition of "institution" and added appendix of all Health and Safety Code sections used in new definition.
Amended December 7, 1978, effective February 18, 1979. Subsection (b)(2) amended to create the presumption that if an institution adds sales tax to any

charges it will be presumed that the institution has made a retail sale; ''special hospital'' and ''residential care facilities for the elderly'' are defined in the Appendix; the terms ''health facility'' and ''community care facility'' have been slightly expanded to reflect changes in the Health and Safety Code.

Amended November 15, 1979, effective January 5, 1980. Added (a)(3); in (b)(1) substituted ''residents'' for ''inmates''; in (b)(2) substituted ''residents'' for ''inmates'' and deleted reference to charges for administration of property.

Amended April 1, 1981, effective August 19, 1981. Repealed the Appendix.

Amended June 2, 1988, effective August 14, 1988. In subdivision (a)(4), included alcohol recovery facility as defined in the definition of ''institution''.

Amended August 1, 1989, effective October 15, 1989. Subdivision (a)(3) amended to exclude from the definition of ''institution'' any retirement home which has more than four persons under 62 years of age in residence during any calendar quarter. Subdivision (b)(2) amended to add that sales of meals and food products by an institution to persons other than residents or patients of that institution are subject to the tax.

Amended May 1, 1990, effective July 13, 1990. Paragraph (a)(4) was amended to conform the regulation to the statute, amended by Senate Bill 990, Chapter 919, Statutes of 1989, to provide that drug abuse recovery or treatment facilities as defined in the Health and Safety Code are included in the definition of ''institution''.

Amended August 1, 1991, effective August 30, 1991. Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, to exclude specified snack foods from the definition of food products and to clarify that snack foods are considered components of meals and food products served to residents or patients of certain institutions which may be purchased by the institutions for resale.

Amended July 28, 1993, effective November 3, 1993. Amended subdivision (b)(1) to remove reference to snack foods as an example of a normally taxable item which may be purchased for resale as a component of a meal.

Amended June 20, 1995, effective July 20, 1995. New subdivision (a)(3) added and previous subdivision (a)(3) amended and renumbered to (a)(4) as provided in Statutes of 1994, Chapter 702.

Amended February 15, 2001, effective June 1, 2001. Subdivision (a)(1) replaced with ''There . . . patients;'' former subdivisions (a)(1)–(5) are redesignated (a)(1)(A–E). New subdivision (a)(2) added to include enteral feeding, TPN and IDPN in the definition of meals for purposes of this subdivision. Subdivision (b) retitled ''General.'' Subdivision (b)(1)—current title changed to ''Sales to Medical Service Facilities,'' existing language deleted, language ''medical service facilities . . . exempted'' added to provide that medical service facilities are consumers of property furnished in connection with their services. Subdivision (b)(2)—current title changed to ''Sales by Medical Service Facilities;'' existing language deleted; new language ''When . . . patients'' and new unnumbered paragraph added to specify when a medical service facility is the retailer of property furnished.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1504. MAILING LISTS AND SERVICES.

References: Sections 6006, 6006.3, 6009, 6012, 6015, 6016, and 6379.8, Revenue and Taxation Code.

(a) TRANSACTIONS IN MAILING LISTS.

(1) DEFINITION. A "mailing list" as used herein means a written or printed list, series, set, group, aggregation, etc., of names and addresses of, and occasionally, other information concerning persons, such as potential customers or donors, which is intended for use in circulating material by mail. Such a list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, gummed labels, index cards, or other similar means of communication. Operative January 1, 1994, "mailing list" includes a magnetic tape or similar device used to produce written or printed names and addresses by electronic or mechanical means.

(2) APPLICATION OF TAX GENERALLY. Except as otherwise provided in (a)(3) below, tax applies to receipts from the transfer of title or possession, rental or granting of a license for use of mailing lists, to the same extent as to receipts from sales or rentals of tangible personal property generally.

(3) LIMITED USE. Tax does not apply to charges for the transfer or use of mailing lists, where a contract restricts the transferee or user to use of the mailing list one time only. The charges in such cases are considered to be for information or addressing services.

(4) MAGNETIC TAPES. Where the names and addresses are recorded on magnetic tapes or similar devices used to produce written or printed names and addresses by electronic or mechanical means, charges for the transfer or use of the tape or similar device are subject to tax to the same extent as receipts from sales or rentals of tangible personal property generally regardless of any contractual restrictions on the frequency of use. Operative January 1, 1994, such magnetic tapes or similar devices are considered a mailing list and charges for their transfer and use under (a)(3) above are exempt from tax.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1504. (Contd.)

(5) APPLICATION OF TAX TO MATERIALS USED. Persons engaged in the business of selling, renting or licensing mailing lists are consumers of tangible personal property used in producing lists the transfer of which is not subject to tax, and tax applies to the sale to them of such property. Tangible personal property which becomes a component part of lists, the transfer of which is taxable may be purchased for resale.

(b) MAILING SERVICES.

(1) GENERAL. Tax does not apply to charges for services rendered in preparing material for mailing, such as addressing, enclosing, sealing, collating, affixing labels, blocking out, tucking or clasping envelope flaps, metering, affixing stamps, edging seal or edging with stamp, addressing permit indicia, and sorting, tying and sacking in compliance with postal rules and regulations, nor to charges for the handling or wrapping of material left over after preparation of material for mailing, which is to be returned to the customer.

(2) ADDRESSING DEFINED. ''Addressing'' means the actual writing, typewriting, printing, imprinting or affixing of names and addresses or addresses only on property to be mailed. The mailing may be done by the person doing the addressing or by another person. The process may include the preparation of Cheshire tapes, Dick tapes, cards, gummed labels, etc., to be affixed to, or enclosed in, the property so as to serve as addresses for that property and not to be used for any other purpose such as reproduction or reference.

(3) CONSUMERS OF MATERIALS. Persons engaged in the business of providing mailing services are consumers of materials used in performing those services.

(c) PRINTING RELATED TO MAILING.

(1) SALES OF PRINTED MATTER. Tax applies to charges for printed matter furnished to a customer by a person engaged in the business of providing mailing services to the same extent as to charges for printed matter generally, even though the printed matter is to be mailed. If such matter is printed by another person, it may be purchased for resale by giving a resale certificate. If the mailing service has reimbursed its vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the purchase of such matter, a ''tax-paid purchases resold'' deduction will be allowed.

(2) SEPARATE STATEMENT OF PRINTING CHARGES. Charges for printed matter should be separately stated on the invoice to the customer. If not separately stated, the amount subject to tax will be determined by the board based on information available to it.

History: Adopted April 22, 1966.
Amended and renumbered February 17, 1972, effective March 26, 1972.
Amended December 7, 1978, effective February 18, 1979. Revised subsection (c)(1) with regard to the allowance of a ''tax-paid purchases resold'' deduction;

revised subsection (c)(2) to provide a procedure for when charges for printed matter are not separately stated on the invoice.

Amended February 8, 1995, effective July 12, 1995. Subparagraphs (a)(1) and (4) amended to provide that charges for the transfer or use of magnetic tapes or similar devices are exempt from tax where a contract restricts their use to one time only and to delete an obsolete effective date. Subparagraphs (a)(2) and (b)(1) amended to correct clerical errors.

Regulation 1505. MORTICIANS.

Reference: Sections 6015, 6381, Revenue and Taxation Code.

(a) IN GENERAL.

(1) MORTICIANS AS RETAILERS. Morticians are retailers of caskets, boxes, vaults, and clothing. They also are retailers of any other tangible personal property furnished in connection with rendering their services if a separate charge is made for such property. Unless otherwise exempt, tax applies to the sales price of all tangible personal property sold by morticians.[1]

(2) MORTICIANS AS CONSUMERS. Morticians are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, and prayer books which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price to the mortician of all tangible personal property consumed by him.

(b) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.

(1) SALES IN INTERSTATE OR FOREIGN COMMERCE. The sale of a casket and other tangible personal property by a mortician, which he delivers or ships to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.

(2) SALES TO THE UNITED STATES. All or a portion of charges for funerals of veterans and other persons may be paid by the United States Veterans Administration or by the Social Security Administration. Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to $150, in addition to the regular funeral and burial allowance for veterans. Morticians may take a deduction for sales to the United States Government when claims filed by them with federal agencies are paid directly to the morticians regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption

[1] On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.

Regulation 1505. (Contd.)

even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the mortician as a credit against those charges.

In computing the allowable exemption, the funeral allowance and the interment allowance must be treated separately.

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services. None are to be allocated to accommodation cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a mortician has made a specific charge.

(B) Payments received directly from the United States Veterans Administration which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the mortician has made a specific charge.

(3) EXAMPLES OF APPLICATION OF AMOUNTS RECEIVED BY MORTICIANS DIRECTLY FROM A FEDERAL AGENCY. (Examples are at 6 percent rate.)

Mortician's invoice to client:	
Charges	
Services	$400.00
Casket	355.00
Vault	200.00
Suit	45.00
Subtotal	$1,000.00
Accommodation Cash Advances	
Cemetery Space and Opening	$50.00
Clergy	25.00
Music	15.00
Subtotal	$90.00
Total	$1,090.00
Sales Tax (6% of $355, $200 & $45)	36.00
Total	$1,126.00

Example 1. Funeral allowance only.

Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was $300. No interment allowance was received.

Since $600 of the $1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of $300 equals $180) is considered a sale of such property to the United States Government and is exempt from sales tax.

Regulation 1505. (Contd.)

Computation of Tax:		
Total Charges		$1,090.00
Less: Accommodation Advances	$90.00	
Exempt Services	400.00	
Sale to United States	180.00	670.00
Taxable Sale		$420.00
Tax at 6%		25.20
Taxable Sale Including Tax		$445.20

Example 2. Funeral allowance and interment allowance received by mortician.

Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was $300 as a funeral allowance and $150 as an interment allowance.

Since the total charges by the mortician related to interment were $250 (vault $200 plus cemetery space and opening $50), and the charge for tangible personal property related to interment was $200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of $150 equals $120) is considered a sale of such property to the United States Government and is exempt from sales tax.

Since $400 (casket $355 and suit $45) of the $800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of $300 equals $150) is considered a sale of such property to the United States Government and ix exempt from sales tax.

Computation of Tax:		
Total Charges		$1,090.00
Less: Accommodation Advances	$90.00	
Exempt Services	400.00	
Sale to United States Government ($120 plus $150)	270.00	760.00
Taxable Sale		$330.00
Tax at 6%		19.80
Taxable Sale Including Tax		$349.80

(4) ACCOMMODATION CASH ADVANCES. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.

(5) TAX-PAID PURCHASES RESOLD. A mortician may claim a ‘‘tax-paid purchases resold’’ deduction if the mortician reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.

(c) “PRE-NEED” AGREEMENTS. Where a mortician, cemetery association or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.

Regulation 1505. (Contd.)

An amount designated as "sales tax" in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with "pre-need" agreements until the services are rendered.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered September 16, 1970, effective October 18, 1970.
Amended October 25, 1972, effective November 30, 1972.
Amended May 1, 1974, effective June 5, 1974.
Amended May 1, 1974, effective July 21, 1974. Noted additional interment allowance from U.S. Veterans Administration and illustrated effect on computation of tax exempt sales to federal government.
Amended December 7, 1978, effective February 18, 1979. Subsection (b)(3) and (c) amended to delete language on excess tax reimbursement and subsection (b)(5) with regard to "tax-paid purchase resold" was reworded.
Amended April 9, 1980, effective June 19, 1980. In (b)(3), Examples 1 and 2, substituted "$300" for "$250," "$180" for "$150," for "$125" and revised the computations accordingly.

Regulation 1506. MISCELLANEOUS SERVICE ENTERPRISES.

References: Sections 6006, 6007, 6015, 6018.1, 6018.7, 6358, 6358.4 and 6363, Revenue and Taxation Code.

(a) LICENSED ARCHITECTS.

(1) IN GENERAL. Fees paid to licensed architects for their ability to design, conceive or communicate ideas, concepts, designs, and specifications are not subject to tax. Any plans, specifications, renderings or models or other instruments of service provided by a licensed architect under a licensed architect's contract or commission are integral to the licensed architect's services and are not subject to tax. The licensed architect is the consumer of any tangible personal property, including plans, specifications, renderings or models, used or transferred in the performance of professional services notwithstanding the fact that a fee may be added to the cost of the property and separately stated on a billing to the customer. If after the completion of the contract or commission the licensed architect provides additional copies of the original plans or specifications, or any models or renderings of an existing structure, the architect is regarded as making a sale of such copies, models or renderings.

(2) LICENSED ARCHITECT. A "licensed architect" is defined under the Business and Professions Code Chapter 3, Division 3, Section 5500 as follows:

> "As used in this chapter, architect means a person who is licensed to practice architecture in this state under the authority of this chapter."

A licensed architect preparing or being in responsible control of plans, specifications, and instruments of service is required to affix to those plans, specifications, and instruments of service their stamp or seal which bears the licensee's name, his or her

license number, the legend "Licensed Architect" and the legend "State of California," and which shall provide a means of indicating the renewal date of the license.

(3) ARCHITECTURAL PERSPECTIVISTS AND MODELERS. Architectural perspectivists do not act as "licensed architects." Architectural perspectivists are the retailers of renderings, prints and drawings they provide to architects or other consumers and tax applies to their entire charge for such items. Modelers do not act as "licensed architects." Modelers are the retailers of models they provide to architects or other consumers, and tax applies to their entire charge for such items.

(4) Licensed architects who produce renderings, prints, drawings or models pursuant to a contract that includes professional architectural services are not retailers of the renderings, prints, drawings or models they provide pursuant to that contract for architectural services. Tax does not apply to their charge for such items.

(b) BARBERS, BEAUTY SHOP OPERATORS, SHOE POLISHERS, LAUNDERERS AND CLEANERS.

(1) IN GENERAL. Barbers, beauty shop operators, shoe polishers, launderers and cleaners are the consumers of the supplies and other property used in performing their services, and tax applies with respect to the sale to them of the supplies and other property. They are retailers, however, of any such supplies or of used articles or other tangible personal property which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such sales.

(2) RENTALS. Launderers and cleaners are the consumers of linen supplies and similar articles, including towels, uniforms, coveralls, shop coats, dust cloths, and similar items, rented to others when an essential part of the rental contract is the furnishing of the recurring service of laundering or cleaning of the articles rented, and tax applies with respect to the sale to them of such articles.

(c) CIRCULATING LIBRARIES. When circulating libraries, which are engaged in the business of renting books to others, pay tax measured by the purchase price of such books either to the person from whom the books are purchased or to the board, tax does not apply to the amount charged for the rental of such books. Such libraries are retailers of new or used books which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such sales.

(d) DENTISTS AND DENTAL LABORATORIES. Dentists are consumers of the materials, supplies, dental laboratory products and other tangible personal property which they use in performing their services. Tax, accordingly, applies to the sale of the tangible personal property to them.

Dental laboratories are the retailers of the plates, inlays and other products which they manufacture for dentists or other consumers. Tax applies to their entire charges for such products regardless of whether a separate charge or billing is made for materials and manufacturing services.

Regulation 1506. (Contd.)

(e) GUN CLUBS. Gun clubs are consumers, not retailers, of clay pigeons or blue rocks furnished to members or patrons in connection with trapshooting or similar sports even though the charge for the service is measured by the number of clay pigeons or blue rocks used. The tax applies with respect to the sale of such property to the clubs.

(f) LICENSED HEARING AID DISPENSERS. Persons licensed as hearing aid dispensers by the Department of Consumer Affairs, Hearing Aid Dispensers Examining Committee, are consumers of hearing aids furnished or sold by them. The term "hearing aid" includes any necessary accessory or component part of the hearing aid which is fully worn on the body of the user such as cords, connector tubing, ear molds, or batteries, whether the part is sold or furnished separately or in conjunction with the hearing aid. The term also includes replacement and repair parts. Tax applies with respect to the sale of such products to licensed hearing aid dispensers.

Tax applies to the retail sale of such products by persons who are not licensed hearing aid dispensers.

(g) SUMMER CAMPS. The tax applies to gross receipts from the sale of meals or other tangible personal property at summer camps, whether operated by municipal or private corporations, or other parties. When a camp qualifies as a school or educational institution, tax, with respect to meals, applies in the same manner as to schools and educational institutions. To qualify as a school or educational institution for purposes of this regulation, the camp must conduct regularly scheduled classes, with required attendance, in charge of qualified instructors.

If a single charge is made for all of the privileges extended by the camp, a segregation must be made and the tax returned on that portion of the total charge representing taxable receipts from the sale of meals or other tangible personal property. In the absence of such a segregation, the taxable receipts from the sale of meals or other tangible personal property shall be determined by the board based on information available to it.

(h) TAXIDERMISTS. Taxidermists are consumers of the materials used in repairing, stuffing and mounting skins, heads, etc., of animals, birds, fish, and the like furnished by their customers, and tax applies with respect to the sale of such property to them. If, however, a separate charge for such property is made on the invoices to the customers at the fair retail selling price, the taxidermist is the retailer of the property and tax applies to such separate charge.

Tax applies to retail sales by taxidermists of skins, heads, mountings or other tangible personal property.

(i) LICENSED VETERINARIANS.

(1) DEFINITIONS. As used herein:

(A) The term "licensed veterinarian" means any person licensed as a veterinarian by the California Department of Consumer Affairs, Board of Examiners in Veterinary Medicine.

Regulation 1506. (Contd.)

(B) The term "drugs and medicines" includes substances or preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals and which is commonly recognized as a substance or preparation intended for this use. The term includes legend drugs, pills and capsules (other than vitamins), liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps if those soaps are available only to veterinarians. The term does not include vitamins, shampoos, pet foods, prescription diet foods, artificial diets, flea powders, and flea sprays.

(C) The term "professional services" includes the diagnosis and treatment of disease or trauma in animal life. It also includes the administration of drugs and medicines by means of, for example, injection, intravenous solution, or oral or bodily application.

(2) APPLICATION OF TAX.

(A) Licensed veterinarians are consumers of drugs and medicines which they use or furnish in the performance of their professional services. Accordingly, tax does not apply to a licensed veterinarian's charges to clients for such drugs and medicines, whether or not separately stated. Licensed veterinarians are also consumers of tangible personal property, other than drugs and medicines, which they use or which they furnish to clients without a separately stated charge. Tax applies to the sales of such drugs, medicines and other items to licensed veterinarians except:

1. Operative April 1, 1996, drugs or medicine which are purchased to be administered to animal life as an additive to feed or drinking water of food animals (as defined in Regulation 1587 (18 CCR 1587), "Animal Life, Feed, Drugs and Medicines") or of non-food animals which are being held for sale in the regular course of business, and the primary purpose of the drugs or medicines is the prevention and control of disease, or

2. Operative January 1, 1997, drugs or medicines which are purchased to be administered directly (e.g., orally, by injection, or by application to the body) to food animals and the primary purpose of the drugs or medicines is the prevention or control of disease of the food animals. Veterinarians remain consumers of drugs and medicines administered directly to non-food animals.

(B) Licensed veterinarians are retailers of drugs and medicines which they furnish for a consideration without performing specific related professional services. Licensed veterinarians are also retailers of tangible personal property, other than drugs and medicines, which they furnish to clients for a separately stated charge. Unless otherwise exempt, tax applies to charges made by licensed veterinarians to clients for such drugs, medicines and other items. See Regulation 1587 (18 CCR 1587), "Animal Life, Feed, Drugs and Medicines" for exemption for sales of feed, drugs, or medicines for certain animals. Tax applies to separately stated charges made for X-rays if the X-rays are delivered to clients.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended September 2, 1965, applicable August 1, 1965 Rulings 3 and 4 (Cal. Admin. Codes 1903 and 1904).
Effective May 1, 1940 Ruling 9 (Cal. Admin. Code 1909).

Regulation 1506. (Contd.)

Adopted November 3, 1969, as restatement of former Rulings 3 (Cal. Admin. Code 1903); 4 (Cal. Admin. Code 1904); 5 (Cal. Admin. Code 1905); 6 (Cal. Admin. Code 1906); 9 (Cal. Admin. Code 1909); 10 (Cal. Admin. Code 1910), effective December 5, 1969.

Amended June 22, 1983, effective October 7, 1983. In subsection (e), deleted last sentence and added new last sentence.

Amended May 1, 1985, effective May 31, 1985. A new subdivision (e), which defines the term ''hearing aids'', has been added and is entitled ''Licensed Hearing Aid Dispensers.'' It explains that licensed hearing aid dispensers are, as of January 1, 1985, the consumers of hearing aids which they furnish or sell. However, the section also states that tax will apply to retail sales of hearing aids when sold by persons who are not licensed hearing aid dispensers. Subdivision (e), which is entitled ''Summer Camps'' has been renumbered to subdivision (f). Subdivision (f), which is entitled ''Taxidermists'', has been renumbered to subdivision (g).

Amended July 30, 1986, effective November 7, 1986. In subdivision (h), added explanation that licensed veterinarians are consumers of certain drugs and medicines. In subdivision (h)(1)(A), added definition of term ''licensed veterinarian''. In subdivision (h)(1)(B), added definition of term ''drugs and medicines''. In subdivision (h)(1)(C), added definition of term ''professional services''. In subdivision (h)(2)(A), added explanation concerning application of tax to certain drugs and medicines by licensed veterinarians. In subdivision (h)(2)(B), added explanation that licensed veterinarians are retailers of certain drugs and medicines. The subdivision also specified the correct application of tax to certain charges made for X-rays.

Amended June 9, 1998, effective July 9, 1998. Amended subdivision (h) to incorporate provisions of Chapter 620, Statutes of 1995, and Chapter 954, Statutes of 1996. Subdivisions (a), (e), and (h) were amended to correct outdated terminology or references. Subdivision (h) was amended to delete an unnecessary effective date.

Amended June 17, 2000, effective September 15, 2000. Subdivision (a) added; former subdivisions (a)-(h) redesignated (b)-(i) accordingly.

Regulation 1507. TECHNOLOGY TRANSFER AGREEMENTS

Reference: Sections 6011 and 6012, Revenue and Taxation Code
Preston v. *State Board of Equalization* (2001) 25 Cal. 4th 197,105 Cal. Rptr. 2d 407.

(a) DEFINITIONS.

(1) ''Technology transfer agreement'' means an agreement evidenced by a writing (e.g., invoice, purchase order, contract, etc.) that assigns or licenses a copyright interest in tangible personal property for the purpose of reproducing and selling other property subject to the copyright interest. A technology transfer agreement also means a written agreement that assigns or licenses a patent interest for the right to manufacture and sell property subject to the patent interest, or a written agreement that assigns or licenses the right to use a process subject to a patent interest.

Regulation 1507. (Contd.)

A technology transfer agreement does not mean an agreement for the transfer of any tangible personal property manufactured pursuant to a technology transfer agreement, nor an agreement for the transfer of any property derived, created, manufactured, or otherwise processed by property manufactured pursuant to technology transfer agreement. A technology transfer agreement also does not mean an agreement for the transfer of prewritten software as defined in subdivision (b) of Regulation 1502, *Computers, Programs, and Data Processing*.

Example No. 1: Company X holds a copyright in certain tangible artwork. Company X transfers (temporarily or otherwise) its artwork to Company Y and, in writing, transfers (temporarily or otherwise) a copyright interest to Company Y authorizing it to reproduce and sell tangible personal property subject to Company X's copyright interest in the artwork. Company X's transfer of artwork and a copyright interest to Company Y constitutes a technology transfer agreement. Company Y's sales of tangible personal property containing reproductions of Company X's artwork do not constitute a technology transfer agreement.

Example No. 2: Company X holds patents for widgets and the process for manufacturing such widgets. Company X, in writing, transfers (temporarily or otherwise) its patent interests to sell widgets and the process used to manufacture such widgets to Company Y. Company X's transfer of its patent interests to Company Y constitutes a technology transfer agreement. Company Y's sale or storage, use, or other consumption of any widgets that it manufactures does not constitute a technology transfer agreement. Company Y's sale or storage, use, or other consumption of any tangible personal property used to manufacture widgets also does not constitute a technology transfer agreement.

Example No. 3: Company X manufactures and leases a patented medical device to Company Y. As part of the lease of the medical device, Company X also transfers to Company Y, in writing, a separate patent interest in a process external to the medical device that involves the use, application or manipulation of the medical device. Company X charges a monthly rentals payable for the equipment as well as a separate charge for each time the separate patented process external to the medical device is performed by Company Y. Company X's lease of the medical device to Company Y to perform the separately patented process is not a technology transfer agreement and tax applies to the entire rentals payable for the medical equipment. Company X's transfer of its separate patent interest for the right to perform the separate patented process external to the medical device is a technology transfer agreement. Company X's separate charges to Company Y for the right to perform the separate patented process external to the medical device are not subject to tax provided they relate to the right to perform the separate patented process, are not for the lease of the medical device, and represent a reasonable charge for the right to perform the separate patented process external to the medical device. Where the separate charges for the right to perform the separate patented process relate to the patented technology embedded in the internal design, assembly or operation of the medical device, Company X's separate charges for the right to perform the separate patented process are not pursuant to a technology transfer agreement and are instead part of the rentals payable from the lease of the medical device.

Regulation 1507. (Contd.)

(2) "Copyright interest" means the exclusive right held by the author of an original work of authorship fixed in any tangible medium to do and to authorize any of the following: to reproduce a work in copies or phonorecords; to prepare derivative works based upon a work; to distribute copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending; to perform a work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; to display a copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission. For purposes of this regulation, an "original work of authorship" includes any literary, musical, and dramatic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings, including phonograph and tape recordings; and architectural works represented or contained in tangible personal property.

(3) "Patent interest" means the exclusive right held by the owner of a patent issued by the United States Patent and Trademark Office to make, use, offer to sell, or sell a patented process, machine, manufacture, composition of matter, or material. "Process" means one or more acts or steps that produce a concrete, tangible and useful result that is patented by the United States Patent and Trademark Office, such as the means of manufacturing tangible personal property. Process may include a patented process performed with an item of tangible personal property, but does not mean or include the mere use of tangible personal property subject to a patent interest.

(4) "Assign or license" means to transfer in writing a patent or copyright interest to a person who is not the original holder of the patent or copyright interest where, absent the assignment or license, the assignee or licensee would be prohibited from making any use of the copyright or patent provided in the technology transfer agreement.

(b) APPLICATION OF TAX.

(1) Tax applies to amounts received for any tangible personal property transferred in a technology transfer agreement. Tax does not apply to amounts received for the assignment or licensing of a patent or copyright interest as part of a technology transfer agreement. The gross receipts or sales price attributable to any tangible personal property transferred as part of a technology transfer agreement shall be:

(A) The separately stated sale price for the tangible personal property, provided the separately stated price represents a reasonable fair market value of the tangible personal property;

(B) Where there is no such separately stated price, the separate price at which the tangible personal property or like (similar) tangible personal property was previously sold, leased, or offered for sale or lease, to an unrelated third party; or,

Regulation 1507. (Contd.)

(C) If there is no such separately stated price and the tangible personal property, or like (similar) tangible personal property, has not been previously sold or leased, or offered for sale or lease to an unrelated third party, 200 percent of the combined cost of materials and labor used to produce the tangible personal property. "Cost of materials" consists of those materials used or otherwise physically incorporated into any tangible personal property transferred as part of a technology transfer agreement. "Cost of labor" includes any charges or value of labor used to create the tangible personal property whether the transferor of the tangible personal property contributes such labor, a third party contributes the labor, or the labor is contributed through some combination thereof. The value of labor provided by the transferor of the tangible personal property shall equal the separately stated, reasonable charge for such labor. Where no separately stated charge for labor is made, the value of labor shall equal the lower of the taxpayer's normal and customary charges for labor made to third persons, or the fair market value of such labor performed.

(2) Tax applies to all amounts received from the sale or storage, use, or other consumption of tangible personal property transferred with a patent or copyright interest, where the transfer is not pursuant to a technology transfer agreement.

(3) Specific Applications. Tax applies to the sale or storage, use, or other consumption of artwork and commercial photography pursuant to a technology transfer agreement as set forth in Regulation 1540, *Advertising Agencies, Commercial Artists and Designers*.

History: Adopted March 27, 2002, effective July 6, 2002. Effectively implementing the decision in the case of *Preston* v. *State Board of Equalization* (2001) 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407.

Regulation 1521. CONSTRUCTION CONTRACTORS.

References: Sections 6006–6010, 6012, 6012.2, 6012.6, 6012.8, 6012.9, 6015, 6016, 6016.3, 6016.5, 6055, 6091–6095, 6203.5, 6241–6246, 6276, 6276.1, 6379, 6384, 6386, 6421, 6901.5, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) CONSTRUCTION CONTRACT.

(A) "Construction contract" means and includes a contract, whether on a lump sum, time and material, cost plus, or other basis, to:

1. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property, or

2. Erect, construct, alter, or repair any fixed works such as waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and

Regulation 1521. (Contd.)

water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries and chemical plants, or

3. Pave surfaces separately or in connection with any of the above works or projects, or

4. Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure thereon.x

(B) ''Construction contract'' does not include:

1. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment, or

2. The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

(2) CONSTRUCTION CONTRACTOR. ''Construction contractor'' means any person who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract. ''Construction contractor'' includes subcontractors and specialty contractors and those engaged in such building trades as carpentry, bricklaying, cement work, steel work, plastering, drywall installation, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air-conditioning, elevator installation and construction, painting, and persons installing floor coverings, including linoleum, floor tile, and wall-to-wall carpeting, by permanently affixing such coverings to a floor. ''Construction contractor'' includes any person required to be licensed under the California Contractors' State License Law (Business & Professions Code Sections 7000 et seq.), and any person contracting with the United States to perform a construction contract, whether such persons are formed or organized under the laws of this state, or another state or country.

(3) UNITED STATES CONSTRUCTION CONTRACTOR. ''United States construction contractor'' means a construction contractor who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract for the United States Government.

(4) MATERIALS. ''Materials'' means and includes construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. A list of typical items regarded as materials is set forth in Appendix A.

(5) FIXTURES. ''Fixtures'' means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed. A list of typical items regarded as fixtures is set forth in Appendix B.

Regulation 1521. (Contd.)

(6) MACHINERY AND EQUIPMENT. ''Machinery and equipment'' means and includes property intended to be used in the production, manufacturing or processing of tangible personal property, the performance of services or for other purposes (e.g., research, testing, experimentation) not essential to the fixed works, building, or structure itself, but which property incidentally may, on account of its nature, be attached to the realty without losing its identity as a particular piece of machinery or equipment and, if attached, is readily removable without damage to the unit or to the realty. ''Machinery and equipment'' does not include junction boxes, switches, conduit and wiring, or valves, pipes, and tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment, nor does it include items of tangible personal property such as power shovels, cranes, trucks, and hand or power tools used to perform the construction contract. A list of typical items regarded as machinery and equipment together with a list of typical items not regarded as machinery and equipment is set forth in Appendix C.

(7) TIME AND MATERIAL CONTRACT. ''Time and material contract'' means a contract under which the contractor agrees to furnish and install materials or fixtures, or both, and which sets forth separately a charge for the materials or fixtures and a charge for their installation or fabrication.

(8) LUMP SUM CONTRACT. ''Lump sum contract'' means a contract under which the contractor for a stated lump sum agrees to furnish and install materials or fixtures, or both. A lump sum contract does not become a time and material contract when the amounts attributable to materials, fixtures, labor, or tax are separately stated in the invoice.

(b) APPLICATION OF TAX.

(1) UNITED STATES CONSTRUCTION CONTRACTORS.

(A) Materials and Fixtures. United States construction contractors are consumers of materials and fixtures which they furnish and install in the performance of contracts with the United States Government. Either the sales tax or the use tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies, and equipment) to contractors for use in the performance of such contracts with the United States for the construction of improvements on or to real property in this state. The fact that the contract may provide principally for the manufacture or acquisition of tangible personal property is immaterial. The sales tax, but not the use tax, applies even though the contractor purchases the property as the agent of the United States.

(B) Machinery and Equipment. United States contractors are retailers of machinery and equipment furnished in connection with the performance of a construction contract with the United States Government. Tax does not apply to sales of machinery and equipment to United States contractors or subcontractors, provided title to the property passes to the United States before the contractor makes any use of it. Such sales are sales for resale, and the purchasing contractor may issue a resale certificate. A contractor who uses the machinery or equipment before title passes to

Regulation 1521. (Contd.)

the United States is the consumer of that machinery or equipment and either sales tax or use tax applies with respect to the sale to or the use by the contractor.

(2) CONSTRUCTION CONTRACTORS OTHER THAN UNITED STATES CONSTRUCTION CONTRACTORS.

(A) Materials.

1. In General. Construction contractors are consumers of materials which they furnish and install in the performance of construction contracts. Either sales tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor.

2. When Contractor is Seller. A construction contractor may contract to sell materials and also to install the materials sold. If the contract explicitly provides for the transfer of title to the materials prior to the time the materials are installed, and separately states the sale price of the materials, exclusive of the charge for installation, the contractor will be deemed to be the retailer of the materials.

In the case of a time and material contract, if the contractor bills his or her customer an amount for ''sales tax'' computed upon his or her marked up billing for materials, it will be assumed, in the absence of convincing evidence to the contrary, that he or she is the retailer of the materials.

If the sale occurs in this state, the sales tax applies to the contractor's (retailer's) gross receipts from the sale of the materials. If the sale occurs prior to the time the property is brought into this state, the contractor's (retailer's) customer is the consumer and his or her use (unless otherwise exempt) is subject to use tax measured by the sales price. The contractor must collect the use tax and pay it to this state.

(B) Fixtures.

1. In General. Construction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts and tax applies to their sales of the fixtures.

2. Measure of Tax.

a. In General. If the contract states the sale price at which the fixture is sold, tax applies to that price. If the contract does not state the sale price of the fixture, the sale price shall be deemed to be the cost price of the fixture to the contractor.

b. Determining Cost Price. If the contractor purchases the fixtures in a completed condition, the cost price is deemed to be the sale price of the fixture to him or her and shall include any manufacturer's excise tax or import duty imposed with respect to the fixture prior to its sale by the contractor.

If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him or her to other contractors.

If similar fixtures are not sold to other contractors ready for installation, then the cost price shall be deemed to be the amount stated in the price lists, bid sheets or other records of the contractor.

Regulation 1521. (Contd.)

If the sale price cannot be established in the above manner and the fixture is manufactured by the contractor, the cost price shall be deemed to be the aggregate of the following:

[1] Cost of materials, including such items as freight-in and import duties,

[2] Direct labor, including fringe benefits and payroll taxes,

[3] Specific factory costs attributable to the fixture,

[4] Any manufacturer's excise tax,

[5] Prorata share of all overhead attributable to the manufacture of the fixture, and

[6] Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the fixture. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or a fixture to a structure or other real property.

3. Exceptions—Leased Fixtures. In some instances the construction contractor may furnish and install a fixture for a person, other than the owner of the realty, who intends to lease the fixture in place as tangible personal property as provided in Section 6016.3 of the Revenue and Taxation Code and pay tax measured by rental receipts.

In this case the construction contractor may take a resale certificate from the lessor at the time of the transaction and the sale to the lessor will be considered to be a sale for resale. The resale certificate should indicate that the fixture is purchased for resale by the purchaser as tangible personal property under Section 6016.3 of the Revenue and Taxation Code.

(C) Machinery and Equipment.

1. In General. Construction contractors are retailers of machinery and equipment even though the machinery and equipment is furnished in connection with a construction contract. Tax applies to the contractor's gross receipts from such sales.

2. Measure of Tax.

a. In General. Tax applies to the gross receipts from the sale of machinery and equipment furnished and installed by a construction contractor. If the contract calls only for the furnishing and installation of machinery and equipment, tax applies to the total contract price less those charges excludable from gross receipts under Section 6012 of the Revenue and Taxation Code.

b. Lump Sum Contracts—Determining Gross Receipts. If the contract is for a lump sum and includes the furnishing and installation of materials, fixtures, and machinery and equipment, the gross receipts from the sale of the machinery and equipment shall be the price at which similar quantities ready for installation are sold at retail delivered in the market area where the installation takes place.

Regulation 1521. (Contd.)

If there is no such retail price for the machinery and equipment, then the gross receipts shall be determined from the contracts, price lists, bid sheets, or other records of the contractor.

If the gross receipts cannot be established in the above manner and the machinery and equipment is manufactured by the contractor, the gross receipts from the sale shall be the aggregate of the following:

[1] Cost of materials, including such items as freight-in and import duties,

[2] Direct labor, including fringe benefits and payroll taxes,

[3] Specific factory costs attributable to the machinery or equipment,

[4] Any manufacturer's excise tax,

[5] Prorata share of all overhead attributable to the machinery or equipment, including overhead attributable to manufacturing, selling, contracting, and administration, and

[6] Reasonable profit from the manufacture and sale of the machinery or equipment which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the machinery or equipment. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or the machinery or equipment to a structure or other real property.

(D) Cost Plus A Fee Contracts. When a contractor enters into a construction contract for a cost plus a fee or time and materials plus a fee, whether the fee is a lump sum or a percentage of costs, the fee is not included in the measure of tax. When the contractor is the manufacturer of the fixtures or machinery and equipment, the ''cost price'' of the fixtures and the gross receipts from the sale of the machinery and equipment shall be determined in accordance with (B) and (C) above.

(3) MISCELLANEOUS SALES BY CONTRACTORS. In addition to sales of fixtures and machinery and equipment, tax applies to all retail sales by contractors of tangible personal property, including parts, supplies, tools, construction equipment, buildings severed or to be severed by the contractor, and furniture, including furniture sold with a building, even though the building is sold ''in place.''

(4) PERMITS. Contractors engaged solely in performing construction contracts which do not involve the sale and installation of fixtures and who do not also engage in business as sellers or retailers are not required to hold seller's permits. However, if a contractor is a seller or retailer because he or she makes sales of fixtures, materials, or machinery and equipment, or other tangible personal property either in connection with or as part of a construction contract, or otherwise, he or she is required to hold a seller's permit.

(5) SUPPLIES AND TOOLS FOR SELF-USE. Contractors are the consumers of supplies such as oxygen, acetylene, gasoline, acid, thread-cutting oil, and tools and parts for tools, which they use in their business, and the tax applies to the sale of such supplies and tools to contractors.

Regulation 1521. (Contd.)

(6) EXEMPTION CERTIFICATES.

(A) Resale Certificates. Contractors holding valid seller's permits may purchase fixtures and machinery and equipment for resale by issuing resale certificates to their suppliers. They may not purchase materials for resale unless they are also in the business of selling materials.

A contractor cannot avoid liability for sales or use tax on materials or fixtures furnished and installed by him or her by taking a resale certificate from the prime contractor, interior decorators, designers, department stores, or others. However, under the circumstances described in subsection (b)(2)(B)3., a contractor may take a resale certificate for fixtures furnished and installed by him or her for a person other than the owner of the realty.

(B) Exemption Certificates for Out-of-State Use. Sales tax does not apply to sales of tangible personal property to a construction contractor who holds a valid California seller's permit when the property is used by the contractor outside this state in his or her performance of a contract to improve real property and as a result of such use the property is incorporated into and becomes a part of real property located outside this state. This exemption is available only if at the time of the purchase the contractor certifies in writing to the seller that he or she holds a valid California seller's permit (giving the number of that permit and identifying the property purchased) and states that the property will be used in the manner stated above. The certificate must be signed by the contractor or an authorized employee. Such a certification may appear in the body of a purchase order which bears the signature of the purchaser. Any certificate given subsequent to the time of purchase will not be recognized.

If the property purchased under a certificate is used by the contractor in any other manner or for any other purpose than stated in the certificate, the contractor shall be liable for sales tax as if he or she were a retailer making a retail sale of the property at the time of such use, and the sale price of the property to him or her shall be deemed the gross receipts from the sale.

(C) Deductions for Tax-Paid Purchases Resold. A contractor may claim a "tax-paid purchases resold" deduction for any property of which he or she is the retailer when he or she has reimbursed his or her vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property prior to making any use of it. In the event that the contractor sells short ends or pieces which are not used other than in severing them from larger units purchased by him or her and as to which he or she has paid sales tax reimbursement or use tax, he or she may claim the deduction for tax-paid purchases resold, but the amount of the deduction shall not exceed the price at which he or she sells such short ends or pieces.

(c) PARTICULAR APPLICATIONS.

(1) DRAPERIES AND DRAPERY HARDWARE. Persons who contract to sell and install draperies including drapery hardware, such as brackets, rods, tracks, etc., are retailers of the items which they furnish and install.

Regulation 1521. (Contd.)

Tax applies to the entire contract price exclusive of the charge for installation which charge should be separately stated. Installers who furnish drapery hardware or other tangible personal property may accept resale certificates from department stores or other sellers to furnish and install the draperies and drapery hardware.

The department stores or other sellers furnishing resale certificates are required to pay the tax to the state upon their selling price of the draperies and drapery hardware, exclusive of installation charges. The installer should segregate his or her installation charge in order that the department store or other seller may properly segregate its charge attributable to installation for purposes of determining its taxable gross receipts.

(2) PREFABRICATED CABINETS. A cabinet will be considered to be ‘‘prefabricated’’ and a ‘‘fixture’’ when 90 percent of the total direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty. In determining this 90 percent, the total direct cost of all labor and materials in fabricating the cabinet to the point of installation will be compared to the total direct cost of all labor and materials in completely fabricating and installing the cabinet. If more than one cabinet is fabricated and installed under the contract, each cabinet will be considered separately in determining whether the cabinet is prefabricated.

(3) PREFABRICATED BUILDINGS. Prefabricated units such as commercial coaches, house trailers, etc., registered with the Department of Motor Vehicles or the Department of Housing and Community Development, are tangible personal property even though they may be connected to plumbing and utilities. A mobile home which meets or is modified to meet, all applicable building codes and regulations and which is permanently affixed to realty, is an improvement to realty and is not personal property. A contract to furnish and install a prefabricated or modular building which is not a factory-built school building (relocatable classroom) is a construction contract whether the building rests in place by its own weight or is physically attached to realty. It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

Generally, a contract to furnish and install a small prefabricated building, such as a shed or kiosk, which is movable as a unit from its site of installation, is a construction contract only if the building is required to be physically attached to real property by the seller, upon a concrete foundation or otherwise. The sale of such a unit to rest in place by its own weight, whether upon the ground, a concrete slab, or sills or piers, is not a construction contract even though the seller may deliver the unit to its site of use.

Prefabricated or modular buildings which are ‘‘factory-built housing’’ where permanently affixed to the realty are improvements to realty. The manufacturer of factory-built housing who contracts to furnish and install the factory-built housing manufactured by him or her is the consumer of the materials used in building and installing the factory-built housing and the retailer of the fixtures. Tax applies as provided in (b) above.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1521. (Contd.)

(4) FACTORY-BUILT SCHOOL BUILDINGS.

(A) General. On and after September 26, 1989, a contract to furnish and install a factory-built school building is not a construction contract but rather is a sale of tangible personal property.

(B) Definitions.

1. "Factory-built School Building." The term "factory-built school building" (relocatable classroom) means and includes:

A. for the period September 26, 1989 through September 12, 1990, any building designed to be used as a school building as defined in Sections 39214 and 81165 of the Education Code and so used. A factory-built school building must be designed in compliance with state laws for school construction and approved by the structural safety section in the office of the State Architect. It must be wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a schoolsite.

B. effective September 13, 1990, any building which is designed or intended for use as a school building and is wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a site owned or leased by a school district or a community college district. A factory-built school building must be designed and manufactured in accordance with building standards adopted and approved pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and must be approved by the structural safety section in the office of the State Architect.

The term does not include buildings licensed by either the Department of Motor Vehicles or the Department of Housing and Community Development. The term also does not include prefabricated or modular buildings which are similar in size to, but which are not, "factory-built school buildings". It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

2. "Consumer."

A. For the period September 26, 1989 through September 12, 1990, the term "consumer" as used herein means either (1) a school or a school district or (2) a contractor who purchases a factory-built school building for the purpose of fulfilling the requirements of an existing contract with a school or school district to furnish and install such building.

B. Effective September 13, 1990, the term "consumer" as used herein means either (1) a school district or a community college district or (2) a contractor who purchases a factory-built school building for the purpose of fulfilling the requirements of an existing contract with a school district or a community college district to furnish and install such building.

(C) Place of Sale. The place of sale or purchase of a factory-built school building is the place of business of the retailer regardless of whether the sale of the building includes installation or whether the building is placed upon a permanent foundation.

Regulation 1521. (Contd.)

(D) Application of Tax.

1. Tax applies to 40 percent of the sales price of the building to the consumer excluding any charges for placing the completed building on the site. The sales price of the building shall include amounts representing tangible personal property installed in the building by a subcontractor, whether prior to or after installation of the building at the site, provided such installation is called for in the prime contract for the building.

A separate contract to furnish and install tangible personal property in a factory-built school building after installation of the building at the site is a construction contract and tax applies as in (b) above. Any contract or subcontract for site preparation (e.g., foundation) is a construction contract and tax applies as in (b) above.

2. The sale of a factory-built school building to a purchaser who will resell the building without installation is a sale for resale and the seller may accept a resale certificate from the purchaser. If the purchaser then sells to a contractor who has an existing contract to install the building on a school site, tax will apply as in (c)(4)(D)1. above. If tax has been paid on the purchase price of a factory-built school building which is subsequently resold for installation, a tax-paid purchases resold deduction may be taken as provided in Regulation 1701 (18 CCR 1701).

(E) Exclusion Certificate. For the period September 26, 1989, through September 12, 1990, if the purchaser certifies in writing to the retailer that the factory built school building purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 60% of the gross receipts or sales price from the measure of tax and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of tax measured by 60% of the sales price. For the above stated period, all retailers who made retail sales of ‘‘factory-built school buildings’’ claimed to be subject to tax measured by 40 percent of the sales price must obtain from the ‘‘consumer’’ a signed certificate substantially in the form set forth below.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1521. (Contd.)

CLAIM FOR 60% EXCLUSION FROM TAX ON PURCHASE OF FACTORY-BUILT SCHOOL BUILDINGS
(Sec. 6012.6, Rev. & Tax. Code)

I hereby certify that the factory-built school building that I

_____
(Name of Purchaser-Consumer)

am purchasing under the authority of this certificate from

_____
(Name of Retailer)

will be used as a school building as defined in Sales and Use Tax Regulation 1521. My seller's permit number, if any, is_____.

I further certify that I understand and agree that if the property purchased under the authority of this certificate is used by the purchaser for any purpose other than indicated above, the purchaser shall be liable for payment of tax to the State Board of Equalization at the time of such use measured by 60% of the sales price of the factory-built school building.

Signed by_____
(Name of Purchaser)

As:_____
(Owner, Partner, Purchasing Agent, etc.)

Date_____

(5) MOBILEHOMES INSTALLED FOR OCCUPANCY AS RESIDENCES. Operative July 1, 1980, a special measure of sales or use tax is provided for a mobilehome sold to be affixed to realty for occupancy as a residence.

A mobilehome dealer who sells a new mobilehome to a construction contractor to be affixed to land for occupancy as a residence is the ''retailer-consumer'' of the property and is required to pay tax for the period in which the sale was made by the dealer measured by an amount equal to 75 percent of the retailer-consumer's purchase price of the mobilehome.

A construction contractor who withdraws a new mobilehome from an inventory purchased for resale to be affixed to realty for occupancy as a residence in the performance of a construction contract is required to pay tax measured by 75 percent of the purchase price by his or her mobilehome vendor except where the purchase is made directly from a mobilehome manufacturer. In the absence of satisfactory evidence of the vendor's purchase price it shall be presumed that the measure of tax for the transaction is an amount equivalent to 60 percent of the sales price of the mobilehome to the construction contractor.

A mobilehome manufacturer who sells a new mobilehome directly to a construction contractor for installation to real property for occupancy as a residence is required to pay tax measured by 75 percent of the sales price at which a similar mobilehome ready for installation would be sold by the manufacturer to a retailer-consumer in this state. A construction contractor who withdraws a new mobilehome from an inventory purchased from a manufacturer for resale must pay tax measured by 75 percent of his or her purchase price.

Regulation 1521. (Contd.)

A mobilehome manufacturer who performs a construction contract by permanently affixing a new mobilehome to real property is the consumer of the material and the retailer of fixtures installed by him or her and the tax applies as set forth in paragraph (b) above.

Reference should also be made to the provisions of Regulation 1610.2 for additional interpretative rules relating to custom additions to the mobilehome prior to sale, transfers of non-vehicle items, and the application of the tax to a purchase made from an out-of-state retailer.

(6) REPAIR CONTRACTS. A contract to repair a fixture in place or a fixture the contractor is required by the contract to reaffix to the realty is a construction contract. Sales or use tax applies to the gross receipts or sales price of the parts sold by a contractor who is a retailer under this provision. Either sales tax or use tax applies to the sales price of the parts sold to or used by a contractor who is a consumer under this provision.

(A) United States Construction Contractors. A United States construction contractor is the consumer of the parts furnished in the performance of a construction contract to repair a fixture.

(B) Construction Contractors Other Than United States Construction Contractors.

1. A contractor is the retailer of the parts furnished in the performance of a construction contract to repair a fixture when the sale price of the parts is billed separately from the repair labor.

2. A contractor is the consumer of the parts furnished in the performance of a lump sum construction contract to repair a fixture.

(7) ELEVATOR INSTALLATIONS. A large number of components are included in the installation of an elevator system. Those portions constituting the cage or platform and its hoisting machinery are fixtures. The balance of the installation, if attached to a structure or other real property will generally be ‘‘materials.’’

Similarly, installation of escalators and moving sidewalks are in part fixtures and in part materials.

Following are examples of components constituting part of the cage or platform and its hoisting machinery, and which are fixtures:

alarm bell
cab or car
car doors
car platform and sling
door hanger on cab
door openers
door operator on cab or car
door safety edge on cab
door sills on cab
electronic door protector
jack assembly
motors
power units and control boxes
pumps
pushbuttons on cab
wire and piping (which are components of a fixture)

Regulation 1521. (Contd.)

Following are examples of components constituting ‘‘materials’’ when attached to realty:

car guides
casing section of jack assembly
guide rails
hoistway doors
hoistway door frames
hoistway door safety edge
hoistway door sills and jams
hoistway door supports
hoistway entrance
pushbuttons on hoistway
rail brackets
sill, struts
sound insulating panels on ‘‘materials’’
structural steel (unless part of cab, car, or other ‘‘fixture’’)
valve strainer
wire and piping attached to ‘‘materials’’

Following are examples of components constituting parts of escalators or moving sidewalks which are fixtures:

staircase
moving sidewalk
moving handrails
chains
sprockets
motors
other operating mechanisms

(8) TELEPHONE SWITCHBOARDS AND INSTRUMENTS. Telephone switching equipment installed in a building specifically designed to accommodate the equipment or attached to a building or structure in a manner such that its removal would cause damage to the equipment or building in which it is installed will be considered to be ‘‘fixtures’’ under paragraph (a) (5) of this regulation.

Telephone handsets, modular switching equipment and standardized, off-shelf, general purpose switching equipment sold for use in general purpose office buildings constitute machinery and equipment under paragraph (a) (6) of this regulation. Handsets, modular switching equipment and standardized equipment were previously classified as fixtures.

This change in classification shall be applied prospectively only with respect to construction contracts entered into on and after July 1, 1988, by contractors other than United States construction contractors.

(9) DEEP-WELL AGRICULTURAL PUMPS. A deep-well agricultural pump is tangible personal property if installed so that it rests in position by force of gravity and is not otherwise affixed to the land.

The pump is a fixture if:

(A) It is affixed to the land such as by concrete, bolts or screws,

(B) It is physically connected to an irrigation system such as by pipes or couplings so as to become an integral part of the system, or

(C) It is enclosed by a pump house or other building or structure.

(10) REMOTE CONTROL GARAGE DOOR OPENERS. Remote control garage door opening units are fixtures. Portable transmitter units furnished pursuant to a construction contract are deemed to be fixtures and are taxable as provided in subdivision (b)(2)(B). Sales of portable transmitter units not a part of a construction contract, as, for example, sales of replacement units, are retail sales of tangible personal property and subject to tax as such.

Regulation 1521. (Contd.)

(11) EXCESS REIMBURSEMENT. The excess tax reimbursement provisions of Regulation 1700 apply to construction contractors.

(12) ON-PREMISE ELECTRIC SIGNS

(A) An on-premise electric sign is any electrically powered or illuminated structure, housing, sign, device, figure, statuary, painting, display, message, placard, or other contrivance or any part thereof affixed to real property and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes: 1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located, or 2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been erected.

(B) Application of Tax. An on-premise electric sign is a fixture and tax applies to the sale price of the sign. Notwithstanding the provisions of 1521(b)(2)(B), operative October 1, 2000, if the contract does not state the sale price of the sign, tax applies to 33 percent of the contract price of on-premise electric signs that are furnished and installed by the seller. ''Contract price'' includes charges for materials, fabrication labor, installation labor, overhead, profit, and other charges associated with the sale and installation of the sign. If a contract provides that a contractor is to install an on-premise electric sign furnished by a third party, the charges for installation are not taxable. If a seller furnishes but does not install an on-premise electric sign, the seller is a retailer of the sign and tax applies to the total contract price.

Separately stated charges for transportation are subject to tax as defined in Regulation 1628, *Transportation Charges.*

Appendix A. The following is a list of typical items regarded as materials:

Asphalt
Bricks
Builders' hardware
Caulking Material
Cement
Conduit
Doors
Ducts
Electric wiring and connections
Flooring
Glass
Gravel
Insulation
Lath
Lead
Lime
Linoleum
Lumber
Macadam
Millwork
Mortar
Oil
Paint
Paper
Piping, valves, and pipe fittings
Plaster
Power poles, towers, and lines
Putty
Reinforcing mesh
Roofing
Sand
Sheetmetal
Steel
Stone
Stucco
Tile
Wall coping
Wallboard
Wallpaper
Wall-to-wall carpeting (when affixed to the floor)
Weather stripping
Windows
Window screens
Wire netting and screen
Wood preserver

Regulation 1521. (Contd.)

Appendix B. The following is a list of typical items regarded as fixtures:

Air conditioning units
Awnings
Burglar alarm and fire alarm fixtures
Cabinets, counters, and lockers (prefabricated)
Cranes (including moving parts of cranes) affixed or annexed to a building, structure or fixed work) [1]
Electric generators (affixed to and accessory to a building, structure or fixed works)
Elevators, hoists, and conveying units
Furnaces, boilers, and heating units
Lighting fixtures
Plumbing fixtures
Refrigeration units
Signs
Television antennas
Transformers and switchgear
Vault doors and equipment
Venetian blinds

Appendix C. The following are lists of typical items regarded as:

Machinery and Equipment

Drill presses
Electric generators (unaffixed, or, if affixed, which meet the requirements of subparagraph (a)(6))
Lathes
Machine tools
Printing presses

Not Machinery or Equipment

Fixtures and materials as defined in this regulation
Wiring, piping, etc., used as a source of power, water, etc., for machinery and equipment
Radio transmission antennas
Large tanks (i.e., over 500 barrel capacity)
Fire alarm systems
Street light standards
Cooling towers other than small prefabricated cooling units

History: Effective July 1, 1939.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended September 2, 1965, applicable as amended September 17, 1965.

Amended and renumbered November 3, 1971, effective December 3, 1971.

Amended February 4, 1976, effective April 1, 1976. Rewrote and expanded regulation for clarity, combined Regulation 1615, added particular applications, and applied Regulation 1521 definition of "fixture" to U.S. Contractors.

Amended August 17, 1976, effective September 19, 1976. Clarified "U.S. Government", limited exemption certificate, and clarified "generators" in appendices.

Amended December 7, 1978, effective February 18, 1979. Subsections (a)(3), (b)(1)(A), and (b)(1)(B) no longer reference instrumentalities of the United States; subsection (b)(1)(A) was amended to apply sales tax to the sale of tangible personal property to contractors for use on construction contracts with the United States; amends subsection (c)(7) to provide that the section only applies to transactions prior to 1/1/79.

Amended August 1, 1980, effective August 22, 1980, operative July 1, 1980. On first page, added (c) (4) and re-numbered following subsections; in (c) (3), first sentence, deleted "mobile homes" and substituted "commercial coaches"; in third paragraph, deleted "as defined in Regulation 1521.2," from first sentence, and deleted second sentence; added (c) (4), and renumbered following sections.

[1] Moving parts of cranes are classified as machinery and equipment when furnished and installed pursuant to fixed price construction contracts entered into prior to July 1, 1985.

Regulation 1521. (Contd.)

Amended November 19, 1980, effective January 16, 1981. In (c)(3) corrected typographical error. In (c)(4), third paragraph, substituted ''construction contractor'' for ''any person,''; added ''in the performance of a construction contract,'' and added exception for purchases made directly from a mobilehome manufacturer; substituted ''construction contractor'' for ''person withdrawing and affixing the property to realty,''. In fourth paragraph, added provision re withdrawal by construction contractor of new mobilehome from inventory purchased from a manufacturer.

Amended December 1, 1983, effective April 14, 1984. In (c)(3) added reference to the Department of Housing and Community Development. In (c) added new (c)(8) and renumbered former (c)(8) to (c)(9); deleted former text and added reference to Regulation 1700. Deleted former subdivision (d). In appendix C changed reference to subparagraph (a)(6).

Amended February 5, 1986, effective May 11, 1986. Deletes the term ''Moving parts of cranes'' as machinery and equipment under Appendix C and adds the term ''Cranes'' to Appendix B as fixtures with a footnote that moving parts of cranes are classified as machinery and equipment when furnished and installed pursuant to fixed price construction contracts entered into prior to July 1, 1985.

Amended May 3, 1988, effective July 2, 1988. Added subdivision (c) (7) to make clear and specific that certain types of telephone equipment are classified as ''fixtures'' whereas other types of telephone equipment are classified as ''machinery and equipment''. In Appendix B, deleted reference to ''telephone switchboards and instruments''.

Amended April 5, 1989, effective June 17, 1989. The change to subdivision (c)(3) provides that construction contracts include contracts to furnish and install a relocatable classroom, or other prefabricated or modular building of similar size, whether the building rests in place by its own weight or is physically attached to the realty. The revised subdivision also provides that a contract to furnish and install a small prefabricated building such as a shed or kiosk, which is moveable from its installation site, is a construction contract only if the building is required to be physically attached to the realty by the seller.

Amended June 5, 1991, effective August 18, 1991. Modified the definition of the term ''factory-built school building'' and deleted the provisions relating to the liability of the purchaser for taxes if the building is used for some purpose other than a school. Amended paragraph (c)(3) to remove reference to factory-built school buildings (relocatable classrooms). Added paragraph (c)(4).

Amended February 8, 1995, effective July 16, 1995. Amended subparagraph (c)(6) to include, as subparagraphs (A) and (B), specific examples of how tax applies to both United States contractors and other construction contractors when performing repair construction contracts. Deleted gender-based language from subparagraphs (a)(2) & (3), (b)(2)(A)2., (b)(2)(B)2.b., (b)(4), (b)(6), (c)(3), and (c)(5). Corrected clerical errors in (c)(3) and (c)(4)(E).

Amended November 18, 1998, effective February 13, 1999. Subdivision (a)(2) amended by adding sentence '' 'Construction contractor' . . . country.''

Amended April 5, 2000, effective May 18, 2000. Added subdivision (c)(12) to explain the application of tax to on-premise electric signs, as defined.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1521.4. FACTORY-BUILT HOUSING.

References: Section 6012.7, Revenue and Taxation Code.

(a) GENERAL. ''Gross receipts'' from the sale of factory-built housing, and the ''sales price'' of factory-built housing, sold or stored, used, or otherwise consumed in this state shall be 40 percent of the sales price of the factory-built housing to the consumer.

(b) DEFINITIONS.

(1) Factory-built housing includes only those particular models or units that are approved by the Department of Housing and Community Development of the State of California (Department) or by the local building authority under contract with the Department as factory-built housing within Section 19971 of the Health and Safety Code. Those models or units approved as factory-built housing by the Department or local building authority bear an insignia of approval issued by the Department under Section 19980 of the Health and Safety Code and attached at the factory before shipment.

Such models or units include:

(A) A residential building, dwelling unit, or an individual dwelling room or combination of rooms thereof, or building component, assembly, or system, so manufactured that all of its parts cannot be inspected prior to affixation to realty without disassembly, damage, or destruction, including units designed for use as part of an institution for resident or patient care, which is either wholly manufactured or is in substantial part manufactured at an offsite location to be wholly or partially assembled onsite in accordance with regulations adopted by the Commissioner of Housing and Community Development of the State of California or in accordance with applicable local building requirements if such factory-built housing is inspected and approved by the local enforcement agency at the place and time of manufacture pursuant to Section 19990 of the Health and Safety Code.

(B) ''Modular housing,'' which is a three dimensional box or cube-shaped structure or structures making up one or more rooms of a residential building, or an institution or part thereof for resident or patient care.

(C) ''Sectionalized housing,'' which generally consists of two modules which form a total living unit of a residential building, or an institution or part thereof for resident or patient care.

(D) ''Modular,'' ''utility,'' or ''wet cores,'' which are three-dimensional habitable rooms or modules and which are generally comprised of a kitchen or a bathroom or bathrooms of a residential building, or an institution or part thereof for resident or patient care.

(E) ''Fixtures'' and ''materials,'' as defined in regulation 1521, which were included as items sold or purchased as a part of the factory-built housing package and installed in the resulting structure.

Regulation 1521.4. (Contd.)

(2) Factory-built housing does not include:

(A) A ''mobilehome,'' as defined in Sections 18008 and 18211 of the Health and Safety Code, which provide that a mobilehome is a structure transportable in one or more sections designed and equipped to contain not more than two dwelling units to be used with or without a foundation system.

(B) ''Precut housing packages'' where more than 50 percent of the package consists of precut lumber only. This percentage is determined by using the ratio of direct labor and material costs applicable to the precut lumber to the total direct labor and material costs applicable to the housing package.

(C) ''Panelized construction,'' such as walls or components that may become one or more rooms of a building. However, ''factory-built housing'' does include panelized construction sold by the builder or manufacturer of the panelized construction and which consists of a package including wall panels, floors, and a roof that will form a complete housing structure.

(D) Porches, awnings, materials, fixtures, or components which are not purchased as a part of the factory-built housing package.

(E) Freestanding appliances, such as freestanding refrigerators, stoves, washers, and dryers, which are included in the sales or purchase price of, and installed as part of, the factory-built housing package.

(F) Rugs (except wall-to-wall carpets), draperies, free-standing cabinets, furniture, or other furnishings.

(3) The term ''consumer'' as used herein means any person who purchases factory-built housing for use in erecting or remodeling a building or other structure on land to be used for residential dwelling purposes or as an institution or part thereof for resident or patient care.

(c) APPLICATION OF TAX.

(1) Tax applies to 40 percent of the sales price at which factory-built housing is sold to a ''consumer'' as defined herein. If factory-built housing is purchased free of tax for resale and is subsequently installed and assembled into buildings by the purchaser or on his behalf, tax applies to 40 percent of the sales price of the factory-built housing provided such buildings are to be used for residential dwelling purposes, or as an institution or part thereof for resident or patient care. If any other use is made of the factory-built housing, tax applies to the full sales price, or to 60 percent of the sales price if purchased tax paid with tax measured by 40 percent of the sales price. Taxable use of property purchased free of tax occurs when the property is allocated for use in construction and tax should be reported and paid with the return for that period.

(2) Tax applies as in regulation 1521 to:

(A) ''Factory-built housing'' furnished and installed by the manufacturer thereof.

Regulation 1521.4. (Contd.)

(B) Materials used at the jobsite to construct foundations, rough plumbing, or other improvements to realty which are installed preparatory to installing or affixing the factory-built housing and which were not sold or purchased as a part of the factory-built housing package.

(C) Fixtures and other items installed in the structure and which are not sold or purchased as a part of the factory-built housing package.

(d) EXCLUSION CERTIFICATE.

All retailers who make retail sales of ''factory-built housing'' claimed to be subject to tax measured by 40 percent of the purchase price must obtain from the ''consumer'' a signed certificate substantially in the form set forth below. Each person using a certificate of this nature must provide his own forms. They will not be supplied by this board.

The form of certificate prescribed by the board is:

CLAIM FOR 60% EXCLUSION FROM TAX ON PURCHASE OF FACTORY-BUILT HOUSING

(Sec. 6012.7, Rev. & Tax. Code)

I hereby certify that the factory-built housing that I

_____
(Name of Purchaser-Consumer)

am purchasing under the authority of this certificate from

_____
(Name of Supplier)

will be consumed by me in erecting or remodeling a building or other structure on land to be used for residential purposes or as an institution or part thereof for resident or patient care. My seller's permit number if any is _____ .

I further certify that I understand and agree that if the property purchased under the authority of this certificate is used by the purchaser for any purpose other than indicated above, the purchaser shall be liable for payment of tax to the State Board of Equalization measured by 60% of the sales price of the factory-built housing at the time of such use.

Date Certificate Given_____

Signed by_____
(Name of Purchaser)

As:_____
(Owner, Partner, Purchasing Agent, etc.)

(e) BOOKS AND RECORDS. All retailers who claim that their gross receipts from the sale of factory-built housing by reason of the provisions of this regulation is limited to 40 percent of the sales price of such housing must keep adequate and complete records in accordance with regulation 1698.

The certificates must be attached to or filed in such a manner that they may readily be checked against purchase orders or any document evidencing a sale to the persons claiming that the tax due is limited to 40 percent of the sales price of the factory-built housing.

Regulation 1521.4. (Contd.)

All purchasers must keep adequate and complete records in accordance with regulation 1698 and such additional records as will clearly support that all property purchased under the certificate was used exclusively under conditions set forth in this regulation.

(f) OPERATIVE DATE. The provisions of this regulation are operative on and after January 1, 1981.

History: Adopted April 2, 1981, effective August 19, 1981.

Regulation 1524. MANUFACTURERS OF PERSONAL PROPERTY.

References: Sections 6011, 6012, 6018.6, Revenue and Taxation Code.
Bad Debts, see Regulation 1642.
Tax Paid Purchases Resold, see Regulation 1701.

(a) IN GENERAL. Tax applies to the gross receipts from retail sales (i.e., sales to consumers) by manufacturers of tangible personal property the sale of which is not otherwise exempted. The measure of the tax is the gross receipts of, or sales price charged by, the manufacturer, from which no deduction may be taken by the manufacturer on account of the cost of the raw materials or other components purchased, or labor or service costs of any step in the manufacturing process, including work performed to fit the customer's specific requirements, whether or not performed at the customer's specific request, or any other services that are a part of the sale. In addition, no deduction may be taken on account of interest paid, losses or any other expense.

(b) PARTICULAR APPLICATIONS.

(1) ALTERATIONS TO NEW CLOTHING FOR MEN, WOMEN AND CHILDREN.

(A) Definition of Alteration. "Alteration," as herein used, means and includes any work performed upon new clothing to meet the requirements of a customer, whether the work involves the addition of material to the garment, the removal of material from the garment, the rearranging or restyling of the garment, or any other change therein.

(B) Application of Tax.

1. In General. Charges for alterations to new clothing are subject to tax. It is immaterial whether the charges for the alterations are separately stated or are included in the price of the garment. It also is immaterial whether the alterations are performed by the seller of the garment or by another person.

(2) ALTERATIONS BY CLOTHES CLEANING OR CLOTHES DYEING ESTABLISHMENT. A person who operates a clothes cleaning or clothes dyeing establishment is the consumer of property used or furnished in altering new and used clothing, provided that

Regulation 1524. (Contd.)

(A) 75 percent or more of the establishment's total gross receipts represent charges for garment cleaning or dyeing services and

(B) No more than 20 percent of the establishment's total gross receipts during the preceding calendar year were from the alteration of new and used garments.

If both requirements are met, sales tax shall not apply to the operator's charges for alterations of new or used clothing. However, that person is a retailer of any other tangible personal property sold to consumers in the regular course of business, and sales tax shall apply to the gross receipts from those sales.

(3) PAINTING, POLISHING, FINISHING. Tax applies to charges for painting, polishing, and otherwise finishing tangible personal property in connection with the production of a finished product for consumers, whether the article to be finished is supplied by the customer or by the finisher. Tax does not apply to charges for painting or finishing real property.

History: Effective July 1, 1939.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered August 4, 1970, effective September 5, 1970.
Amended April 8, 1987, effective August 8, 1987. In subdivision (b)(1)(2), added reference to application of tax to persons who operate clothes cleaning or clothes dyeing establishments.

Regulation 1525. PROPERTY USED IN MANUFACTURING.

Reference: Sections 6007–6009.1, Revenue and Taxation Code.

(a) Tax applies to the sale of tangible personal property to persons who purchase it for the purpose of use in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment, and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

(b) Tax does not apply to sales of tangible personal property to persons who purchase it for the purpose of incorporating it into the manufactured article to be sold, as, for example, any raw material becoming an ingredient or component part of the manufactured article.

(c) PARTICULAR APPLICATION OF NEW OAK WINE BARRELS. Tax does not apply to sales of new, used, or re-coopered oak barrels to persons who purchase the barrels for the purpose of physically incorporating oak into wine to be sold. Re-coopered barrels have the inner surface shaved off to expose new wood. The use of oak wine barrels as a container during the manufacturing process is incidental to the primary purpose of incorporating oak into the wine.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1525. (Contd.)

(d) PARTICULAR APPLICATION OF BRANDY BARRELS. Tax does not apply to sales of new or used oak barrels to persons who purchase the barrels for the purpose of physically incorporating oak into brandy to be sold. The use of the barrels as containers during the manufacturing process is incidental to the primary purpose of incorporating oak into the brandy.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended by renumbering November 3, 1971, effective December 3, 1971.
Amended January 10, 1996, effective April 3, 1996. Added subdivision (c).
Amended October 8, 1997, effective April 4, 1998. Subdivision (d) added.
Amended January 6, 1999, effective May 1, 1999. Subdivision (c) is amended as follows: phrase ", used, or re-coopered" added to first sentence; new second sentence added; word "new" deleted from former second, now the third, sentence.

SALES TAX GENERAL BULLETIN 50–24; July 10, 1950

Subject: REGULATION 1525, PROPERTY USED IN MANUFACTURING, AND REGULATION 1541, PRINTING AND RELATED ARTS, AS APPLIED TO DIES, PATTERNS, JIGS, TOOLING, PHOTO ENGRAVINGS, AND OTHER MANUFACTURING AIDS.

When manufacturers purchase, or fabricate from raw materials purchased, dies, patterns, jigs, tooling, photo engravings, and other manufacturing or printing aids for the account of customers who acquire title to the property upon delivery thereof to, or upon the completion of the fabrication thereof by, the manufacturers, the manufacturers will be regarded as purchasing such property either as agent for, or for resale to, their customers. The tax will apply, accordingly, with respect either to the sale to the manufacturer as agent of his customer, or with respect to the sale by the manufacturer to the customer, and not also with respect to the sale to the manufacturer.

In determining whether the manufacturer or printer purchases the property on behalf of, or for resale to, his customer, the terms of the contract with the customer, the custom or usage of the trade and any other pertinent factors will be considered. For example, if the customer issues a purchase order for a pattern, die, or other tool, or on the purchase order for the goods itemizes or otherwise specifies the particular pattern, die, or tool which will be required by the manufacturer or printer to manufacture the goods desired by the customer, and the manufacturer obtains such tool pursuant to the customer's specific order, billing, itemizing, or otherwise identifying it to the customer separately from the billing for the article manufactured therefrom, and either delivers it to the customer or holds it as bailee for the customer, it will be presumed that the manufacturer acquired the property on behalf of the customer or for immediate resale to him.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1525.1. MANUFACTURING AIDS.

Reference: Sections 6007-6009.1, 6010.5, Revenue and Taxation Code.

Tax applies to the sale of manufacturing aids such as dies, patterns, jigs and tooling used in the manufacturing process notwithstanding the fact that the property used in manufacturing may subsequently be delivered to or held as property of the person to whom the manufactured product is sold. If the contract of sale between the manufacturer and the customer provides that title to the manufacturing aid passes to the purchaser prior to physical use of the property in the manufacturing process, then the manufacturing aid or its raw materials, if the manufacturing aid is fabricated by the manufacturer, may be purchased for resale. Tax then applies, unless otherwise exempt, to the sale of the manufacturing aid by the manufacturer to the customer, and not also with respect to the sale to the manufacturer. If the contract provides that title to the manufacturing aid passes to the customer in this state prior to use, then a retail sale subject to tax occurs in this state even though the manufacturing aid may subsequently be shipped to a point outside this state.

History: Adopted August 20, 1985, effective November 22, 1985. Added this new regulation to explain the application of the sales and use tax to the sale of manufacturing aids such as dies, patterns, jigs, and tooling used in manufacturing other items of tangible personal property.

BUSINESS TAXES GENERAL BULLETIN 61–2; January 16, 1961, Revised June 9, 1967 and June 15, 1967

Subject: REGULATION 1525, PROPERTY USED IN MANUFACTURING, AND REGULATION 1668, RESALE CERTIFICATES, AS APPLIED TO SALT USED IN FOOD PROCESSING.

(a) APPLICATION OF TAX.

(1) Section 6359 of the Sales and Use Tax Law exempts sales of ‘‘food products for human consumption’’, and provides that the term ‘‘food products’’ includes . . . ‘‘salt’’ . . .

Accordingly, the sale of salt for human consumption as such, or as a component part of other foods for human consumption, such as pickles and olives, is exempt from the tax.

(2) Sales of salt to manufacturers or processors of food products or other commodities are not exempt as sales for resale if the salt is purchased for any purpose other than resale as a component part of the manufactured article. Section 6007 defines a ‘‘retail sale’’ as ‘‘a sale for any purpose other than resale in the regular course of business in the form of tangible personal property’’. Thus, if salt is purchased by a manufacturer for use in the manufacturing process (other than incorporation into the manufactured product), the sale of the salt is not exempt, either as a food product for human consumption or as a sale for resale.

(A) Examples of use in the manufacturing process are:

1. As a brine for storing, curing, or pickling when the food product is withdrawn from the brine prior to sale, except that portion of the salt purchased which remains in the food product to be sold.

2. Cleaning and grading food products by means of a flotation process.

3. Water softening.

(B) Examples of incorporation into the manufactured product are:

1. The placing of salt in the containers in which food products are placed and sold.

2. The placing of salt in a brine to be placed in containers in which food products are placed and sold.

3. The placing in a brine of all of the salt intended to remain in the food product to be sold, notwithstanding the fact that a portion of the brine must be discarded because of impurities forming in the brine before all of the salt can be incorporated in the food product to be sold.

(b) RESALE CERTIFICATES

(1) The law governing the use of resale certificates is set out in several sections of the Sales and Use Tax Law as follows:

"6091. For the purpose of the proper administration of this part and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

"6092. Effect of certificate. The certificate relieves the seller from liability for sales tax only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in Article 2 (commencing with Section 6066) of this chapter.

"6094. Liability of purchaser. If a purchaser who gives a certificate makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be taxable to the purchaser under Chapter 3 (commencing with Section 6201) of this part as of the time the property is first used by him, and the sales price of the property to him shall be the measure of the tax.

"6094.5. Any person who gives a resale certificate for property which he knows at the time of purchase is not to be resold by him in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor."

(2) Resale certificates given by food processors and accepted by salt vendors must meet the requirements set forth in Regulation 1668. This is further explained by Form BT-741-A regarding "Resale Certificates—Their Use and Misuse" directed by the Secretary of the Board to all persons holding sellers' permits as of March 31,

BUSINESS TAXES GENERAL BULLETIN 61–2 (Contd.)

1960. Inasmuch as a portion of the salt purchased by food processors is consumed and a portion is resold (see (a) (2) (A) and (a) (2) (B) above), the processors should determine by the best means possible the approximate percentage of all salt purchased that is resold and give resale certificates covering such percentage only. The percentage may vary with the type of salt sold, the type of food being processed, the processing methods used, and other factors. Studies have been made which indicate that when undried salt is sold to food processors who use the salt to make brine in which olives or pickles are processed, about 50% of the salt is resold with the olives or pickles and the remaining 50% is consumed by the food processors. Accordingly, it is in order for vendors of undried salt to accept resale certificates for 50% of each sale of undried salt to food processors who certify that the salt is to be used in making brine for processing olives or pickles for resale. Fifty percent of each such sale will be regarded as a taxable retail sale.

(3) Where a food processor is not a ''seller'' as defined by Section 6014 of the Sales and Use Tax Law and therefore is not required to hold a seller's permit, the food processor may nonetheless give a resale certificate in the same fashion as though he were a ''seller''. A statement substantially as follows may be entered on the resale certificate in lieu of a seller's permit number:

''Food processor selling only food products for human consumption.''

(4) Inasmuch as the actual use of the salt purchased is within the specific knowledge of the manufacturer or processors rather than of the salt seller, purchasers holding sellers' permits may desire to follow the procedure authorized by Section 6012 of the Sales and Use Tax Law and Regulation 1701. Under this procedure, the purchasers of the salt would reimburse the salt vendors for tax on the total price of the salt. The purchasers would then deduct on their own tax returns the purchase price of the salt which is resold rather than used for some other purpose, a matter peculiarly within their knowledge rather than their vendors'. This procedure would give the purchasers an automatic credit for tax paid on purchases for resale, subject to audit of the purchasers, and the salt vendors would be relieved of any further responsibility.

Regulation 1525.2. MANUFACTURING EQUIPMENT.

Reference: Section 6377, Revenue and Taxation Code.

(a) PARTIAL EXEMPTION FOR PROPERTY PURCHASED FOR USE IN THE MANUFACTURING PROCESS. Section 6377 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for certain properties described in this regulation.

For the period commencing on January 1, 1994, and ending on December 31, 1994, the partial exemption applies to the taxes imposed by the state (6%), but does not apply to the taxes imposed by counties, cities, and districts pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev.& Tax. Code §§ 7200, et seq.) or the Transactions and Use Tax Law (Rev.& Tax. Code §§ 7251, et seq.).

Regulation 1525.2. (Contd.)

For the period commencing on January 1, 1995, and ending on December 31, 2000, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

Subject to the limitations set forth above, this partial exemption applies to gross receipts from the sale, storage, use, or other consumption in this state of the following items:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point that raw materials are received by the qualified person and introduced into the process and ending at the point at which the property has been altered to its completed form, including packaging, if required. For purposes of this regulation:

(A) Raw materials will be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing activities are conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing activities are conducted, however, will not be considered to have been introduced into the process for purposes of this regulation.

(B) For purposes of this regulation, the term ''packaging'' includes only that packaging necessary to prepare the goods for delivery to and placement in the qualified person's finished goods inventory, or to prepare the goods so that they are suitable for delivery to and placement in finished goods inventory. Any additional packaging, such as that packaging necessary to consolidate the goods prior to shipping or to protect them during transportation, shall not be considered to be ''packaging'' for purposes of this regulation.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development as defined in subdivision (c)(8).

Regulation 1525.2. (Contd.)

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in subdivision (a)(1) or (a)(2).

(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

Regulation 1525.2. (Contd.)

(b) PROPERTY USED PRIMARILY IN ADMINISTRATION, GENERAL MANAGEMENT, OR MARKETING. Notwithstanding any other provision of this regulation, this partial exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing. For purposes of this subdivision:

(1) Tangible personal property is used primarily in administration, general management, or marketing when it is used 50 percent or more of the time in one or more of those activities.

(2) Tangible personal property used primarily to clean and maintain the factory floor of a manufacturing facility is used primarily in a stage of the manufacturing of property and is not used primarily in administration, general management, or marketing.

(3) Fire safety equipment that is tangible personal property and that is used primarily at and in connection with the factory floor of a manufacturing facility is used primarily in a stage of the manufacturing of property and is not used primarily in administration, general management, or marketing.

(c) DEFINITIONS. For purposes of this regulation:

(1) ''Fabricating'' means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) ''Manufacturing'' means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property. For purposes of this regulation, ''greater functionality'' means that the tangible personal property has been improved so that it can perform new or different functions than the original property. Manufacturing includes logging, that is, the felling of timber, but does not include tree farming. Manufacturing does not include crop harvesting. Provided that the activity constitutes a ''sale'' as that term is used in subdivision (b) of section 6006 of the Revenue and Taxation Code, the tangible personal property need not be owned by the qualified person in order for the activity to qualify as manufacturing for purposes of this regulation.

(3) ''Primarily'' means that the tangible personal property is used 50 percent or more of the time in the designated activity or activities.

(4) ''Process'' means the period beginning at the point at which any raw materials are received by the qualified person and are introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing, processing,

Regulation 1525.2. (Contd.)

refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) "Processing" means the physical application of materials and labor to modify or change the characteristics of property.

(6) "Qualified person" means any person that satisfies the requirements of both subdivisions (c)(6)(A) and (c)(6)(B) below with regard to the trade or business in which the property will be placed into service in the use qualifying the property for this partial exemption:

(A) A "qualified person" must have first commenced trade or business activities in a new trade or business in this state on or after January 1, 1994. For purposes of this subdivision, the term "activities" means trade or business activities. In determining whether or not a person is qualified within the meaning of this subdivision, the following rules apply:

1. The term "trade or business activities" does not mean the mere formation or organization of a corporation or other business entity that is intended to conduct a trade or business. Instead, a corporation or business entity first conducts activities when it first starts or commences the trade or business for which it was organized. The acquisition of operating assets that are necessary to the type of business contemplated, however, will constitute commencing activities. The term "operating assets" as used in this subdivision means assets that are in a state of readiness to be placed in service within a reasonable time period following their acquisition.

2. Notwithstanding any other provision of this subdivision, a person will not be considered to have first commenced activities in a new trade or business in this state on or after January 1, 1994, if, at any time within the 36 months preceding that date, that person, or any related person, was required to have secured a seller's permit under section 6066 of the Revenue and Taxation Code for that trade or business, or any other trade or business classified under the same division of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (the "Manual"). For purposes of this regulation, the term "division" means a division as that term is used in the Manual.

3. A trade or business is not a new trade or business in this state if, within the 36 months preceding the date that activities were first commenced in that trade or business in this state, either the person claiming the partial exemption, or any related person, had conducted any activities in this state in any trade or business classified under the same division of the Manual as that trade or business.

4. Where a person, or any related person, is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (a "prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as

Regulation 1525.2. (Contd.)

a new trade or business if the additional trade or business activity is classified under a different division of the Manual than are any of the person's (or any related person's) current or prior trade or business activities in this state within the preceding 36 months.

5. Where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of section 23101 of the Revenue and Taxation Code) after December 31, 1993 (other than by purchase or other acquisition described in subdivision (c)(6)(A)6.), the newly commenced trade or business activity in this state shall be treated as a new trade or business for purposes of this subdivision.

6. On or after January 1, 1995, notwithstanding anything else set forth in this subdivision, in any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of the entity) that is doing business in this state (within the meaning of section 23101 of the Revenue and Taxation Code), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new trade or business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by that person (or any related person) in the conduct of his or her trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the person (or any related person) being used in the same trade or business both within and without this state. For purposes of this subdivision only:

a. The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the month following the quarterly period in which the person (or any related person) first uses any of the acquired trade or business assets in his or her business activity.

b. Any acquired assets that constitute property described in section 1221(a)(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in section 1221(a)(1) of the Internal Revenue Code in the hands of the acquiring person (or any related person).

c. The trade or business conducted in this state by the acquiring person after the asset acquisition date shall be considered to be the same as an out-of-state trade or business conducted or previously conducted by the acquiring person (or any related person) only if the trade or business activities of both companies are or would be classified in the same division of the Manual.

d. An acquired trade or business will not be considered to have been acquired as an existing trade or business for purposes of this subdivision if it is acquired either: (1) from a liquidation sale of assets pursuant to a bankruptcy filed under Chapter 7 of the United States Bankruptcy Code; or (2) pursuant to a creditor's execution or foreclosure sale of a secured interest in the assets of the trade or business.

e. Example No.1: Corporation X is doing business wholly outside of this state in the trade or business of manufacturing automobiles. The total fair market value of the total assets of this trade or business is $100,000,000. Then, on or after January 1, 1994, Corporation X acquires all of the assets of an automobile manufacturing business in this state with a fair market value of $5,000,000 and

immediately uses the acquired assets in its automobile manufacturing trade or business. Thereafter, between the date of acquisition and the last day of the month following the quarterly period during which the acquisition occurred, Corporation X acquires another $1,000,000 in assets for use in the automobile manufacturing business in this state. Under these assumed facts, the conditions set forth in this subparagraph will not serve to disqualify Corporation X from the partial exemption since the fair market value of the acquired assets does not exceed 20 percent ($5,000,000/$106,000,000) of the aggregate fair market value of the total assets of the trade or business being conducted by Corporation X; and neither Corporation X nor any related person had conducted any trade or business activities in this state within the preceding 36 months.

f. Example No. 2: Assume the same facts as in Example No. 1 above, but in this case, prior to acquiring the assets of the automobile manufacturing business in this state, Corporation X was solely and exclusively in the trade or business of providing data processing services. After the acquisition of the assets by Corporation X, however, the acquired assets will continue to be used in the automobile manufacturing business in this state. Assume further that no additional purchases are made after the date of acquisition. Under these assumed facts, since data processing services and automobile manufacturing are classified in different divisions of the Manual, the partial exemption will not be available to Corporation X because the fair market value of the acquired assets exceeds 20 percent ($5,000,000/$5,000,000) of the aggregate fair market value of the total assets held by Corporation X in the same trade or business.

7. In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business. For purposes of this subdivision only:

a. Example No. 1: Corporation X is doing business in this state. One of its trade or business activities in this state is manufacturing automobiles. After January 1, 1994, for consideration, Corporation X transfers all of the assets used in the trade or business of manufacturing automobiles to a newly-formed, wholly-owned subsidiary known as Corporation Y. For purposes of applying this regulation, this transaction shall be treated as an acquisition of an existing trade or business by Corporation Y.

b. Example No. 2: Partnership A is a manufacturer doing business in this state. After January 1, 1994, for consideration, Partnership A transfers all of its assets to a newly-formed corporation known as Corporation B. Corporation B is owned by the partners of Partnership A in the same proportionate ownership interests as their respective ownership interests in the partnership. For purposes of applying this regulation, this transaction shall be treated as an acquisition of an existing trade or business by Corporation B.

8. For purposes of this subdivision, a person is a "related person" if that person is or previously was related to the qualified person within the meaning of either section 267 or 318 of the Internal Revenue Code.

Regulation 1525.2. (Contd.)

9. The term ''acquire'' shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(B) A qualified person must be engaged in those manufacturing lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition. For purposes of this subdivision:

1. For purposes of classifying a line or lines of business, the economic unit shall be the ''establishment'' and the classification of the line or lines of business will be based on the establishment's single most predominant activity based upon value of production. The term ''establishment'' means an economic unit, generally at a single physical location, where business is conducted or where services or manufacturing or other industrial operations are performed. The following will generally constitute an ''establishment'': a factory, mill, store, hotel, movie theater, mine, farm, ranch, bank, railroad depot, airline terminal, sales office, warehouse, or central administrative office.

2. For purposes of determining the ''establishment'' or ''establishments'' of a trade or business:

a. Where distinct and separate economic activities are performed at a single physical location, such as construction activities operated out of the same physical location as a lumber yard, each activity should be treated as a separate establishment where: (i) no one industry description in the classification includes such combined activities; (ii) the employment in each such economic activity is significant; and (iii) separate reports are prepared on the number of employees, their wages and salaries, sales or receipts, property and equipment, and other types of financial data, such as financial statements, job costing, and profit center accounting. For purposes of this paragraph, whether or not employment in an economic activity is significant shall be based upon all of the facts and circumstances. Nevertheless, employment in an economic activity will be considered to be ''significant'' for purposes of this paragraph whenever more than 25 percent of the taxpayer's total number of employees at a single physical location, or more than 25 percent of the taxpayer's total dollar value of payroll at a single physical location, is attributable to the economic activity being tested for separate establishment status.

b. An establishment is not necessarily identical with the enterprise or company which may consist of one or more establishments. Also, an establishment is to be distinguished from subunits of the establishment such as departments.

c. Where a person conducts business at more than one establishment within the meaning of this subdivision, then that person shall be considered to be a ''qualified person'' for purposes of this regulation only as to those purchases that are intended to be used and are actually used in those lines of business that are described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(7) ''Refining'' means the process of converting a natural resource to an intermediate or finished product.

(8) ''Research and development'' means those activities that are described in section 174 of the Internal Revenue Code or in any regulations thereunder.

Regulation 1525.2. (Contd.)

(9) "Tangible personal property" does not include any of the following:

(A) Real property, including tangible personal property to be incorporated into an improvement to real property, except for "special purpose buildings and foundations" as defined in subdivision (c)(10)(D) and conveyance systems and assembly lines as provided in subdivision (c)(10)(A).

(B) Consumables with a normal useful life of less than one year, except as provided in subdivision (c)(10)(E). For purposes of this regulation, it shall be presumed tangible personal property that the qualified person treats as having a normal useful life of less than one year for state income or franchise tax purposes is tangible personal property with a normal useful life of less than one year. This presumption may be rebutted by evidence satisfactory to the Board.

(C) Furniture, inventory, equipment used in the extraction process, equipment used to store raw materials that have not yet entered or commenced the manufacturing process, or equipment used to store finished products that have completed the manufacturing process. The extraction process includes such severance activities as mining, oil and gas extraction.

(D) Any property for which a credit is claimed under either section 17053.49 or 23649 of the Revenue and Taxation Code.

(10) "Tangible personal property" includes but is not limited to the following:

(A) Machinery and equipment within the meaning of subdivision (a)(6) of Regulation 1521 of the Sales and Use Tax Regulations, including component parts and contrivances such as belts, shafts, moving parts, and operating structures. The term also includes conveyance systems and assembly lines without regard to the manner of affixation to real property.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Any repair and replacement parts that the qualified person treats as having a useful life of less than one year for state income or franchise tax purposes shall be presumed to have a useful life of less than one year for purposes of this regulation. This presumption may be rebutted by evidence satisfactory to the Board.

(C) Property used in pollution control that meets or exceeds standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations that (i) are used as an integral part of the manufacturing, processing, refining, or fabricating process, or (ii) constitute a research facility used during the manufacturing process as an integral part of a manufacturing, processing, refining, or fabricating activity, or (iii) constitute a storage facility used during the manufacturing process as an integral part of a manufacturing, processing, refining, or fabricating activity. For purposes of this subdivision:

Regulation 1525.2. (Contd.)

1. For purposes of this subdivision, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subdivision (a)(1) of this regulation (the qualified purpose).

2. A building is specifically designed and constructed or modified for a qualified purpose if it is not economic to design and construct the building for the intended purpose and then use the structure for a different purpose.

3. A building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. A use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualifying purpose.

4. In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subdivision.

5. Buildings and foundations that do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to, buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process.

6. For purposes of this subdivision, the term "integral part" means that the special purpose building or foundation (i) is used directly in the activity qualifying for the partial exemption from sales and use tax and (ii) is essential to the completeness of that activity. In determining whether property is used as an integral part of manufacturing, all properties used by the qualified person in processing the raw materials into the final product are properties used as an integral part of manufacturing.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(11) "Standard Industrial Classification" means a Standard Industrial Classification in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

Regulation 1525.2. (Contd.)

(d) THREE-YEAR LIMITATION. Notwithstanding any other provision of this regulation, once a person has conducted business activities in a new trade or business for three or more years, that person will no longer be considered to be in a "new trade or business," nor "qualified" for this partial exemption.

(e) TAXES AS TO WHICH THE PARTIAL EXEMPTION DOES NOT APPLY. This partial exemption does not apply to any tax levied by a county, city, or district pursuant to, or in accordance with, either the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev.& Tax. Code §§ 7200 et seq.) or the Transactions and Use Tax Law (Rev.& Tax Code §§ 7251 et seq.).

On or after January 1, 1995, this partial exemption shall not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution.

(f) EXEMPTION CERTIFICATES. Except as otherwise set forth in subdivision (f)(3), to claim the partial exemption provided by this regulation, a person must be both pre-qualified by the Board and either registered to hold a seller's permit or maintain a consumer use tax account. Exemption certificates issued to qualified persons will contain a control number and expiration date for verifying a person's status as a qualified person. An exemption certificate is not valid if it has not been issued by the Board or if it is accepted after the expiration date on the certificate. Qualified persons who have been pre-qualified may reproduce the issued certificates as needed for their qualifying purchases.

The exemption certificates issued by the Board will be in substantially the same form as they appear in Appendices A and B of this regulation. Qualified persons who purchase or lease tangible personal property from an in-state retailer or an out-of-state retailer obligated to collect the use tax must provide the retailer with a manufacturer's exemption certificate in order to claim the partial exemption. The manufacturer's use tax declaration must be completed by a qualified person to claim a partial exemption from use tax on purchases of tangible personal property from an out-of-state retailer not obligated to collect the use tax.

Solely for the purposes of this regulation, it is presumed that a seller accepts a manufacturer's exemption certificate from a prequalified purchaser in good faith in the absence of evidence to the contrary. A retailer's direct knowledge that the purchaser is not purchasing tangible personal property for use in a manufacturing activity, that the purchaser intends the tangible personal property for his or her own use, or that the tangible personal property does not have a normal useful life of one year or more constitutes evidence to the contrary. A purchaser providing a manufacturer's exemption certificate accepted in good faith by the seller for tangible personal property that does not qualify for this exemption is liable for the payment of tax as set forth in subdivision (h).

(1) MANUFACTURER'S EXEMPTION CERTIFICATES.

(A) IN GENERAL. Except as otherwise provided in subdivisions (f)(1)(B) or (f)(3) of this regulation, or in section 6902.2 of the Revenue and Taxation Code, a partial exemption from sales or use tax shall not be allowed unless:

Regulation 1525.2. (Contd.)

1. The qualified person furnishes the retailer with a manufacturer's exemption certificate no later than 60 days after the date of the purchase; and

2. The retailer timely files a sales and use tax return claiming the partial exemption and, together with that timely return, provides the Board with a copy of the manufacturer's exemption certificate.

(B) EXCLUSIONS. Except as provided in subdivision (f)(1)(C) below, retailers claiming the partial exemption in timely filed returns will not be required to furnish the Board with copies of manufacturer's exemption certificates for sales or leases of tangible personal property made by a retailer at any single physical location to a single qualified purchaser that do not exceed an aggregate total of $25,000 during a single calendar quarter. Regardless of the total quarterly sales per purchaser, however, when necessary for the efficient administration of the sales and use tax law, the Board may, on 30 days' written notice, require a retailer to commence furnishing the Board with copies of all certificates on a quarterly basis pursuant to subdivision (f)(1)(A)2.

(C) RETENTION AND AVAILABILITY OF CERTIFICATES. A retailer must retain each manufacturer's exemption certificate received from a qualified person for a period of four years from the date on which the retailer claims a partial exemption based on the exemption certificate.

Within 45 days of the Board's request, retailers must furnish to the Board any and all manufacturer's exemption certificates, or copies thereof, received from qualified persons, including exemption certificates for aggregate sales or leases of $25,000 or less to a single qualified person made at any single physical location of the retailer during a single calendar quarter.

(2) MANUFACTURER'S USE TAX DECLARATION. Except as provided in section 6902.2 of the Revenue and Taxation Code, a partial exemption from the use tax shall not be allowed unless the qualified person:

(A) Timely files a sales and use tax return or consumer use tax return for the period in which the purchase occurs and timely pays any applicable tax in full that is excluded from this partial exemption as provided in subdivision (e) of this regulation; and

(B) Attaches a completed manufacturer's use tax declaration to the sales and use tax return or consumer use tax return that is timely filed with the Board.

(3) REFUND OF PARTIAL EXEMPTION.

(A) For the period commencing on January 1, 1994, and ending on December 31, 1994, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a manufacturer's exemption certificate on or before March 31, 1995. The retailer must refund the tax directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount. In the event that the retailer has already reported and paid the tax to the Board, the retailer must file a written claim for refund on or before April 30, 1995.

(B) A person who paid sales tax on a qualified sale or paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for such a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation code section 6901. For transactions subject to use tax, a person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(4) CONSTRUCTION CONTRACTORS. In the case of a contractor who purchases property as an agent of a qualified person or for subsequent resale to a qualified person, the qualified person is deemed to be the purchaser for purposes of this subdivision.

(g) CONVERSION OF PROPERTY TO A USE NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), this partial exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of property that, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, is: (i) removed from this state, (ii) converted from an exempt use under this regulation to some other use not qualifying for the partial exemption, or (iii) used in a manner not qualifying for the partial exemption under this regulation. For purposes of this subdivision, property is converted to a use not qualifying for the partial exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to a person who is not a qualified person on the date the property is sold, transferred, leased, or assigned to such nonqualified person. In the case of a corporation that, as a qualified person, purchases tangible personal property under this partial exemption and then, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by that corporation in an exempt use, either directly or indirectly transfers that property to its parent corporation that is not a qualified person on the date of the transfer of property to the parent corporation, that property has been converted to a use not qualifying for the partial exemption.

(h) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX. If a purchaser submits a copy of a manufacturer's exemption certificate to the seller, and then within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, the purchaser either (i) removes that property from this state, (ii) converts that property from an exempt use under this regulation to some other use not qualifying for the partial exemption, or (iii) uses that property in a manner not qualifying for the partial exemption under this regulation, then, in that event, the purchaser shall be

liable for payment of sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used; and the sales price of the property to the purchaser shall be deemed to be the gross receipts from that retail sale. For purposes of this subdivision, property is converted to a use not qualifying for the partial exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to a person who is not a qualified person on the date the property is sold, transferred, leased, or assigned to such nonqualified person.

(i) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Subject to all the limitations and conditions set forth in this regulation and regulation 1525.3, this partial exemption may apply to rental receipts paid by a qualified person with respect to a lease of tangible personal property to the qualified person, which tangible personal property is used as set forth in subdivisions (a)(1), (a)(2), (a)(3), or (a)(4) of this regulation.

(2) LEASES—ACQUISITION SALE AND LEASEBACK. A person will be regarded as having paid sales tax reimbursement or use tax with respect to that person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rental receipts.

(j) EFFECTIVE DATE. Except as expressly set forth otherwise in subdivisions (c)(5)(A)6 and (e) of this regulation, this regulation is effective as of January 1, 1994.

History: Adopted February 9, 1995, effective August 18, 1995.
Amended November 7, 1997, effective December 7, 1997. Added new subdivision (c)(4) to incorporate provisions of Chapter 954, Statutes of 1996 and renumbered the following subdivisions. Subdivision (i)(1) was amended to add reference to regulation 1525.3 and Appendix A & B were updated for clarity.
Amended December 8, 1998, effective April 3, 1999. Subdivision (f): phrase "Except . . . (f)(3)," added to first sentence. Subdivision (f)(3)(B): phrase "does not" added and phrase "and . . . purchase" deleted; last sentence added. New subdivision (f)(3)(C) added.
Amended April 5, 2000, effective July 7, 2000. Subdivision (f)(3): former subdivisions (A) and (B) deleted. Unnumbered paragraph of former subdivision (f)(3)(B) redesignated (f)(3)(A) and former subdivision (f)(3)(C) redesignated as (f)(3)(B). In redesignated subdivision (f)(3)(B): Two references to "use tax" deleted. In the first sentence, phrase "self-reported

Regulation 1525.2. (Contd.)

and'' after ''a person who,'' and ''from a retailer not engaged in business in this state,'' after ''on a qualified purchase'' deleted; phrases ''sales'' after ''paid'' and ''on a qualified sale or paid use tax'' after ''a person who paid sales tax'' added. Phrase ''for transactions subject to use tax,'' added in the third sentence. Last sentence ''for transactions subject to sales tax . . . claimed under this part'' added.

Amended November 1, 2000, effective January 1, 2001. Subdivision (a)—phrase ''For the period'' and ''and ending on December 31, 2000'' added to third sentence; last sentence of first paragraph added. ''Subsection(s)'' changed to ''subdivision(s)'' throughout regulation. Appendices (A) and (B)—incorporated new tax rate of 4.75% effective January 1, 2001, in first paragraph.

Amended March 28, 2001, effective July 5, 2001. Subdivision (c)(6)(A)6.b.—Internal Revenue Code section corrected to 1221(a)(1). Subdivision (c)(9)(B)—in second sentence, phrase ''for . . . presumed'' added, uppercase ''T'' replaced with lowercase ''t'' in ''tangible;'' and phrases ''or . . . less'' and ''for purposes of this regulation'' deleted. Third sentence added. Subdivision (c)(10)(B)—phrase ''be presumed to'' added. Third sentence added. Subdivision (f)—second unnumbered paragraph added. Exhibits (A) and (B)—Statement ''Certificate Not Valid for Purchases with a Unit Value of $250 or Less'' deleted.

Amended October 29, 2001, effective May 17, 2002. Subdivision (a) added ending date for the 4.75% tax rate and added new paragraph incorporating the new tax rate of 5% effective January 1, 2002. Appendices A and B revised to incorporate the new 5.0% tax rate and to make minor grammatical and formatting changes to improve clarity.

Regulation 1525.2. (Contd.)

SECTION 6377 MANUFACTURER'S EXEMPTION CERTIFICATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

PLEASE NOTE

This is a partial exemption from sales and use taxes at the rate of 5% effective January 1, 2002, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1995 to December 31, 2000. You are not relieved from your obligations for the local and district taxes on this transaction. The exemption is specific to this transaction only and may not be construed to exempt other transactions. Generally, the partial exemption will not be allowed unless this certificate is issued within 60 days after the date of purchase and the retailer claims the exemption on a timely filed return. Void after expiration date.

Certificate No:

Valid Period Begins:

Valid Period Expires:

I hereby certify that the tangible personal property described below and purchased or leased from:
(enter seller's/lessor's name and address)

SELLER'S NAME

SELLER'S ADDRESS (Street, City, State, Zip Code)

and will be used by me primarily (please check one)

☐ 1. for manufacturing, processing, refining, fabricating, or recycling, or
☐ 2. for research and development activities as described in Internal Revenue Code Section 174, or
☐ 3. to maintain, repair, measure, or test any property being used for (1) or (2) above, at my facility located at (enter facility's address):
(Street, City, State, Zip Code)

SALES INVOICE NUMBER	SALES INVOICE DATE	DESCRIPTION OF QUALIFIED PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I understand that if such property is, within one year from the date of purchase or lease, removed from California or converted for use or otherwise used in a manner not qualifying for the exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. *Attach a copy of the lease agreement.

PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE	TITLE	
SIGNATURE	DATE	PERMIT NUMBER

**NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION

The following business has been registered as a "qualified person" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the exemption provided in Section 6377 of the Revenue and Taxation Code.

BUSINESS NAME	SIC CODE
BUSINESS ADDRESS (Street, City, State, Zip Code)	PERMIT NUMBER

**AUTHORIZED BY: (Must be signed by two Board representatives)

REVIEWED BY	DATE
APPROVED BY	DATE

** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE.

Regulation 1525.2. (Contd.)

SECTION 6377 MANUFACTURER'S USE TAX DECLARATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

PLEASE NOTE

This exemption being declared applies only to the state use tax which is at the rate of 5% effective January 1, 2002, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1995 to December 31, 2000, and is specific to this transaction only and may not be construed to exempt other transactions. As the purchaser, you remain liable for the applicable local and district taxes. To claim the exemption, this declaration must accompany a timely filed sales and use tax. Return for the period of purchase. Void after expiration date.

Certificate No:

Valid Period Begins:

Valid Period Expires:

I hereby certify that the tangible personal property described below that is subject to use tax was purchased or is being leased from: (enter seller's/lessor's name and address)

SELLER'S NAME

SELLER'S ADDRESS (Street, City, State, Zip Code)

and will be used by me primarily (please check one)

☐ 1. for manufacturing, processing, refining, fabricating, or recycling, or
☐ 2. for research and development activities as described in Internal Revenue Code Section 174, or
☐ 3. to maintain, repair, measure, or test any property being used for (1) or (2) above, at my facility located at (enter facility's address):
(Street, City, State, Zip Code)

SALES INVOICE NUMBER	SALES INVOICE DATE	DESCRIPTION OF PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I understand that if such property is, within one year from the date of purchase or lease, removed from California or converted for use or otherwise used in a manner not qualifying for the exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. *Attach a copy of the lease agreement.

PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE	TITLE	
SIGNATURE	DATE	PERMIT NUMBER

** NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION

The following business has been registered as a "qualified person" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the exemption provided in Section 6377 of the Revenue and Taxation Code.

BUSINESS NAME	SIC CODE
BUSINESS ADDRESS (Street, City, State, Zip Code)	PERMIT NUMBER

**AUTHORIZED BY: (Must be signed by two Board representatives)

REVIEWED BY	DATE
APPROVED BY	DATE

** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE.

Regulation 1525.3. MANUFACTURING EQUIPMENT—LEASES OF TANGIBLE PERSONAL PROPERTY.

Reference: Sections 6244.5 and 6377, Revenue and Taxation Code.

(a) GENERAL APPLICATION TO LEASES. Leases of tangible personal property which are classified as ''continuing sales'' and ''continuing purchases'' of tangible personal property, in accordance with Regulation 1660, ''Leases of Tangible Personal Property—In General,'' may qualify for the partial exemption from tax for manufacturing equipment, under the conditions set forth in paragraph (i)(1) of Regulation 1525.2, ''Manufacturing Equipment.'' Lease transactions which qualify for the partial exemption are taxed at the rate specified in Regulation 1525.2, paragraph (a).

(b) RECHARACTERIZATION. With respect to transactions which the parties denominate as a ''lease,'' but which are recharacterized for sales and use tax purposes either as sales at their inception, pursuant to Regulation 1641, ''Credit Sales and Repossessions,'' paragraph (b), or as sales under a security agreement, Regulation 1660, ''Leases of Tangible Personal Property—In General,'' paragraph (a)(2), the transactions may qualify for the partial exemption, in accordance with Regulation 1525.2.

(c) CONTINUATION OF PARTIAL EXEMPTION. Where possession of tangible personal property is transferred to a qualified person as defined in paragraphs (c) and (d) of Regulation 1525.2 and pursuant to a lease agreement classified as a continuing sale and continuing purchase, lease receipts shall remain partially exempt for a period of six years from the date of the inception of the lease whether or not the lessee remains as a qualified person throughout the six year period. At the close of the six year period from the date of the inception of the lease, lease receipts are subject to tax without exemption.

(d) LEASES OF TAX-PAID PROPERTY. The partial exemption is not available to lessors who lease to qualified persons or to vendors to such lessors when the lessor elects to pay sales tax reimbursement at the time of acquisition of the property or pays use tax measured by the purchase price of the property.

(e) MANUFACTURERS WHO LEASE QUALIFIED PROPERTY. A lease of tangible personal property by the manufacturer of that property is ordinarily regarded as a ''continuing sale'' and ''continuing purchase'' in accordance with Regulation 1660, ''Leases of Tangible Personal Property—In General.'' Nevertheless, beginning January 1, 1997, a lessor of tangible personal property described in sections 17053.49 or 23649 of the Revenue and Taxation Code, who is the manufacturer of that property and who leases that property to a qualified person, as defined in section 17053.49 or 23649 of the Revenue and Taxation Code, in a form that is not substantially the same form as acquired, may, in lieu of reporting tax measured by the rentals payable, elect to pay tax measured by the cost price of that property where the election is made on or before the due date of the return for the period in which the property is first leased to the qualified person. The election shall be made by reporting use tax measured by the cost price of that property on the return

Regulation 1525.3. (Contd.)

for that period. The election shall not be revoked with respect to the property as to which it is made. The lease of that property for which an election is made to report and pay tax on the cost price of that property shall thereafter be excluded from the classification of a ‘‘continuing sale’’ and ‘‘continuing purchase.’’

For purposes of this subdivision, ‘‘cost price’’ means the price at which similar property has been previously sold or offered for sale. If that property has not been previously sold or offered for sale, then the cost price shall be deemed to be the aggregate of the following:

(1) Cost of materials.

(2) Direct labor.

(3) The pro rata share of all overhead costs attributable to the manufacture of the property.

(4) Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the factors listed in subsections (1) to (3), inclusive.

History: Adopted January 10, 1996, effective April 4, 1996.
Amended November 4, 1997, effective December 4, 1997. Amended subdivision (c) and added new subdivision (e) to incorporate provisions of Chapter 954, Statutes of 1996.

Regulation 1525.5. MANUFACTURING BY-PRODUCTS AND JOINT-PRODUCTS.

Reference: Sections 6094, 6244, Revenue and Taxation Code.

(a) IN GENERAL. Manufacturers and refiners are consumers of tangible personal property purchased for the purpose of use and consumed in the manufacturing or refining process, including that portion of purchased raw materials that comprise by-products that are produced and consumed during the manufacturing or refining process, or subsequent thereto.

(b) DEFINITIONS.

(1) Property Purchased. As used herein the term ‘‘property purchased’’ means materials that have been acquired in a transaction defined as a ‘‘purchase’’ pursuant to Section 6010 of the Revenue and Taxation Code and includes property acquired by purchase from a joint venture of which the manufacturer or refiner is a member.

(2) Split-Off Point. The point at which joint products being manufactured or refined become separately identifiable.

(3) Separable Costs. All costs incurred to further process and dispose of products and by-products after split-off point.

Regulation 1525.5. (Contd.)

(4) By-Products. As used herein the term "by-products" means products simultaneously produced from the manufacturing process, including joint-products.

(5) Net Realizable Value. The market value or sales value of a product or by-product less costs of completion and disposal after split-off point, if any.

(c) COMMINGLED GOODS. When a manufacturer or refiner purchases property for resale, and prior to or during the refining or manufacturing process, physically commingles these materials with property not so purchased of such similarity that the identity of the materials that comprise this commingled mass cannot be determined, by-products that are produced from the mass of commingled goods and consumed shall be deemed to be first consumed from the property not purchased for resale until a quantity of commingled goods equal to the quantity of property not purchased for resale has been consumed.

Any manufacturer or refiner that claims its consumed by-products are not subject to tax, because of the physical commingling of property purchased and property not so purchased, must establish by its records that this commingling occurred prior to such consumption.

(d) REPORTING METHODS.

(1) Manufacturers or refiners that consume by-products that are produced during the manufacturing or refining process from purchased raw material may use any method of cost allocation consistent with generally accepted accounting principles that accurately computes the purchased cost of the consumed raw materials to report their tax liability for the reporting period in which the use was made. The manufacturer or refiner must be prepared to demonstrate by records which can be verified by audit that the method used properly reflects their tax liability.

(2) The following is a description of an approved method that manufacturers and refiners that consume by-products from purchased materials may utilize to compute their tax liability:

(A) Determine the split-off point for by-products that are used.
(B) Determine the net realized values of all products and by-products.
(C) Determine the net realizable value(s) of by-product(s) used.
(D) Divide the net realizable value(s) of by-product(s) used (Step C) by the net realizable values of all products and by-products (Step B) to obtain a taxable ratio.
(E) Multiply the purchase cost of all raw materials added to the manufacturing or refining process prior to the split-off by the taxable ratio (Step D) to find the measure of the tax liability resulting from the use of by-products.

The following formulas summarize the above steps:

MV = Market Value
PC = Purchase Cost
SC = Separable Costs Beyond Split-Off
bp = By-Products Used
tp = Total Products and By-Products

Regulation 1525.5. (Contd.)

Where no processing is necessary beyond split-off to obtain market value so that MV equals market or sales value at split-off:

$$\frac{MV_{bp}}{MV_{tp}} \times PC = \text{MEASURE OF TAX}$$

Where processing beyond split-off is necessary to obtain market value so that MV equals market or sales value beyond split-off:

$$\frac{MV_{bp} - SC_{bp}}{MV_{tp} - SC_{tp}} \times PC = \text{MEASURE OF TAX}$$

Note: MV − SC = Net Realizable Value at Split-Off

(e) To ensure compliance with the provisions of this regulation, manufacturers and refiners are encouraged to obtain approval by the Board prior to adopting a method of calculating their tax liability incurred as a result of the consumption of purchased raw materials produced and consumed during the manufacturing or refining process.

(f) AUDITS. Taxpayers using the suggested method or an alternate method that has been approved by the Board will normally be audited by application of the same approved procedure in the audit to verify the accuracy of reported amounts. Determinations may be imposed or refunds granted if the Board, upon audit of the books and records, determines that the amounts reported by return did not accurately disclose the amount of tax due.

History: Adopted June 27, 1984, effective March 27, 1985.

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION.

Reference: Section 6378.1, Revenue and Taxation Code.

(a) GENERAL. Commencing on and after January 1, 2001, and before January 1, 2006, section 6378.1 of the Revenue and Taxation Code authorizes the Rural Investment Tax exemption (hereafter "Partial Exemption") which provides a partial exemption from sales or use taxes imposed on the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property as defined in subdivision (b)(6) by an eligible entity as defined in subdivision (b)(3).

For the period commencing on January 1, 2001, and ending on December 31, 2001, the Partial Exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the Partial Exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

The California Infrastructure & Economic Development Bank (CIEDB) Board, part of the California Technology, Trade & Commerce Agency, determines who is eligible to receive this Partial Exemption and monitors eligible entities for compliance with the requirements of the Partial Exemption. As the aggregate amount of this Partial Exemption is limited, the CIEDB Board determines the amount of this Partial Exemption available to each eligible entity.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Board" refers to the Board of Equalization.

(2) "CIEDB Board" refers to the California Infrastructure & Economic Development Bank Board.

(3) "Eligible entity" means any entity that meets all of the following:

(A) The entity is deemed eligible for the Partial Exemption in writing by the CIEDB Board.

(B) The entity has been pre-qualified, and re-qualified as applicable, by the Board and registered to hold a California seller's permit or maintain a consumer use tax account.

(4) "Primarily" means used 50 percent or more of the time in a qualified county for the one-year period following the date of purchase of the property. Tangible personal property shall not be considered used for any period of time that the property is located outside a qualified county, regardless of how the property is used while outside the qualified county.

(5) "Qualified county" means a California county with an average annual unemployment rate of five percentage points or more above the statewide average for the most recent calendar year as determined by the State of California, Employment Development Department.

(6) "Tangible personal property" includes all of the following:

(A) Machinery and equipment within the meaning of subsection (a)(6) of Regulation 1521 of the Sales and Use Tax Regulations, including component parts and contrivances such as belts, shafts, moving parts, and operating structures. The terms also include conveyance systems and assembly lines without regard to the manner of affixation to real property.

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Repair and replacement parts with a useful life of more than one year may qualify for this Partial Exemption even where such items are expensed for income tax purposes under the special provisions of section 179 of the Internal Revenue Code (26 U.S.C. § 179).

(7) "Tangible personal property" does not include any of the following:

(A) Any tangible personal property that is used primarily in administration, general management, or marketing.

(B) Furniture, inventory, or equipment used to store products.

(C) Any property for which a credit is claimed under either Section 17053.49 or 23649 of the Revenue and Taxation Code.

(D) Materials or fixtures within the meaning of subsections (a)(4) and (a)(5), respectively, of Regulation 1521 of the Sales and Use Tax Regulations, including such items set forth in Appendices A and B of Regulation 1521.

(E) Fuels.

(F) Real property.

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) OBTAINING AND MAINTAINING THE PARTIAL EXEMPTION CERTIFICATE. To obtain a Partial Exemption certificate, an entity must be pre-qualified by the Board, registered to hold a California seller's permit or maintain a consumer use tax account, and be deemed eligible for the Partial Exemption by the CIEDB Board. An entity shall include in its application a copy of its written notification from the CIEDB Board verifying the entity's eligibility and the amount allocated by the CIEDB Board for use by that eligible entity pursuant to the Partial Exemption. Partial Exemption certificates issued to eligible entities will contain a control number and expiration date for verifying the entity's status as an eligible entity. To maintain a Partial Exemption certificate it may be necessary to re-qualify with the Board periodically in accordance with Revenue and Taxation Code section 6378.1. A Partial Exemption certificate is not valid if it has not been issued by the Board or if it is accepted after the expiration date on the certificate. Eligible entities that have been pre-qualified or re-qualified, as applicable, may reproduce the issued certificates as needed for their qualifying purchases.

The Partial Exemption certificates issued by the Board will be in substantially the same format as they appear in Appendices A and B of this regulation. Eligible entities who purchase or lease tangible personal property from an in-state retailer or an out-of-state retailer obligated to collect the use tax must provide the retailer with a Partial Exemption certificate in order to claim the Partial Exemption. The Partial Exemption

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

Use Tax Declaration must be completed by an eligible entity to claim a Partial Exemption from use tax on purchases of tangible personal property from an out-of-state retailer not obligated to collect the use tax.

For purposes of this regulation, it is presumed that a seller accepts a Partial Exemption certificate from a purchaser in good faith in the absence of evidence to the contrary.

(2) CLAIMING THE PARTIAL EXEMPTION.

(A) IN GENERAL. The Partial Exemption from sales or use tax authorized under this part shall not be allowed unless:

1. The eligible entity furnishes the retailer with a Partial Exemption certificate no later than 60 days after the date of purchase; and

2. The retailer timely files a sales and use tax return claiming the Partial Exemption and, together with that timely return, provides the Board with a copy of the Partial Exemption certificate.

(B) EXCLUSIONS. Except as provided in subdivision (c)(2)(C) below, retailers claiming the Partial Exemption in timely filed returns will not be required to furnish the Board with copies of Partial Exemption certificates for sales or leases of tangible personal property made by a retailer at any single physical location to a single eligible entity that do not exceed an aggregate total of $25,000 during a single calendar quarter. Regardless of the total quarterly sales per purchaser, however, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days written notice, require a retailer to commence furnishing the Board with copies of all certificates on a quarterly basis pursuant to subdivision (c)(2)(A)2.

(C) RETENTION AND AVAILABILITY OF CERTIFICATES. A retailer must retain each Partial Exemption certificate received from an eligible entity for a period of not less than four years from the date on which the retailer claims a Partial Exemption based on the Partial Exemption certificate.

Within 45 days of the Board's request, retailers must furnish to the Board any and all Partial Exemption certificates, or copies thereof, received from eligible entities, including Partial Exemption certificates for aggregate sales or leases of $25,000 or less to a single eligible entity made at any single physical location of the retailer during a single calendar quarter.

(3) PARTIAL EXEMPTION USE TAX DECLARATION. A Partial Exemption from the use tax shall not be allowed unless the eligible entity:

(A) Timely files a sales and use tax return or consumer use tax return for the period in which the purchase occurs and timely pays any applicable tax in full that is excluded from this Partial Exemption as provided in subsection (a) of this regulation; and

(B) Attaches a completed Partial Exemption Use Tax Declaration (Appendix B) to the sales and use tax return or consumer use tax return that is timely filed with the Board.

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

(d) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on January 1, 2001, and ending on June 30, 2002, an eligible entity may claim the Partial Exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a Partial Exemption certificate on or before September 30, 2002. The retailer must refund the tax or tax reimbursement directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount. In the event that the retailer has already reported and paid the tax to the Board, the retailer must file a written claim for refund on or before October 31, 2002.

(2) An eligible entity who paid sales tax on a qualified sale or paid use tax on a qualified purchase and who failed to claim the Partial Exemption as provided by this regulation may file a claim for refund equal to the amount of the Partial Exemption that he or she could have claimed pursuant to this regulation. The procedure for such a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code Section 6901. For transactions subject to use tax, an eligible entity filing a claim for refund of the Partial Exemption has the burden of establishing that he or she was entitled to claim the Partial Exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the Partial Exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of an eligible entity at the time of the purchase subject to the refund claimed under this part.

(e) IMPROPER USE OF PARTIAL EXEMPTION.

(1) CONVERSION OF PROPERTY TO A USE NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), this Partial Exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of property that, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, is: (i) removed from a qualified county, (ii) converted from an exempt use under this regulation to some other use not qualifying for the Partial Exemption, or (iii) used in a manner not qualifying for the Partial Exemption under this regulation.

For purposes of this regulation, property is converted to a use not qualifying for the Partial Exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to an entity who is not an eligible entity on the date the property is sold, transferred, leased, or assigned to such non-eligible entity. In the case of a corporation that, as an eligible entity, purchases tangible personal property under this Partial Exemption and then, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by that corporation in an exempt use, either directly or indirectly transfers that property to its parent corporation that is not an eligible entity on the date of the transfer of property to the parent corporation, that property has been converted to a use not qualifying for the Partial Exemption.

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

Tangible personal property shall not be considered used in a qualifying manner for any period of time that the property is located outside a qualified county, regardless of how the property is used while outside such a county.

(2) PURCHASES BY INELIGIBLE ENTITIES. Notwithstanding subdivision (a), this Partial Exemption shall not apply if the CIEDB Board subsequently determines that a purchaser is not an eligible entity pursuant to Revenue and Taxation Code section 6378.1.

(3) PURCHASES EXCEEDING THE PARTIAL EXEMPTION ALLOTMENT. Notwithstanding subdivision (a), this Partial Exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of tangible personal property purchased by an eligible entity that exceeds the amounts allocated by the CIEDB Board for use by that eligible entity pursuant to the partial exemption.

(f) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a Partial Exemption certificate to the seller or Partial Exemption Use Tax Declaration to the Board, and then within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, the purchaser either (i) removes that property from a qualified county, (ii) converts the property from an exempt use under this regulation to some other use not qualifying for the Partial Exemption, or (iii) uses that property in a manner not qualifying for the Partial Exemption under this regulation, then, in that event, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a Partial Exemption certificate accepted timely and in good faith by the seller or a Partial Exemption Use Tax Declaration to the Board for tangible personal property that does not qualify for the Partial Exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(g) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Subject to all the limitations and conditions set forth in this regulation, this Partial Exemption may apply to rental receipts paid by an eligible entity with respect to a lease of tangible personal property to the eligible entity.

(2) LEASES—ACQUISITION SALE AND LEASEBACK. An eligible entity will be regarded as having paid sales tax reimbursement or use tax with respect to that eligible entity's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the eligible entity has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the Partial Exemption from tax provided by this regulation.

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If an eligible entity has acquired property subject to the Partial Exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rental receipts.

(h) RECORDS. Adequate and complete records must be maintained by the eligible entity as evidence that the property purchased qualifies under the provisions of this regulation and that the property was used by the eligible entity. The eligible entity must also maintain detailed records to show the amount of the tax benefit derived from this Partial Exemption as each eligible entity will have an annual limit established by the CIEDB Board.

The Board shall, within one year after being notified by the CIEDB Board that an entity has not fulfilled the requirements of Revenue and Taxation Code section 6378.1, examine the books and records of the entity, and issue a determination of any liabilities due.

(i) OPERATIVE DATE. This regulation is operative as of January 1, 2001 and expires December 31, 2005 unless Revenue and Taxation Code section 6378.1 is extended by an act of the Legislature.

History: Adopted June 7, 2002, effective July 7, 2002.

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

REVENUE AND TAXATION CODE SECTION 6378.1
RURAL INVESTMENT TAX EXEMPTION CERTIFICATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

PLEASE NOTE

This is a partial exemption from sales and use taxes which is at the rate of 4.75% from January 1, 2001 through December 31, 2001, and 5% effective January 1, 2002. You are not relieved from your obligations for the local and district taxes on this transaction. The partial exemption is specific to this transaction only and may not be construed to exempt other transactions. Generally, the partial exemption will not be allowed unless this certificate is issued within 60 days after the date of purchase and the retailer claims the partial exemption on a timely filed return. Void after expiration date.

Certificate No:

Expires:

I hereby certify that the tangible personal property described below and purchased or leased from:
(enter seller's/lessor's name and address)

SELLER'S NAME

SELLER'S ADDRESS (Street, City, County, State, Zip Code)

will be used by me primarily at my facility located at (enter facility's address):

(Street, City, County, State, Zip Code)

SALES INVOICE NUMBER	SALES INVOICE DATE	DESCRIPTION OF PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I understand that if such property is, within one year from the date of purchase or lease, removed from a qualified county described in Regulation 1525.7(b)(5), converted from an exempt use under Regulation 1525.7(e) to some other use not qualifying for the partial exemption, or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. *Attach a copy of the lease agreement.

PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE	TITLE	TELEPHONE
SIGNATURE	DATE	PERMIT NUMBER

**NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION

The following business has been registered as an "eligible entity" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the partial exemption provided in Section 6378.1 of the Revenue and Taxation Code.

BUSINESS NAME	CIEDB Board Authorization Number
BUSINESS ADDRESS (Street, City, County, State, Zip Code)	PERMIT NUMBER

**AUTHORIZED BY (Must be signed by two Board representatives)

REVIEWED BY	DATE
APPROVED BY	DATE

** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE

Appendix A

Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION. (Contd.)

REVENUE AND TAXATION CODE SECTION 6378.1
RURAL INVESTMENT USE TAX DECLARATION

STATE OF CALIFORIA
BOARD OF EQUALIZATION

Certificate No:
Expires:

PLEASE NOTE

This partial exemption being declared applies only to the state use tax which is at the rate of 4.75% from January 1, 2001 through December 31, 2001, and 5% effective January 1, 2002, and is specific to this transaction only and may not be construed to exempt other transactions. As the purchaser, you remain liable for the applicable local and district taxes. To claim the partial exemption, this declaration must accompany a timely filed sales and use tax return for the period of purchase. Void after expiration date.

I hereby certify that the tangible personal property described below and purchased or leased from: (enter seller's/lessor's name and address)

SELLER'S NAME

SELLER'S ADDRESS (Street, City, County, State, Zip Code)

will be used by me primarily at my facility located at (enter facility's address):

(Street, City, County, State, Zip Code)

SALES INVOICE NUMBER	SALES INVOICE DATE	DESCRIPTION OF PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I understand that if such property is, within one year from the date of purchase or lease, removed from a qualified county described in Regulation 1525.7 (b)(5) or converted from an exempt use under Regulation 1525.7(e) to some other use not qualifying for the partial exemption, or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. *Attach a copy of the lease agreement.

PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE	TITLE	TELEPHONE
SIGNATURE	DATE	PERMIT NUMBER

**NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION

The following business has been registered as a "eligible entity" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the partial exemption provided in Section 6378.1 of the Revenue and Taxation Code.

BUSINESS NAME	CIEDB Board Authorization Number
BUSINESS ADDRESS (Street, City, County, State, Zip Code)	PERMIT NUMBER

**AUTHORIZED BY: (Must be signed by two Board representatives)

REVIEWED BY	DATE
APPROVED BY	DATE

** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1526. PRODUCING, FABRICATING AND PROCESSING PROPERTY FURNISHED BY CONSUMERS—GENERAL RULES.

References: Section 6006, Revenue and Taxation Code.

Alterations of new garments, see regulation 1524 (Section 1524 of Title 18).

Printing and Imprinting, see regulation 1541 (Section 1541 of Title 18).

Repairing and Reconditioning Generally, see regulation 1546 (Section 1546 of Title 18).

(a) IN GENERAL. Tax applies to charges for producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting.

(b) OPERATIONS INCLUDED—REPAIRING AND RECONDITIONING DISTINGUISHED. Producing, fabricating, and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do not include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced.

(c) OPERATIONS INCLUDED—STRETCH LIMOUSINES. Producing, fabricating, and processing include any operation which results in the creation or production of a stretch limousine. The following rules apply in determining the measure of tax for converting a vehicle into a stretch limousine:

(1) When a vehicle dealer, at the request of a consumer, has a conversion company convert (i.e., stretch) a vehicle into a limousine, the tax does not apply to the conversion company's charge to the dealer, but the tax does apply to the entire charge made to the consumer by the dealer for the conversion.

(2) When a consumer provides the conversion company with a vehicle for conversion into a stretch limousine, the tax applies to the entire charge made to the consumer by the conversion company.

History: Effective July 1, 1939.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended and renumbered August 5, 1969, effective September 6, 1969.

Amended October 19, 1988, effective January 11, 1989. In subdivision (c), amended regulation to include within the definition of producing, fabricating, and processing any operation which results in the creation or production of a stretch limousine.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1527. SOUND RECORDING.

Reference: Sections 6006, 6010–6012, 6362.5, Revenue and Taxation Code.

(a) RECORDING STUDIOS.

(1) Tax does not apply to the charges for the making of an original recording on recording media if the recording media is not delivered to the customer or to any person at the direction of the customer, and title is retained by the studio. If, however, the recording studio agrees to furnish finished records, acetates, tapes or other recording media, tax applies to the sale of such tangible personal property but, effective January 1, 1976, the measure of tax is limited to the sale price of the unprocessed recording media. Recording media includes wax, tape, wire, or other material used to embody sound.

Regulation 1527. (Contd.)

(2) Rental of Studio Facilities. To the extent that the studio which is making the recording rents tangible personal property to the customer, tax applies in the same manner as it does to rentals generally.

(b) MASTER TAPES AND RECORDS.

(1) ''Master tapes and master records embodying sound'' means tapes, records, and other devices, not including mothers, stampers or finished records, utilized by the recording industry in making recordings embodying sound. The term includes, but is not limited to tapes or records which are produced for the immediate purpose of auditioning or demonstrating the particular artistic talents contained therein. The term includes tapes or records which are produced for use as radio commercials or other advertising, syndicated radio programs or for educational purposes. The term does not include recordings for video games or seismic surveys.

(2) Measure of Tax. Effective January 1, 1976, the measure of tax with respect to the retail sale of master tapes or master records embodying sound is limited to the sale price of the unprocessed recording media. The measure of tax does not include charges for labor in recording sound, services rendered in producing, fabricating, processing or imprinting the master tapes, any other services or production expenses or amounts paid for the copyrightable, artistic, or intangible elements of master tapes or master records, whether designated as royalties or otherwise. Tax applies to subsequent retail sales of master records and tapes in the same manner as tax applies to the original retail sale. (See Regulation 1529 for application of tax to recording sound for motion pictures.)

(3) Intermediate Working Products. The recording of sound on intermediate recording media used to produce a master tape or master record is included within the exemption for master tapes and records under (b)(2). For example, studio charges for recording on multi-track tape which is to be mixed down and transferred to two-track tape are not subject to tax. Tax applies only to the sale of the unprocessed recording media.

(4) Safety Tapes. Charges for the production of a safety copy of the master tape or master record exempt under (b)(2) are not subject to tax. Charges for the unprocessed recording media are subject to tax.

(c) PROCESSORS. The furnishing of ''mothers,'' ''stampers,'' and finished records by a processor to a record manufacturer constitutes a sale of tangible personal property and tax applies thereto.

(d) LIBRARY PRODUCERS. Tax applies to rentals of records and other tangible personal property by library producers in the same manner as it does to rentals generally whether designated as a license to use or otherwise.

History: Effective August 1, 1933.
Amended February 16, 1949.
Amended September 2, 1965.
Applicable as amended August 1, 1965.

Regulation 1527. (Contd.)

Amended and renumbered November 3, 1971, effective December 3, 1971.
Amended November 14, 1974, effective December 22, 1974. Renamed regulation, updated terminology, cross-referenced to Regulation 1529, and added (a)(3) and (4) which give tax ramifications of recording sessions manned by customer's own personnel and of sale or rental of master recordings or tapes themselves.
Amended December 17, 1975, effective January 1, 1976. Limited tax on sales of master tapes and recordings to fabrication costs and defined ''recording studio'' and ''master tapes or master records embodying sound.''
Amended April 9, 1985, effective August 14, 1985. In subdivision (a)(1), amended to use the term ''recording media'' in place of ''wax, tape or wire''; and limited the measure of tax to the sale price of the unprocessed recording media. Deleted subdivisions (a)(3), (4), (5) and (6). Added new subdivisions (b)(1), (2), (3) and (4) to define ''master tapes and master records embodying sound''; relettered remaining subdivisions. In relettered subdivision (c), substituted the term ''mothers'' for ''masters'' and substituted the term ''record manufacturer'' for ''producer''.

Regulation 1528. PHOTOGRAPHERS, PHOTOCOPIERS, PHOTO FINISHERS AND X-RAY LABORATORIES.

Reference: Sections 6006, 6009, 6015, and 6020, Revenue and Taxation Code.

(a) PHOTOGRAPHERS AND PHOTOCOPIERS. Tax applies to sales of photographs, whether or not produced to the special order of the customer. Tax applies to sales of photocopies, whether or not produced to the special order of the customer, and to charges for the making of photographs or photocopies out of materials furnished by the customer or others. Except as provided in subdivision (b)(2), no deduction is allowable on account of expenses such as travel time, telephone calls, rental of equipment, or salaries or wages paid to assistants or models, whether or not such expenses are itemized in billings to customers.

Tax does not apply to sales to photographers and persons who make photocopies of tangible personal property which becomes an ingredient or component part of photographs or photocopies sold, such as mounts, frames, sensitized paper, and toner but does apply to sales to the photographer or producer of materials used in the process of making the photographs or photocopies and not becoming an ingredient or component part thereof, such as chemicals, trays, films, plates, proof paper cameras, and copy machine drums.

(b) PHOTOCOPYING OF RECORDS.

(1) GENERAL RULES. Tax applies to sales of photocopies of records. Persons who make and sell, or obtain and sell, photocopies of records to consumers are retailers of the photocopies whether they make the photocopies themselves, hire a subcontractor to make the photocopies, or acquire the photocopies for resale from the person who owns or maintains the records. Tax applies whether or not the copies are made at the business location of the retailer or at the location of the person who

Regulation 1528. (Contd.)

owns or maintains the records. The tax applies to the entire charge for making and selling, or obtaining and selling, photocopies, without deduction for expenses incurred in obtaining access to the records, travel time, time spent in selecting the particular records desired, the field service of photocopying or microfilming the records, telephone calls, file setup charges, basic fees, typing fees, document handling fees, or any other costs or expenses of filling the customer's order.

(2) SERVICE TRANSACTIONS. Merely because a fee is charged in connection with the transfer of a photocopy of a record does not mean that the transaction is a sale transaction under the Sales and Use Tax Law. If a person who owns or maintains the records (recordholder) is required by law to furnish the photocopy upon tender and payment of a fee, the transfer of the photocopies by that person is not a sale. For sales and use tax purposes, that person is the consumer of the photocopies transferred and charges by a photocopy company to the recordholder for the photocopies are subject to tax.

(A) Medical Records. Ordinarily tax does not apply to charges made by a hospital or other health care provider (recordholder) for photocopying of medical records. The transaction is regarded as a service transaction, and the fees are nontaxable if the photocopies are furnished to the patient, or to someone acting on behalf of the patient, or to the patient's representative, as provided in Health and Safety Code section 123110(b). Likewise, the fees are nontaxable if the photocopies are furnished in response to a written authorization presented by an attorney or the attorney's representative as provided in Evidence Code section 1158, or if the photocopies are furnished as provided in subdivision (b)(2)(C) below. Tax does apply, however, if the hospital or other health care provider is not required by law to furnish photocopies but otherwise sells photocopies of records for a price. Charges made by a photocopy company directly to the requesting party for photocopies which, by agreement with the recordholder, were made and furnished directly to the requesting party are taxable in their entirety.

The preparation and service of a written authorization as provided in California Evidence Code Section 1158 is a nontaxable service. The tax does not apply to separately stated charges for this service even though the written authorization is served in connection with the performance of a contract to produce and deliver photocopies of records.

(B) Public Records. Tax does not apply to charges made by a public agency for photocopies of records furnished pursuant to the California Public Records Act or local law, ordinance, or resolution. Persons who obtain photocopies of public records from public agencies and sell the photocopies are making retail sales and must pay sales tax measured by their entire charge, including reimbursement of legally required fees.

(C) Witness Fees. Copying, witness, mileage or other fees which are charged by a person who furnishes copies of records in response to a subpoena as provided in California Evidence Code Section 1563 are not subject to tax. Separately stated charges by a photocopy company for the reimbursement of witness fees which were paid to the recordholder are not subject to tax. Tax does not apply to separately stated fees, made by a person who makes or acquires records for another for

advancing payment of statutory witness fees. Such fees, commonly identified as ‘‘check charges’’, are made to cover the cost of providing the check, advancing moneys, and associated bookkeeping costs. When a witness fee is charged, the ‘‘check charge’’ will be regarded as part of the charge for a nontaxable service and not as a part of the charge made for the tangible personal property.

(3) PREPARATION OF SUBPOENA DUCES TECUM. The preparation and service of a subpoena duces tecum is a nontaxable service. The tax does not apply to separately stated charges made for the service even though the subpoena is served in connection with the performance of a contract to produce and deliver photocopies of records.

(4) TYPEWRITTEN TRANSCRIPTIONS AND INTERPRETATION OF MEDICAL RECORDS. The tax does not apply to a separately stated charge made for providing a typewritten transcription of a medical report or an interpretation of the contents of a medical record. However, the tax applies to the fair retail value of any photocopies produced for the customer in connection with the nontaxable service.

(c) PHOTO FINISHERS.

(1) PRINTS AND ENLARGEMENTS. Tax applies to charges for printing pictures or making enlargements from negatives or slides furnished by the customer.

Tax applies to sales to photo finishers of all tangible personal property used by them in printing pictures or making enlargements except property becoming an ingredient or component part of the prints, enlargements and other items sold by them.

(2) COLORING AND TINTING. Tax applies to charges for coloring and tinting new pictures.

Tax does not apply to sales of colors and tints to photo finishers for use by them in coloring and tinting new pictures.

(3) FILM PROCESSING.

(A) Negative Development of Customer Furnished Film. Tax does not apply to separately stated charges for the negative development of customer furnished film. Development of film by the reverse process method is not the negative development of film.

Tax applies to sales of chemicals for use in such negative development whether or not the chemicals become a component part of the negative.

(B) Other Film Processing. Tax applies to all film processing charges other than separately stated charges for the negative development of customer furnished film. For example, tax applies to charges for development of film by the reverse process method.

Tax applies to sales of chemicals for use in such film processing if the chemicals do not become a component part of the processed film transferred to customers. Tax does not apply to sales of chemicals which do become a component part of film sold to customers before use.

Regulation 1528. (Contd.)

(d) X-RAY LABORATORIES. Producers of X-Ray films or photographs for the purpose of diagnosing medical or dental conditions of humans, excluding such films and photographs used only for cosmetic purposes, are the consumers of materials and supplies used in the production thereof. Thus, the tax applies to the sale of such materials and supplies to laboratories producing X-Ray films or photographs for the purpose of such diagnoses. Whether the laboratory is a ''lay laboratory'' or is operated by a physician, surgeon, dentist or hospital is immaterial. Producers of X-Ray films or photographs for any other purpose such as use for purely cosmetic purposes, diagnosis of medical or dental conditions of animals, inspection of metals, welds and similar purposes are retailers of the films or pictures and the tax applies to the gross receipts from the retail sale thereof. If, however, an X-Ray laboratory contracts to furnish an X-Ray inspection service, retaining title to and possession of the X-Ray or pictures produced, charges for the performance of such an inspection service are not subject to tax.

History: Effective June 1, 1951.

Amended July 18, 1951.

Amended November 3, 1969, applicable on and after November 10, 1969.

Amended by renumbering November 3, 1971, effective December 3, 1971.

Amended November 14, 1974, effective December 22, 1974. In (a) added explanation of tax on sales of photostatted records, revised (b) for clarity, and in (c) changed X-Ray producers of other than humans or animals from consumers to retailers.

Amended July 27, 1983, effective November 13, 1983. Revised subdivision (c) to delete reference to animals, added ''or photographer'' and added exclusion of use for ''cosmetic purposes''.

Amended March 6, 1985, effective June 2, 1985. Subdivision (a)(2) provides that when a hospital or other person or entity which furnishes copies of records in response to a written authorization presented to it by an attorney, or the attorney's representative, or a subpoena duces tecum served on it, the hospital or other person or entity is not subject to tax with respect to copying, witness, mileage, or other fees received by it pursuant to sections 1158 or 1568 of the Evidence Code. Subdivision (a)(2) also provides that fees for copies of records, when copies are provided through a copying service, remain nontaxable.

Amended August 1, 1991, effective August 27, 1991. Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, which repealed the exemption from sales and use tax for the sale or use of photographs when possession, but not title of the photograph, is transferred for the purpose of being reproduced one time only, in a newspaper regularly issued at average intervals not exceeding three months.

Amended June 26, 1997, effective October 4, 1997. Former subdivision (a)(1) is redesignated as subdivision (a), references to the terms ''photostat producers'' and ''photostats'' are replaced by ''photocopiers'' and ''photocopies,'' respectively, and a cross-reference to new subdivision (b)(2) is added. Subdivision (a)(2) is deleted in its entirety and replaced with new subdivision (b).

Regulation 1529. MOTION PICTURES.

Reference: Sections 6006, 6006.1, 6006.3, 6007, 6010, 6010.4 and 6010.6, Revenue and Taxation Code.

(a) GENERAL.

(1) A person who produces a motion picture or performs ''qualified production services'' is the consumer of, and tax applies to the sale to such persons of raw film, sound tape, or videotape stock; paintings; models; artwork; and other tangible personal property for such use.

(2) Tax does not apply to amounts charged for the right to exploit a qualified motion picture.

(3) Tax does not apply to charges for ''qualified production services'' performed by any person in any capacity (employee, agent, independent contractor or otherwise) in connection with the production of all or any part of a ''qualified motion picture''.

(4) Tax does not apply to charges for services performed by persons who do not fabricate or process tangible personal property, such as directors and lighting technicians. (See Regulation 1501 for a more detailed discussion.)

(b) APPLICATION OF TAX.

(1) QUALIFIED MOTION PICTURE. A ''qualified motion picture'' is any motion picture or portion thereof, whether finished or not, which is produced, adapted, or altered for exploitation in, on, or through any medium or by any device for any purpose, including, but not limited to, any entertainment, commercial, advertising, promotional, industrial, or educational purpose.

(A) Qualified motion picture includes, but is not limited to:

1. Motion pictures produced for display at theaters, amusement parks or on commercial carriers; television shows including closed circuit and broadcast; commercials; trailers; television spots; specials; featurettes; ''promos''; ''sneaks''; corporate training and sales presentations; video press kits; music videos; and special effects, titles, and credits which are embodied on film, tape, or other motion picture media.

2. Original and adapted versions including, but not limited to, adaptation to another language or another medium.

3. Motion pictures produced for the federal government or its instrumentalities, foreign governments, state and local governments, or political subdivisions thereof.

(B) Qualified motion picture does not include motion pictures produced for private noncommercial use, such as motion pictures of weddings or graduations to be used as family mementos, accident reconstruction videotapes to be used for legal analysis, or student films to be used for class projects.

(C) Tax does not apply to the transfer of all or part of, or any interest in, a qualified motion picture if either:

Regulation 1529. (Contd.)

1. The transfer is prior to the date that the qualified motion picture is exhibited or broadcast to its general audience, or

2. The transfer is to any person holding either directly or indirectly, or by affiliation, any exploitation rights obtained prior to the date that the qualified motion picture is exhibited or broadcast to its general audience. For example, a transfer to any entity that has control over or is under the control of another entity that held any exploitation rights directly would not be subject to tax. Further, a transfer to an entity which is under common control with another entity which held exploitation rights directly would not be subject to tax. Control, as used herein, is the ability of any person, such as a corporate parent or other entity, to direct the policies or actions of another entity through stock or other ownership.

(2) QUALIFIED PRODUCTION SERVICES. ''Qualified production services'' are any fabrication performed by any person in any capacity (including, but not limited to, an employee, agent, or independent contractor) on film, tape, or other audiovisual embodiment in connection with the production of all or any part of any qualified motion picture. Qualified production services include, but are not limited to, photography; sound or music recording; creation of special effects or animation on film, tape or other audiovisual embodiment, including animation drawings, inkings, paintings, tracings and celluloid ''cels''; technological modification, including colorizing; adaptation; alteration; computer graphics, including transfers of computer graphics on computer-generated media; sound dubbing or sound mixing; sound or music or effect transferring; film or tape editing or cutting; developing or processing of negatives or positives; timing; coding or encoding; creation of opticals, titles, main or end credits; captioning; and medium transfers (e.g., film to tape, tape to tape).

The term includes any such fabrication whether performed on the qualified motion picture before or after the release date. The term does not include work to manufacture release prints.

Qualified production services include processing performed on a qualified motion picture, except for processing to produce release prints. Processing includes film developing and processing; film to tape transfers; and sound transferring, rerecording, dubbing, and mixing.

(A) Performance of Services. Tax does not apply to charges for qualified production services. For example, tax does not apply to charges for photography, film developing other than of release prints, editing, or negative cutting performed on a qualified motion picture.

(B) Tangible Personal Property. A person who performs qualified production services is the consumer of, and tax applies to the sale to that person of, tangible personal property which that person uses in the performance of the services. For example, persons who perform nontaxable film and tape processing work are consumers of all chemicals and raw stock used in the process regardless that the final film or tape product is transferred to a customer.

Tax does not apply to the charge for the following tangible personal property transferred in connection with the performance of qualified production services:

Regulation 1529. (Contd.)

1. Film, tape, or other embodiment upon which sound, visual images, or computer-generated graphics are created or recorded. See subdivision (d)(11)(B) for a list of film prints and tapes which are considered to be the product of qualified production services and distinguishable from release prints.

2. Paintings, models, and artwork (including drawings, inkings, tracings, celluloid ''cels'', or photostats used in the animation process) used by those filming special effects, titles, or credits regardless that title to the property may be transferred to the customer.

Sales of tangible personal property to persons who perform qualified production services are subject to tax. The person performing the services shall not issue a resale certificate when purchasing such property. The application of tax is the same regardless of whether the person contracts to furnish the services and the tangible personal property for one price or separately itemizes such charges and whether the product of the service is transferred in California or is shipped out of state.

(C) Retail Sales of Tangible Personal Property. Tax applies to other retail sales of tangible personal property by a person who performs qualified production services. For example, if a person who performs qualified production services purchases costumes or props to include in a scene and transfers title to the property to the customer in California, the retail sale of the costumes or props is subject to sales tax.

(D) Services In General.

1. Tax does not apply to charges for services which are not fabrication or processing of tangible personal property. Such nontaxable services commonly found in the motion picture industry include writing, acting, directing, casting, music composing, management, production consulting and services rendered by stage personnel not performing fabrication or processing labor; such as grips, property personnel, lighting technicians or transportation drivers. Persons rendering services are consumers of any tangible personal property which may be incidentally used in rendering the services. (See Reg. 1501.)

2. Charges for repairing, reconditioning, or restoring a qualified motion picture are not subject to tax. Such nontaxable services include the retiming, remounting, or laboratory splicing of negative or positive film, tape, or other audiovisual embodiment.

3. Appliance Make-up. A person who fabricates and applies expendable appliance make-up is the consumer of materials and make-up used. Tax does not apply to charges made to the customer.

4. Storyboards. The preparation of storyboards for either animation or live photography is a service, and tax does not apply to the charge.

5. Creative Art Services. Tax does not apply to charges or buyout fees for creative art services used in connection with the production, distribution or exploitation of a qualified motion picture. A person who provides creative art services is the consumer of tangible personal property used in the performance of

Regulation 1529. (Contd.)

such services and tax applies to the sale of property to the service provider. Tax does not apply to the charges for tangible personal property transferred in connection with the performance of creative art services.

However, if the service recipient subsequently displays the property as a work of art (for example, frames it and hangs it on a wall), the service recipient would owe use tax based on their purchase price. In addition, if the property is subsequently physically incorporated into finished art for reproduction by photomechanical processes, the service recipient would owe use tax based on their purchase price.

(3) RELEASE PRINTS.

(A) The manufacturing of release prints is not the performance of qualified production services. The application of sales tax to sales of release prints is the same as the application of tax to other sales of tangible personal property; that is, the sale of a release print to a person for exhibition or broadcast is a retail sale subject to sales tax. The sale of a release print for resale is not subject to tax. See subdivision (d)(11)(A) for a list of film and tape products which are release prints.

(B) When a contract calls for production or sale of a qualified motion picture, but only requires delivery of one or more release prints, the first film or tape delivered which is of a quality suitable for exhibition will be considered the principal release print. The person required to deliver the principal release print under the contract is the consumer of, and tax applies to the sale to that person of, the principal release print. For the application of tax to all other sales of release prints, whether called for in the original contract or not, see paragraph (A) of this subdivision.

(4) STOCK SHOTS.

(A) The production of a stock shot, whether by the owner at its own facility or by a subcontractor, is a qualified production service. The person producing the stock shot is the consumer of, and tax applies to the sale to that person of, tangible personal property which such person uses to produce the stock shot. The transfer, either outright or by lease, of such stock shot by the owner of the stock shot or subcontractor is nontaxable.

(B) The outright sale of a stock shot library consisting of negative and/or positive materials is a sale subject to tax unless otherwise exempt.

(5) SPECIAL PRODUCTION PARTNERSHIPS. If two or more persons engaged in the production and distribution of motion pictures for use in any media form a partnership for the purpose of reducing the cost of producing motion pictures through the sharing of the use of equipment, studio facilities, and the services of personnel, the furnishing (without transferring title to tangible personal property) of such equipment, facilities, and services by the partnership to its members for the purpose of the production of motion pictures by its members does not constitute a ‘‘sale’’ or ‘‘purchase’’. Refer to subdivision (b)(2)(B) for the application of tax to charges for tangible personal property transferred along with the sale of qualified production services.

Regulation 1529. (Contd.)

(6) RENTALS GENERALLY.

(A) Rentals of Equipment. Tax applies to rentals of tangible personal property as explained in Regulation 1660. A person who contracts to provide qualified production services and provides equipment, such as an editing machine or a camera, together with an operator of the equipment to perform the services, does not thereby rent out the equipment but uses the equipment in performing the qualified production services. Such person may not purchase the equipment under a resale certificate but should pay sales tax reimbursement or timely pay use tax on the purchase of the equipment.

(B) Rentals Under A Studio Facilities Contract. Under a studio facilities contract, a studio provides the use of certain property and services for a facilities fee. Included within the property made available are items of tangible personal property, the furnishing of which constitutes a rental.

In addition, billings are made for additional costs of materials and labor for sets, props and wardrobes. Such costs include the labor of persons such as carpenters, electricians, painters, plasterers, to fabricate flats, to revamp and change existing flats, and to assemble the components into a set (flats are portable components of sets and are usually prefabricated). Usually the facilities contract provides that title to these items remains in the studio. Under these circumstances, charges billed out as the cost of materials and labor are considered rentals.

In view of the difficulty of determining the amount of taxable rentals included within the facilities fee and the additional costs billed for sets, props, and wardrobes, the taxable rental so included will be deemed to be 55 percent of the actual set designing, set construction, and set striking costs billed to the lessee. The 55 percent factor covers set rentals and rentals of all other items furnished under a studio facilities contract whether charged to production cost or included as a portion of the facilities fee.

If title to any particular item is actually transferred, e.g., an item of wardrobe to an actress, the entire charge for the item is taxable.

Rentals of tangible personal property by motion picture and television studios which do not have a studio facilities contract with the lessee are taxable in the same manner as rentals generally.

Charges involving rentals of permanent standing sets, which are real property rather than personal property, are not taxable where the transactions are clearly identifiable in the lessor's records.

(C) Distribution or Rental of Motion Pictures. Rental receipts from any motion picture such as release prints or stock shots are not subject to tax. Tax applies to leases of videocassettes, videotapes, and videodiscs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the videocassette, videotape, or videodisc. (Reg. 1660, subd. (d)(2).)

(D) Rentals of Still Photographs and Photographic Slide Films. Leases of still photographs or photographic slides are subject to tax unless the lessor leases the property in substantially the same form as acquired by the lessor, or by his or her

Regulation 1529. (Contd.)

transferor, and the lessor or transferor has paid sales tax reimbursement or has timely paid use tax measured by the purchase price. (Reg. 1660, subd. (b)(1)(E).)

(c) MISCELLANEOUS.

(1) SLIDE FILMS. Still slide films and filmstrips are not motion pictures. A person who makes such films or filmstrips for customers is a retailer, and tax applies to charges made to the customers.

(d) DEFINITIONS.

(1) "ADAPT." To make suitable for a different use.

(2) "ANIMATION." A process by which the portrayal of action is created by a computer or by the recording of a series of images of drawings or models, each image representing an advancement in the action.

(3) "CUTTING SERVICES." All labor involved in cutting and splicing film, tape or other embodiment.

(4) "EXPLOIT" OR "EXPLOITATION." Any use of all or any part of a qualified motion picture, including exhibiting, broadcasting, telecasting, displaying, projecting, transmitting, duplicating, reproducing, distributing, promoting, advertising, commercializing, merchandising, marketing, in any or all media markets and territories and by any or all means, methods, modes, processes, and devices or delivery systems of every kind and character. "Exploitation" includes each and every act comprising part of any phase of the process of exploiting all or any qualified motion picture, whether before or after commencement of principal photography.

(5) "FACILITIES FEE." An amount charged by the studio to a person who works on any part of a motion picture under a studio facilities contract which entitles the person to the use of basic facilities, such as stage space, projection room, sound facilities, cutting room, dressing rooms, office space, parking, grip equipment, props, set dressings, drapes, and backings, and to services, such as accounting, budgeting, and janitors. Items provided by studios are usually divided into "below-the-line" elements and "above-the-line" elements. The term "below-the-line" includes all elements related to production other than basic format, scripts, directors, talent, and writers, (including persons such as secretaries, production or administrative assistants, and script secretaries).

(6) "MODEL." Any three dimensional representation including, but not limited to landscape or other miniatures, creatures, puppets, sculptures, or non-real life objects or structures.

(7) "MOTION PICTURE." Any audiovisual work (at any stage of the production thereof) consisting of a series of related images, either on film, tape, or other embodiment, whether photographic, or otherwise, and for these purposes, includes all physical materials comprising part of, or synchronized with, the motion picture, including the original, duplicate, and other negatives, intermediary film

Regulation 1529. (Contd.)

products, tapes, prints and original, duplicate and other sound or visual recordings created to accompany the pictorial material depicted in the motion picture.

(8) "PRODUCE OR PRODUCTION OF ANY QUALIFIED MOTION PICTURE." To originate, create, invent, design, devise, develop, photograph, edit, record, imprint, adapt, alter, make, process, fabricate, assemble, construct, or manufacture all or any part of that qualified motion picture by any means, method, or devise of any kind or character, whether before or after commencement of principal photography.

(9) "QUALIFIED MOTION PICTURE." See subdivision (b)(1).

(10) "QUALIFIED PRODUCTION SERVICES." See subdivision (b)(2).

(11) "RELEASE PRINT." A copy of a qualified motion picture complete in all respects, which is of a quality suitable for exhibition or broadcast.

(A) The following film and tape products, if complete in all respects and suitable for exhibition or broadcast, qualify as release prints:

FILM	*TAPE*
Screening Copy (Complete) A print used for marketing, goodwill or other promotional purposes.	Promo/Marketing Videotape A copy used for marketing, goodwill or other promotional purposes.
Release Print A print produced on high quality stock and used for exhibition to the public.	Broadcast/Air Dub A broadcast quality copy made from an edited or safety master.
Show Print A high quality print used for industry screenings and major market exhibition.	

(B) The following film and tape products are not considered release prints but rather are the product of qualified production services:

FILM	*TAPE*
Work Print/Rush/Daily A positive print made from a developed negative and used for editing. The negative may be the embodiment of elements including, but not limited	Master An original tape of film action.

Regulation 1529. (Contd.)

to, original photography, leaders, opticals, intermediates, sound tracks, overlay titles, or mattes.

Fine Grain/Interpositive Master Positive

An intermediate positive film used for storing and processing images, creating visual effects or duplicate negatives for release printing or for archival or other uses.

Duplicate (Dupe) Negative Internegative

A negative film produced from a fine grain or interpositive and used for producing release prints.

Answer Print/First Trial/Composite Print

A print produced from an original or dupe negative for evaluation of color balance and used to generate an interpositive or internegative.

YCM—(Yellow, Cyan and Magenta)

A black and white fine copy of primary colors produced for archival purposes.

Window Dub/Submaster

A copy of the master used for editing.

Edited Master

An edited copy of a sub or edited master.

Safety Master/ Protection Copy

A back-up copy of a sub or edited master.

Work Print Videotape

An intermediate copy made from film and used for reviewing dailies, preliminary editing or network approvals.

Regulation 1529. (Contd.)

Contrast Prints

A print manufactured on special low contrast film emulsion designed to be used for transferring a motion picture from film medium to tape.

Technical Check Videotape

A broadcast quality copy used for technical and internal review.

Stock Shot

A clip from a motion picture which has been exhibited or broadcasted to its general audience.

Stock Shot

A clip from a motion picture which has been exhibited or broadcasted to its general audience.

One Light Print

An untimed color positive print used for editing purposes.

Approval Copy

A copy of the director's final version which is prepared for client review.

Black and White ("Blue") Dupes

A positive print generally without sound used for various types of editing.

Viewing/Screening Videotape (Incomplete)

A non-broadcast quality copy of the finished version used for review purposes which may include visual time codes or overt anti-piracy protection or lack title or end credits.

Check Print

A print produced for purposes of checking the quality of the internegative and to assure that subsequent prints conform to the answer print.

Regulation 1529. (Contd.)

Edited Work Print/
Edited Daily
A print used for internal review prior to a final version.

Preview Print
An edited work print which represents the director's final version as required by guild agreement.

Bid Print
An interim edited preview print used for evaluating market potential.

Screening Copy (Incomplete)
A print used for review purposes which may include visual time codes or overt anti-piracy protection or lack title or end credits.

Approval Copy
A preview print used for customer review purposes.

(12) "SETS." Artificial settings for scenes of motion pictures. They may be either of a temporary or portable nature, such as interiors, or of a permanent nature erected on real property, such as Western streets or city streets.

(13) "SPECIAL EFFECTS." A visual representation, on film, tape, or other audiovisual embodiment of illusory live action produced through photographic, electronic , mechanical, or other means, which comprises all or part of a motion picture.

(14) "TECHNOLOGICAL MODIFICATIONS." Alteration of a motion picture through computer, electromagnetic or other processes or means including color imaging and color enhancing.

(15) "CREATIVE ART SERVICES." Creative art services are services performed by persons such as advertising agencies, commercial artists and designers to convey ideas, concepts, looks or messages in connection with production, distribution or exploitation of a qualified motion picture. Creative art services may result in a transfer, enhancement or revision on any medium including, without limitation, the following: roughs, visualizations, drawings, sketches, renderings,

Regulation 1529. (Contd.)

illustrations, layouts, comprehensives, photographs, negatives, transparencies, prints, copies, chromatics, stats, logo types, scans, lasergraphics, visual prototypes and electronic imagery. Creative art services do not include services for the preparation of finished art for use in reproduction by photomechanical processes.

(16) "BUYOUT FEES." Buyout fees are amounts paid for the right to use an idea, concept, look or message previously presented during any phase of creative art services.

History: Effective August, 1933.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended by renumbering November 3, 1971, effective December 3, 1971.

Amended November 14, 1974, effective December 22, 1974. Totally revised regulation, added definitions, and added explanation and list of taxable charges to producers.

Amended October 26, 1983, effective November 17, 1983. Paragraph (e)(3) amended as an emergency regulation to provide that tax applied to leases of video cassettes, videotapes, and videodiscs for private use.

Amended November 18, 1987, effective January 1, 1988. Amended subdivisions (b)(1), (b)(19), (b)(20), (c)(2), and (d) and added subdivision (e)(4) and (f) to conform the regulation to the Revenue and Taxation Code and to reflect significant changes that have occurred in the industry over the years, e.g., increased diversification of functions and changes in contractual relationships between the parties to a production.

Amended March 6, 1990, effective May 12, 1990. Totally revised the regulation to conform it to the Revenue and Taxation Code as amended by SB 1405 (Chapter 1157, Statutes of 1988) and added subdivision (e) to provide this amendment is operative September 22, 1988.

Amended September 25, 1996, effective February 16, 1997. Added subdivision 5 to subdivision (b)(2)(D) and subdivisions (15) & (16) to subdivision (d); deleted subdivision (e).

Regulation 1530. FOUNDRIES.

Reference: Sections 6007-6009, Revenue and Taxation Code.

Tax applies to fifty-five percent of the receipts from the sale of coke to foundries for use in the manufacture of castings by the cupola process, which percentage represents that portion of the coke that is consumed in the process. Tax does not apply to the remaining forty-five percent, which percentage represents that portion of the coke that is purchased by the foundries for resale.

History: Effective July 1, 1939.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended by renumbering November 3, 1971, effective December 3, 1971.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1531. FUR DRESSERS AND DYERS.

References: Sections 6007–6009, Revenue and Taxation Code.
Altering, repairing, and remodeling furs, see Regulation 1549.

Tax does not apply to sales of dyestuffs and the following chemicals to fur dressers and dyers engaged in processing and dyeing skins and furs of which they are the owners and which they will sell:

(a) Chemicals used in the pickling and tanning process:

Aluminum sulphate	Ammonium sulphate
Sodium chloride *	Potassium aluminum sulphate
Ammonium chloride	Sulphuric acid
Chrome alum	Formaldehyde

* Sodium chloride is also used in ‘‘fleshing,’’ i.e., the process of removing the residue of the flesh from the skin, in which case it does not become a component part of the finished product. In the event that a fur dyer purchases under resale certificates sodium chloride, a portion of which he uses in fleshing, he will be required to pay sales tax on the cost of the total amount purchased, unless he keeps accurate records showing the respective amounts used in each process.

(b) Chemicals used in mordanting:

Potassium dichromate	Potassium tartarate
Copper sulphate	Acetic acid
Ferrous sulphate	Antimonium potassium tartarate
Sodium dichromate	Formic acid
Lead acetate	

(c) Dyes:

Universal D	E G
N Z A	D M G—Gray
B C A	D B
‘‘P’’ Base	Aniline Hydrochloride
Fur Brown	Universal P S
Fur Black	Universal P H C L
Acid Red	Universal A
Acid Blue	Universal 2 G S
	Universal 2 G E

(d) Intermediates:

Hydrogen peroxide *	Ammonium chloride
Potassium chlorate	Copper sulphate
Ammonium hydroxide	Pyrogallic acid

* Hydrogen peroxide is also commonly used as a bleaching agent, in which case the person so using it is the consumer thereof, and the same comments are applicable to it as have been made above in connection with sodium chloride.

Regulation 1531. (Contd.)

(e) Processing oils used to produce softness and flexibility:

Glycerine
Nutramented cod oil
Shellacol
Sulphonated nutracod
Sulphonate cod oil

(f) It is possible that other chemicals than those listed may be used in the above processes and may also be regarded as being purchased by fur dyers for the purpose of resale. All chemicals, however, which are not listed above and which are not used in a manner comparable to those which are listed, must be regarded as being purchased by fur dyers for their own consumption rather than for the purpose of resale.

(g) Included among the products which are commonly used by fur dressers and dyers and which should not be purchased under resale certificates are the following:

Sodium carbonate (soda ash)
Sodium sulphate (glauber salts)
Trisodium phosphate
Fibreen talc
French chalk
Sierra white talc
Chloride of lime

(h) Fur dressers and dyers sometimes process and dye furs belonging to others, as distinguished from furs which they have purchased and will resell. Unless their operations amount to producing, processing or fabricating within the meaning of Regulation 1526, they are the consumers of all products used in connection with such work, including dyestuffs and other chemicals which combine with the fur and become a component part of the finished article.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered November 3, 1971, effective December 3, 1971.

Regulation 1532. TELEPRODUCTION OR OTHER POSTPRODUCTION SERVICE EQUIPMENT.

Reference: Section 6378, Revenue and Taxation Code.

(a) PARTIAL EXEMPTION FOR PROPERTY PURCHASED FOR USE IN TELEPRODUCTION OR OTHER POSTPRODUCTION SERVICES. Commencing on January 1, 1999, section 6378 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for certain properties described in this regulation.

For the period commencing on January 1, 1999 and ending on December 31, 2000, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code,

Regulation 1532. (Contd.)

the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

Regulation 1532. (Contd.)

Subject to the limitations set forth above, this partial exemption applies to sales or use taxes imposed on the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following items:

(1) Tangible personal property as defined in subdivision (c)(5) purchased for use by a qualified person to be used primarily in teleproduction or other postproduction services.

(2) Tangible personal property as defined in subdivision (c)(5) purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in subdivision (a)(1).

(b) PROPERTY USED PRIMARILY IN ADMINISTRATION, GENERAL MANAGEMENT, OR MARKETING. Notwithstanding any other provision of this regulation, this partial exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing. For purposes of this subdivision, tangible personal property is used primarily in administration, general management, or marketing when it is used 50 percent or more of the time in one or more of those activities for the one year period following the date of purchase of the property.

(c) DEFINITIONS. For purposes of this regulation:

(1) ''Primarily'' means tangible personal property as defined in subdivision (c)(5) of this regulation used 50 percent or more of the time in an activity described in subdivision (a) for the one-year period following the date of purchase of the property. Tangible personal property shall not be considered used in such activities for any period of time that the property is located outside the state, regardless of how the property is used while outside the state.

(2) ''Qualified person'' means any person whose line of business is primarily engaged in teleproduction or other postproduction activities, including postproduction audio services for film, television, and video productions, described in Code 512191 of the North American Industry Classification System (NAICS) Manual published by the United States Office of Management and Budget, 1997 edition, and as further defined in (c)(4) of this regulation. The term ''qualified person'' does not include persons whose line of business is primarily engaged in portrait studios providing still, video, or digital portrait photography services (NAICS Code 541921, incorporated herein by reference), or commercial photography services (NAICS Code 541922, incorporated herein by reference). For the purposes of this subdivision:

(A) ''Primarily engaged'' means 50 percent or more of gross revenues, including intra-company charges, are derived from teleproduction or other postproduction activities for the financial year of the purchaser preceding the purchase of the property. In cases where the purchaser was not primarily engaged in ''teleproduction or other postproduction services'' for the financial year preceding the purchase of the property, the one year period following the date of purchase of the property will be used. In the case of a nonprofit teleproduction or other

postproduction establishment, ''primarily engaged'' means 50 percent or more of the funds allocated to the establishment are attributable to teleproduction or other postproduction services.

(B) For purposes of classifying a line of business, the economic unit shall be the ''establishment'' and the classification of the line or lines of business will be based on the establishment's primary activity based upon gross revenues.

(C) ''Establishment'' is defined as the smallest operating unit for which records provide information on the revenues and cost of operations incurred to perform the teleproduction or postproduction services.

1. The services may be provided to other divisions within the same entity or to related parties with or without direct compensation.

2. Establishments may include, but are not limited to, departments, divisions, subdivisions and product lines.

(3) ''Sale'' includes the producing, fabricating or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating or processing. When performed outside this state or when the customer issues a resale certificate, a ''purchase'' includes the producing, fabricating or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating or processing. If such producing, fabricating or processing is performed on property described in subdivision (a)(1) or (a)(2) of this regulation for a qualified person and the other requirements for the partial exemption in this regulation are met, the partial exemption applies to the gross receipts or sales price for such producing, fabricating, or processing.

(4) ''Teleproduction or other postproduction services'' means services for film, video, or digital multimedia formats (audio or visual) that include editing, film and video transfers, transcoding, dubbing, subtitling, credits, close captioning, audio production, special effects (visual or sound), graphics, or animation. For the purposes of this regulation, ''teleproduction or other postproduction services'' includes postproduction services and does not include production services or activities. ''Teleproduction or other postproduction services'' include the duplicating of film for postproduction purposes. However, the duplication of film to make release prints does not qualify as a ''teleproduction or other postproduction service.''

The term ''teleproduction or other postproduction services'' also includes, but is not limited to:

(A) Services performed to transform, manipulate, assemble, and duplicate visual moving images and synchronous sound previously captured on film, video, or digital formats (audio or visual) or as data during principal photography.

(B) Services to create digital images, models, miniatures or sounds that may be, but are not required to be combined with live action images. Teleproduction or other postproduction services does not include the recording of music except music recorded with synchronous visual images.

Regulation 1532. (Contd.)

(C) Film processing; film to tape transfers; tape to tape transfers; DVD or digital audiovisual multimedia format authoring and encoding; color correction; digitizing; on-line and off-line editing; negative cutting; assembling; animation, creating 2d images, creating 3d images (CGI), visual effects; compositing; digital video image manipulation; dirt fixes; motion control visual effects capture; scanning and recording to or from film, video or data; transform; standards or format conversion; transcoding; duplication (except as provided); titles; subtitling; credits; closed captioning; creating graphics; audio scoring; automated dialogue replacement; foley; audio mixing; audio editing; audio laybacks; audio laydowns; audio special effects; management of visual or audio assets and related files stored as data; film, video or audio (dialogue, music and effects) restoration and preservation; archiving, format transfer utilizing compression standards; film cleaning; quality control processes performed in conjunction with any other postproduction process; and creation of data files related to a service defined above.

Definitions of the terms used in this subdivision are provided in Appendix C.

(D) The providing of postproduction facilities, such as personnel and scoring stages or equipment where the provider is deemed to be providing a qualified teleproduction or other postproduction service, is not a lease of tangible personal property.

The providing of special configured equipment to be used in (A) through (D) above with 24 hour a day, 7-day a week available on site technical support where the provider is deemed to be providing a qualified teleproduction or other postproduction service, is not a lease of tangible personal property.

(5) ''Tangible personal property'' includes, but is not limited to, all of the following:

(A) Machinery and Equipment, Including Component Parts. Machinery and equipment includes, but is not limited to, duplication equipment used for postproduction purposes and any property used to provide teleproduction or other postproduction services that is mounted or installed in a vehicle.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, audio and visual monitoring equipment, scopes, computers, data processing equipment, electronic data storage equipment, including both internal and external devices, consoles which are custom built, which have open compartments in which tangible personal property described in subdivisions (a)(1) and (a)(2) is placed and which are not suitable for use for other purposes, equipment racks and computer software, including both operating programs and application programs. This also includes all repair and replacement parts with a useful life of one or more years whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Repair and replacement parts that are treated as a depreciable asset for financial purposes will be treated as having a useful life of more than one year for the purposes of this regulation, even when such items are expensed for income tax purposes under the special provisions of Internal Revenue Code section 179.

Regulation 1532. (Contd.)

(C) Materials (as defined in Regulation 1521), only when purchased by a qualified person as tangible personal property and not pursuant to a construction contract, unless the construction contractor is the retailer of materials under Regulation 1521(b)(2)(A)(2); fixtures; or other tangible personal property used to operate, control, regulate, or maintain the property described in subdivisions (a)(1) and (a)(2) which may subsequently be incorporated into real property, including but not limited to items such as air conditioning units dedicated to cooling equipment, electrical UPS (uninterrupted power source) units, sub-flooring, specialized lighting, sound insulation, hydraulics, cabling, routers, patch bays, hubs, robotic storage and retrieval equipment, switchers, satellite and/or other telecommunications equipment used to facilitate the distribution or movement of elements (in either video or data form) between all the various parties collaborating in the completion of a film or video project as part of the postproduction process.

(6) ''Tangible personal property'' does not include any of the following:

(A) Furniture, inventory, meals, vehicles (including those in or on which qualifying property is mounted or installed,) or equipment used to store products. The term ''furniture'' includes, but is not limited to, tables, chairs, desks or consoles other than those described in subdivision (c)(5)(B).

(B) Real property.

(d) TAXES AS TO WHICH THE PARTIAL EXEMPTION DOES NOT APPLY. This partial exemption does not apply to any tax levied by a county, city, or district pursuant to, or in accordance with, either the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code §§ 7200 et seq.) or the Transactions and Use Tax Law (Rev. & Tax Code §§ 7251 et seq.).

This partial exemption also does not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution.

(e) SECTION 6378 EXEMPTION CERTIFICATE.

(1) Qualified persons who purchase or lease tangible personal property from an in-state seller, or an out-of-state seller obligated to collect use tax, must provide the seller with a section 6378 exemption certificate in order for the seller to claim the partial exemption. If the seller takes a complete section 6378 exemption certificate timely and in good faith, the certificate relieves the seller from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A certificate will be considered timely if it is taken any time before the seller bills the purchaser for the property, any time within the seller's normal billing or payment cycle, or any time at or prior to delivery of the property to the purchaser.

A section 6378 exemption certificate which is not taken timely will not relieve the seller of the liability for tax excluded by the partial exemption unless the seller presents satisfactory evidence to the Board that the specific property was sold to a qualified person and primarily used in a qualifying manner.

Regulation 1532. (Contd.)

The exemption certificate form set forth in Appendix A may be used as an exemption certificate.

(2) BLANKET CERTIFICATES. In lieu of requiring an exemption certificate for each transaction, a qualified person may issue a blanket exemption certificate. The blanket exemption certificate form set forth in Appendix B may be used as an exemption certificate. Qualified persons claiming the partial exemption through a blanket exemption certificate must make a clear reference to the blanket exemption certificate in documents such as their written purchase orders, sales agreements, leases, or contracts. Qualified persons claiming the partial exemption must also include in the document referencing the blanket exemption certificate a description of the property.

(3) FORM OF CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as an exemption certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser or an agent or employee of the purchaser.

(B) The name and address of the purchaser.

(C) The seller's permit number held by the purchaser, or a notation to the effect that the purchaser is not required to hold a permit.

(D) A statement that the property acquired is to be used primarily in teleproduction or other postproduction services or to be used primarily to maintain, repair, measure, or test any such property.

(E) A statement that the purchaser is a qualified person primarily engaged in teleproduction or other postproduction services as described in Regulation 1532.

(F) Description of property purchased, including sales price or rentals payable.

(G) Date executed.

(4) RETENTION AND AVAILABILITY OF CERTIFICATES. A seller must retain each exemption certificate, including a blanket exemption certificate, received from a qualified person for a period of not less than four years from the date on which the seller claims a partial exemption based on the exemption certificate. If a qualified person issues a blanket exemption certificate, the seller must also retain all documents, such as purchase orders, sales agreements, lease agreements, or contracts referencing the blanket exemption certificate and all invoices containing the sales price of the property that the qualified person claims is partially exempt by reference to the blanket exemption certificate. Such documents shall be retained for a period of not less than four years from the date on which the seller claims a partial exemption based on the reference to the blanket exemption certificate.

While the Board will not normally require the filing of the section 6378 exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a seller to commence filing with its sales and use tax returns copies of

Regulation 1532. (Contd.)

all certificates. The Board may also require that, within 45 days of the Board's request, sellers furnish to the Board any and all exemption certificates, or copies thereof, accepted for the purpose of supporting the partial exemption.

(5) If a purchaser who issues a section 6378 exemption certificate pursuant to subdivision (e)(1), (2), or (3) subsequently does not meet the requirements of a qualified person as set forth in subdivision (c)(2) or does not use the property in a manner or for the purpose which entitles the purchaser to the partial exemption, or if a purchaser issues a section 6378 exemption certificate pursuant to subdivision (e)(1), (2), or (3) for property that does not qualify for the partial exemption, the purchaser shall be liable for payment of the sales tax excluded by the partial exemption, with applicable interest, to the same extent as if the purchaser were a seller making a retail sale of the property at the time of conversion. The sales price of the property to the purchaser shall be deemed to be the gross receipts from that retail sale.

(f) USE TAX. With respect to tangible personal property the use of which is subject to use tax, any purchaser claiming the partial exemption pursuant to section 6378 of the Revenue and Taxation Code must file a sales and use tax return or consumer use tax return for the period in which the property is first stored, used, or consumed in California unless the seller holds a valid California seller's permit or a certificate of registration—use tax and collects the use tax. The purchaser will not be relieved of his or her liability to pay any applicable use tax that is excluded from the partial exemption as provided in subdivision (d) of this regulation until such tax is remitted either to a vendor who issues a receipt which meets the requirements of Regulation 1686 or directly to the Board.

(g) CONVERSION OF PROPERTY TO A USE NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Property that, within one year from the date of purchase, is removed from California, converted from an exempt use under this regulation to some other use not qualifying for the partial exemption, or used in a manner not qualifying for the partial exemption under this regulation, such as a lease to a non-qualified person, is used in a non-qualifying manner. If, as a result of the total non-qualifying use, the property is not primarily used, as defined in subdivision (c)(1), in a qualifying activity, the partial exemption shall not apply. In determining the non-qualifying use, two or more non-qualifying uses that occur at the same time shall be counted as one. For example, a lease to a non-qualified person of property that is removed from California shall be considered as one non-qualifying use for the period it was removed from California and leased to a non-qualified person.

The property shall not, however, be regarded as converted to a use not qualifying for the partial exemption if the qualified person sells or leases the property to a qualified person for qualified use in California.

For purposes of this subdivision, tangible personal property shall not be regarded as being converted to a non-qualifying use if such property is used for teleproduction or other postproduction services in this state for more than one half of the one year period from the date of purchase of the property.

Regulation 1532. (Contd.)

(h) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX. If a purchaser submits a section 6378 exemption certificate to the seller, and then within one year of the date of purchase of the property converts that property as described in subdivision (g) from an exempt use pursuant to this regulation to some other use not qualifying for the partial exemption, the purchaser shall be liable for payment of sales tax excluded by the partial exemption, with applicable interest, to the same extent as if the purchaser were a seller making a retail sale of the property at the time the property was so removed, converted, or used; and the sales price of the property to the purchaser shall be deemed to be the gross receipts from that retail sale. In the case of a non-qualifying lease, the payment of sales tax by a purchaser when included on the return for the period covering the date of conversion shall be deemed to be a timely election to pay tax based on the purchase price.

(i) LEASES.

(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as ''continuing sales'' and ''continuing purchases'' of tangible personal property, in accordance with Regulation 1660, ''Leases of Tangible Personal Property—In General,'' may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rental receipts paid by a qualified person with respect to a lease of tangible personal property to the qualified person, which tangible personal property is used as set forth in subdivisions (a)(1) and (a)(2) of this regulation, notwithstanding the fact that the lease was entered into prior to the operative date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

A lessee is a qualified person if the lessee is ''primarily engaged'' in teleproduction or other postproduction activities and meets the requirements of a qualified person set forth in subdivision (c)(2).

(2) LEASES OF TAX-PAID PROPERTY. The partial exemption does not apply to the sale of property to, or the storage, use, or other consumption of property by, a person who is not a qualified person even if that person subsequently leases the property to a qualified person.

(3) LEASE OF PROPERTY BY A QUALIFIED PERSON. If a qualified person has acquired property subject to the partial exemption provided by this regulation, the subsequent lease of that property will not be subject to tax measured by rental receipts. A lease of property to a qualified person for use in a qualified manner constitutes a qualifying use of the property by the lessor. If, however, the property is used in a manner not qualifying for the exemption, such as being leased to a non-qualified person in the aggregate for more than one half of the one year period following the date of purchase by the qualified person, such property is not considered to be primarily used in ''teleproduction or other postproduction services.'' Therefore, the lessor will be liable for tax in accordance with subdivision (e)(5).

Regulation 1532. (Contd.)

For example, if a qualified person purchases property under the partial exemption, and then leases the property to a non-qualified person, the lease receipts will not be subject to tax as the purchaser has elected to pay tax on their cost. However, if the qualified person who purchases the property leases the property to a non-qualified person for more than one half of the one year period following the date of purchase, the lessor is not using the property in a qualifying manner and is responsible for the tax excluded by the partial exemption based upon the purchase price of the property.

(4) LEASES—RECHARACTERIZATION. With respect to transactions which the parties denominate as a ''lease,'' but which are recharacterized for sales and use tax purposes either as sales at their inception, pursuant to Regulation 1641, ''Credit Sales and Repossessions,'' subdivision (b), or as sales under a security agreement, Regulation 1660, ''Leases of Tangible Personal Property—In General,'' subdivision (a)(2), the transactions may qualify for the partial exemption, in accordance with this regulation.

(5) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(j) RECORDS. Adequate and complete records must be maintained by the purchaser to support that the property purchased was used primarily in the performance of teleproduction or other postproduction services for a period of no less than one year prior to conversion of the property to a non-qualifying use or use by a non qualifying party.

(k) OPERATIVE DATE. This regulation is operative as of January 1, 1999. The partial exemption under section 6378 of the Revenue and Taxation Code only applies to qualifying tangible personal property that is sold or first stored, used, or consumed in California on or after the operative date.

History: Adopted October 6, 1999, effective January 8, 2000.

Amended December 14, 2000, effective February 13, 2001. Subdivision (a) and Appendices (A) and (B)—incorporated new tax rate of 4.75% effective January 1, 2001, in first paragraphs.

Amended October 29, 2001, effective May 17, 2002. Subdivision (a), second unnumbered paragraph—phrase ''and ending on December 31, 2001'' added. New third unnumbered paragraph added. Appendices (A) and (B)—incorporated new tax rate of 5.0% effective January 1, 2002, in first paragraphs.

Regulation 1532. (Contd.)

Section 6378 Exemption Certificate

Please Note: This is a partial exemption from sales and use tax at the rate of ▲5% effective January 1, ▲2002, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1999 to December 31, 2000. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. The exemption is specific to these transactions only and may not be construed to exempt other transactions. This exemption also applies to lease payments made on or after January 1, 1999, notwithstanding the fact that the lease agreement was entered into prior to January 1, 1999. This certificate may *not* be used to purchase certain property such as, furniture, inventory, meals, vehicles, equipment used to store products or real property.

Seller's Name
Seller's Address
(Street, City, State, Zip Code)

PURCHASE ORDER NUMBER	DATE OF PURCHASE ORDER	DESCRIPTION OF PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I hereby certify that I am a qualified person primarily engaged in teleproduction or other postproduction services as described in Regulation 1532 and that the property listed above will be used primarily in teleproduction or other postproduction services or to maintain, repair, measure or test any such property. I understand that if such property is used outside the State of California or leased to a non-qualified person in the aggregate for more than one half of the one year period following the date of purchase or lease, or if such property is converted for use in a manner not qualifying for the exemption, that I am required by the Revenue and Taxation Code to report and pay the state sales/use tax measured by the sales price of the property to/by me.

PRINT NAME	TITLE	COMPANY NAME
SIGNATURE	DATE	PERMIT NUMBER (if applicable)*
ADDRESS	CITY	STATE, ZIP

Seller must retain a copy of this exemption certificate to support a deduction taken on their return.

* A seller's permit is required to be held by any person engaged in the business of selling tangible personal property in California. Certain lessors must also hold a seller's permit. If you are not required to hold a seller's permit because you make no sales or leases of tangible personal property in California, please enter "Not Applicable".

Regulation 1532. (Contd.)

Section 6378 Blanket Exemption Certificate

Please Note: This is a partial exemption from sales and use tax at the rate of ▲5% effective January 1, ▲2002, 4.75% from January 1, 2001 to December 31, 2001, 5% from January 1, 1999 to December 31, 2000. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This exemption also applies to lease payments made on or after January 1, 1999, notwithstanding the fact that the lease agreement was entered into prior to January 1, 1999. This certificate may ***not*** be used to purchase certain property such as furniture, inventory, meals, vehicles, equipment used to store products or real property.

Seller's Name
Seller's Address
(Street, City, State, Zip Code)

I hereby certify that I am a qualified person primarily engaged in teleproduction or other postproduction services as described in Regulation 1532 and that the property purchased or leased will be used primarily in teleproduction or other postproduction services or to maintain, repair, measure or test any such property. I understand that if such property is used outside the State of California or leased to a non qualified person in the aggregate for more than one half of the one year period following the date of purchase or lease, or if such property is converted for use in a manner not qualifying for the exemption, that I am required by the Revenue and Taxation Code to report and pay the state sales/use tax measured by the sales price of the property to/by me.

PRINT NAME	TITLE	COMPANY NAME
SIGNATURE	DATE	PERMIT NUMBER (if applicable)*
ADDRESS	CITY	STATE, ZIP

Seller must retain a copy of this exemption certificate to support a deduction taken on their return.

* A seller's permit is required to be held by any person engaged in the business of selling tangible personal property in California. Certain lessors must also hold a seller's permit. If you are not required to hold a seller's permit because you make no sales or leases of tangible personal property in California, please enter "Not Applicable."

Regulation 1532. (Contd.)

Technical Definitions

DVD (Digital Video Disk) - is a medium for recording compressed audio, visual images and other related data.

Digitizing – Process of converting video containing audio, visual images and other related data into digital format.

Assembly – Combining audio, visual images and other related data into proper sequence and recording to a new edited master videotape pursuant to instructions provided by editor.

Creating 2D Images – Process of enhancing original elements captured through principal photography by creating or manipulating two dimensional images.

Creating 3D Images (CGI) – Process of creating three-dimensional images that will ultimately be recorded on film, video or other multimedia format.

Dirt Fixes – Process to electronically "clean up" or "remove" undesirable elements such as dirt and film scratches from visual images.

Digital Video Image Manipulation – This process includes: compositing multiple layers of visual images, changing aspect ratio or scale, flip, defocus, rotate, resize, reposition, crop, color correction, apply special effects such as warping the image, create transitional effects between scenes or shots.

Motion Control Visual Effects Capture – Recording flat art such as pictures and logos and applying movement to the visual image such as pan, scan, zoom. Motion Control Capture could also create tracking points through recording movement of a live subject that will be applied to a computer generated image.

Transcoding – Converting video and audio formats.

Duplication – Process of making film or videotape copies excluding film processing to produce release prints as defined in Regulation 1529 or duplication of video tapes intended for non-broadcast consumer sale or rental.

Automated Dialogue Replacement (ADR) – Recording new dialogue or re-recording dialogue where the production sound is unusable or obscured.

Foley – Process of adding to or replacing sound elements that enhance ambient sounds such as footsteps, doors closing, breathing, rustling of clothes, keys jangling in pockets and punches.

Audio Laybacks – Recording the completed audio back to a videotape or film master.

Audio Laydowns – Recording sound from an audio source or video element to another audio element.

Quality Control (QC) – Process by which a film print or videotape is evaluated to make sure it meets technical requirements.

Archiving – Processes involved in preparing and storing film, videotape or other multimedia elements for future use.

Format Transfer Utilizing Compression Standards – To transfer video or audio format utilizing a compression standard to allow for more efficient file size management or file format changes.

Management of Visual or Audio Assets and Related Files Stored as Data – Process of creating database with specified reference points to allow for timely search and retrieval of elements by multiple users through central file servers.

Creation of Data Files Related to a Teleproduction or other Postproduction Service – Data files contain information that is related to the visual and audio information stored on film, video or other multimedia format such as timecode, keycode/flex files, edit decision lists.

Appendix C

Regulation 1533. LIQUEFIED PETROLEUM GAS

Reference: Section 6353, Revenue and Taxation Code

(a) GENERAL. Commencing on and after September 1, 2001, Section 6353(b) of the Revenue and Taxation Code exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of qualified LPG used by a qualified person in an agricultural activity, or used in a qualified residence for a household activity. The terms "qualified LPG," "qualified person," "agricultural activity," "qualified residence," and "household activity" are defined below.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Agricultural activity" means the producing and harvesting of agricultural products as defined in subdivision (b)(4), by a qualified person as defined in subdivision (b)(5).

(2) "Household activity" means those activities normally undertaken in a qualified residence as defined in subdivision (b)(7), such as cooking, heating and lighting.

(3) "Person that assists a qualified person" means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses qualified LPG in assisting a person engaged in a line of business described in subdivision (b)(5). A person that assists a qualified person may perform a construction contract only if the person performing the contract is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(4). A person that assists a qualified person must provide physical aid or assistance in the actual producing and harvesting of agricultural products owned by the qualified person and not merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person who assists such persons.

(4) "Producing and harvesting agricultural products" means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle,

Regulation 1533. (Contd.)

hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Codes 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20—Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(5) or a person who assists a qualified person as defined in (b)(3).

Example A: Grower A farms raisins and uses qualified LPG to dry Grower A's raisins. Grower A is a qualified person (Code 0172 of the SIC Manual) and uses qualified LPG in the producing and harvesting of an agricultural commodity. The sale of qualified LPG to Grower A for use in this activity is exempt from tax.

Example B: Grower B farms plums and contracts with ABC, Inc. to dry the plums owned by Grower B in preparation for sale. ABC, Inc. uses qualified LPG to dry the plums. ABC, Inc. is a person assisting a qualified person (Code 0723 of the SIC Manual) such that the sale of qualified LPG to ABC for use in this activity is exempt from tax.

Example C: Grower C farms corn. Grower C sells the "wet" corn to a food processor based on the net dry weight of the product. The food processor uses qualified LPG to dry the corn. The food processor's use of qualified LPG to dry the commodity is not a qualified use since the food processor owns the commodity and thereby only performs a non-qualified, post harvesting activity. The sale of qualified LPG to the food processor for use in this activity is not exempt from tax.

(5) "Qualified person" means a person who purchases qualified LPG that is engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains, field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in subdivision (b)(3), that uses qualified LPG to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned

Regulation 1533. (Contd.)

by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.

(6) "Qualified LPG" means liquefied petroleum gas delivered into a tank with a storage capacity that is equal to or greater than 30 gallons. Liquefied petroleum gas is a mixture of light hydrocarbons which are gaseous at atmospheric temperature and pressure. Liquefied petroleum gas occurs naturally in crude oil and natural gas production fields and is also produced in the oil refining process. Its main components are Propane (C3H8) at a boiling point of -42.07° and Butane (C4H10) at a boiling point of 0°C. Delivery into tanks smaller than 30 gallons do not qualify for the exemption even if the total delivery exceeds 30 gallons.

(7) "Qualified residence" means a primary residence not serviced by gas mains and pipes, to which qualified LPG is delivered by a seller. A primary residence means a person's domicile where that person spends the greatest portion of his or her time during a calendar year. A person may change his or her primary residence only when that person moves from and otherwise abandons his or her previous residence and has no intent to return to that previous residence. In no event shall a primary residence include multiple residences maintained simultaneously such as a second, or vacation home.

Solely for purposes of this regulation, a qualified residence also includes a residence where qualified LPG is purchased by a qualified person for use in a household activity at the primary residence of:

(A) A person that assists a qualified person; or

(B) An employee of a qualified person

where such person that assists a qualified person or employee of a qualified person performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual for the qualified person. In addition, solely for purposes of this regulation, a qualified residence includes a residence where qualified LPG is purchased by a landlord or management company on behalf of a renter or tenant for use in a household activity at the primary residence of the renter or tenant.

(c) EXEMPTION CERTIFICATES.

(1) IN GENERAL. A person who purchases qualified LPG for use in an agricultural or household activity from an in-state retailer, or an out-of-state retailer obligated to collect use tax, must provide the retailer with an exemption certificate in order for the retailer to claim the exemption. If the retailer takes an exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a purchaser, the exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. An exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified LPG, any time within the retailer's normal billing or payment cycle, any

Regulation 1533. (Contd.)

time at or prior to delivery of the qualified LPG to the purchaser, or no later than 15 days after the date of purchase. An exemption certificate which is not taken timely will not relieve the retailer of the tax liability; however the retailer may present satisfactory evidence to the Board that the retailer sold the qualified LPG to a purchaser for use in an agricultural or household activity. An exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the exemption on its sales and use tax return for the reporting period during which the transaction subject to the exemption occurred. Where the retailer fails to claim the exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The exemption certificate form set forth in Appendix A may be used to claim the exemption.

(2) BLANKET EXEMPTION CERTIFICATES. In lieu of requiring an exemption certificate for each transaction, a person who purchases qualified LPG for use in an agricultural or household activity may issue a blanket exemption certificate. The exemption certificate form set forth in Appendix A may be used as a blanket exemption certificate. Appendix A may also be used as a specific exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases qualified LPG for use in an agricultural or household activity must include in the exemption certificate how much or what percentage of the qualified LPG will be used in the agricultural or household activity. If purchasing liquefied petroleum gas not qualifying for the exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket exemption certificate.

(3) FORM OF EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as an exemption certificate with respect to the sale or purchase of the liquefied petroleum gas if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. Except as otherwise provided in subdivision (b)(7), if the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that:

1. Of the liquefied petroleum gas purchased, how much or what percentage will be delivered by the seller into a tank with a storage capacity equal to or greater than 30 gallons for use in a household activity at the primary residence, which is not serviced by gas mains and pipes, of:

Regulation 1533. (Contd.)

a. The purchaser;

b. A person described in Codes 0711 to 0783 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that assists a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual (''qualified person'') or an employee of a qualified person where the LPG is purchased by such qualified person on behalf of the person that assists that qualified person in producing and harvesting agricultural products or on behalf of the employee that assists a qualified person in producing and harvesting agricultural products; or

c. A renter or tenant where the LPG is purchased by a landlord or management company on behalf of the renter or tenant.

2. Of the liquefied petroleum gas purchased, how much or what percentage will be delivered into a tank with a storage capacity equal to or greater than 30 gallons for use in producing and harvesting agricultural products, and will be purchased by:

a. A person engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, (''qualified person'');

b. A person described in Codes 0711 to 0783 of the SIC Manual, that assists a qualified person; or

c. An employee of a qualified person.

(E) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF EXEMPTION CERTIFICATES. A retailer must retain each exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims an exemption based on the exemption certificate.

While the Board will not normally require the filing of the exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all exemption certificates, or copies thereof, accepted for the purposes of supporting the exemption.

(5) GOOD FAITH. A seller will be presumed to have taken an exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept an exemption certificate in good faith where the purchaser states that the qualified LPG will be used in a qualified residence for a household activity or in which a qualified person states that the qualified LPG will be used for an agricultural activity. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the LPG is not subject to an exemption, will not be otherwise used in an exempt manner, or where a person is not a qualified person when purchasing qualified LPG for an agricultural activity.

Regulation 1533. (Contd.)

(d) EXEMPTION CERTIFICATE FOR USE TAX. The exemption certificate must be completed by a purchaser to claim an exemption from use tax on purchases of qualified LPG for use in an agricultural or household activity from an out-of-state retailer not obligated to collect the use tax. An exemption from the use tax shall not be allowed unless the purchaser or retailer claims the exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the exemption occurred. Where the purchaser or retailer fails to claim the exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed exemption.

The exemption certificate form set forth in Appendix A may be used to claim the exemption.

(e) REFUND OF TAX.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a purchaser may claim the exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with an exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified LPG or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the exemption as provided by this regulation may file a claim for refund equal to the amount of the exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a purchaser filing a claim for refund of the exemption has the burden of establishing that he or she was entitled to claim the exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the exemption has the burden of establishing that the purchaser of qualified LPG for use in an agricultural or household activity otherwise met all the requirements of a qualified sale at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF EXEMPTION.

(1) PROPERTY USED OR DELIVERED IN A MANNER NOT QUALIFYING FOR THE EXEMPTION. Tax applies to any sale of, and the storage, use, or other consumption in this state of liquefied petroleum gas that is used or delivered in a manner not qualifying for the exemption under this regulation.

Regulation 1533. (Contd.)

(2) PURCHASES BY NON-QUALIFIED PERSONS. Tax applies to any sale of, and the storage, use, or other consumption in this state of qualified LPG for use in an agricultural activity if the purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of an exemption certificate to the retailer or exemption certificate for use tax to the Board, and then uses or takes delivery of the liquefied petroleum gas in a manner not qualifying for the exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the liquefied petroleum gas at the time the liquefied petroleum gas was so removed, converted, or used.

(2) A purchaser providing an exemption certificate accepted in good faith by the retailer or an exemption certificate for use tax to the Board for liquefied petroleum gas that does not qualify for the exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the liquefied petroleum gas at the time the liquefied petroleum gas was purchased.

(h) RECORDS. Adequate and complete records must be maintained by the purchaser as evidence that the qualified LPG purchased was used in an agricultural or household activity.

(i) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.

History: Adopted March 27, 2002, effective September 1, 2001.

Regulation 1533. (Contd.)

Appendix A -

EXEMPTION CERTIFICATE STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Liquefied Petroleum Gas (LPG)

SELLER'S NAME
SELLER'S ADDRESS (Street, City, State, Zip Code)

The undersigned purchaser hereby certifies that the LPG will be used by a qualified person, as applicable, and in the manner as specified below *(check applicable box and complete as necessary)*:

❑ **LPG used in a Household Activity*** – In accordance with Revenue & Taxation Code Section 6353(b), _____% of the LPG purchased will be delivered by the seller into a tank with a storage capacity equal to or greater than 30 gallons for use in a household activity at the primary residence, which is not serviced by gas mains and pipes, of: 1) the purchaser; 2) a person described in Codes 0711 to 0783 of the Standard Industrial Classification (SIC) Manual, that assists a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual ("qualified person"), or an employee of a qualified person where the LPG is purchased by such qualified person on behalf of the person that assists a qualified person in producing and harvesting agricultural products, or on behalf of the employee of that qualified person in producing and harvesting agricultural products; or 3) a renter or tenant where the LPG is purchased by a landlord or management company on behalf of the renter or tenant.

❑ **LPG used in an Agricultural Activity*** – In accordance with Revenue & Taxation Code Section 6353(b), _____% of LPG purchased will be delivered into a tank with a storage capacity equal to or greater than 30 gallons and used in producing and harvesting agricultural products, and will be purchased by: 1) a person engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual ("qualified person"); or 2) a person described in Codes 0711 to 0783 of the SIC Manual, that assists a qualified person; or 3) an employee of the qualified person.

* This certificate will be considered a blanket certificate for future purchases, unless otherwise specified. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number in the following space:

_____

I understand that if the LPG is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price of the LPG to me. I also understand that this exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (If applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable)[1]
TITLE		TELEPHONE NUMBER
ADDRESS	CITY	STATE, ZIP

[1] If you are not required to hold a seller's permit, please enter "Not Applicable."

Regulation 1533.1. FARM EQUIPMENT AND MACHINERY

Reference: Section 6356.5, Revenue and Taxation Code

(a) GENERAL. Commencing on and after September 1, 2001, Section 6356.5 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of farm equipment and machinery, and parts of farm equipment and machinery purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products. The terms "farm equipment and machinery," "parts of farm equipment and machinery," "qualified person," and "producing and harvesting agricultural products" are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Farm equipment and machinery" means implements of husbandry, which include:

(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, fuel storage equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, agricultural operating structures, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope. Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.

Agricultural operating structures include single purpose agricultural or horticultural structures as defined in Treasury Regulation 1.48–10 (26 CFR 1.48–10). Such structures must be specifically designed and constructed for the permitted purposes of housing, raising and feeding of livestock or the commercial production of plants.

Regulation 1533.1. (Contd.)

A structure is specifically designed and constructed if it is not economic to design and construct the structure for the intended qualifying purpose and then use the structure for a different purpose. A structure qualifies as single purpose agricultural or horticultural structure only if it is used exclusively for a permitted purpose. The structure may not be used for any nonpermissible purposes such as processing, marketing, or more than incidental use for storing feed and equipment. A single purpose agricultural structure also houses equipment necessary to house, raise and feed livestock including, but not limited to, equipment necessary to contain livestock, to provide them with feed or water, and to control the temperature, lighting, and humidity of the interior structure. Examples of structures that qualify as a single purpose agricultural or horticultural structure include, but are not limited to, a farrowing barn, greenhouse, free stall barn, milking parlor, and egg production or poultry brooding facility. Single purpose agricultural or horticultural structures do not include general purpose farm buildings.

Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation, a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, and articles of clothing, except clothing designed primarily to protect a commodity or to apply agricultural chemicals as described in 3 CCR 6738.

(B) Any new or used vehicle, as defined in Chapter 1, Division 16 of the Vehicle Code, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code.

A list of typical vehicles regarded as farm equipment and machinery is set forth in Appendix A.

(2) "Parts of farm equipment and machinery" means:

(A) All component parts and contrivances such as belts, shafts, pipes, hoses and moving parts, that are parts of farm equipment and machinery as defined in subdivision (b)(1) which can be separated from the farm equipment and machinery and replaced. Parts of farm equipment and machinery do not include items that are consumed (e.g., burned, evaporate, dissolve, dissipate) through the regular use of the farm equipment and machinery (e.g., gasoline, cleaning agents, solutions, chemicals) which are ordinarily supplies; however, engine oil not consumed (i.e., not consumed as part of fuel for a two-stroke engine) is regarded as a component part.

(B) All repair and replacement parts for farm equipment and machinery as defined in subdivision (b)(1), which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the farm equipment and machinery, whether purchased separately or in

Regulation 1533.1. (Contd.)

conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person, a person that assists a qualified person, or another person.

(3) "Person that assists a qualified person" means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses farm equipment and machinery in assisting a person engaged in a line of business described in subdivision (b)(6) below. A person that assists a qualified person may perform a construction contract only if the person performing the contract is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(5). A person that assists a qualified person must provide physical aid or assistance in the actual producing and harvesting of agricultural products owned by the qualified person and not merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person that assists such persons.

(4) "Primarily" means used 50 percent or more of the time in producing and harvesting agricultural products as defined in subdivision (b)(5).

(5) "Producing and harvesting agricultural products" means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and

Regulation 1533.1. (Contd.)

harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20—Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(5) or a person who assists a qualified person as defined in (b)(3).

For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity despite the fact that the property may otherwise be used less than 50%of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.

(6) ''Qualified person'' means a person engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains, field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in (b)(3) above, that uses qualified property to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.

(7) ''Qualified property'' means farm equipment and machinery, and the parts thereof, as defined in subdivision (b)(1)-(2) used primarily in producing and harvesting agricultural products.

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of-state retailer obligated to collect use

Regulation 1533.1. (Contd.)

tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix B may be used as a blanket partial exemption certificate. Appendix B may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

Regulation 1533.1. (Contd.)

(D) A statement that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products.

(E) A statement that the purchaser is a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or is a person that assists such classified person by performing an agricultural service described in Codes 0711 to 0783 of the SIC Manual.

(F) Description of property purchased.

(G) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or in which a person that assists a qualified person states that he or she performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual and states that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products. If the qualified person or person that assists a qualified person is buying property of a kind not normally used in producing and harvesting agricultural products, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption

Regulation 1533.1. (Contd.)

occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified property or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION.

(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.

(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.

Regulation 1533.1. (Contd.)

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(h) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property—In General," may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used in producing and harvesting agricultural products, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

(2) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.

(i) RECORDS. Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was used by the qualified person primarily in producing and harvesting agricultural products.

(j) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.

History: Adopted March 27, 2002, effective September 1, 2001.

Regulation 1533.1. (Contd.)

Appendix A.

The following is a list of typical vehicles regarded as farm equipment and machinery:

1. A lift carrier or other vehicle designed and used exclusively for the lifting and carrying of implements of husbandry or tools used exclusively for the production or harvesting of agricultural products, when operated or moved upon a highway.

2. A trailer of the tip-bed type when used exclusively in the transportation of other implements of husbandry or tools used exclusively for the production or harvesting of agricultural products.

3. A trailer or semi-trailer having no bed, and designed and used solely for transporting a hay loader or swather.

4. A spray or fertilizer applicator rig used exclusively for spraying or fertilizing in the conduct of agricultural operations, except anhydrous ammonia fertilizer applicator rigs which have a transportation capacity in excess of 500 gallons.

5. A trailer or semi-trailer which has a maximum transportation capacity in excess of 500 gallons, but not more than 1,000 gallons, used exclusively for the transportation and application of anhydrous ammonia, if the vehicle is either equipped with operating brakes or is towed upon a highway by a motor truck that is assigned a manufacturer's gross vehicle weight rating of ¾ ton or more.

6. A nurse rig or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of an applicator rig or an airplane used for the dusting, spraying, fertilizing, or seeding of crops.

7. A row duster.

8. A wagon or van used exclusively for carrying products of farming from one part of a farm to another part thereof, or from one farm to another farm, and used solely for agricultural purposes, including any van used in harvesting alfalfa or cotton, which is only incidentally operated or moved on a highway as a trailer.

9. A wagon or portable house on wheels used solely by shepherds as a permanent residence in connection with sheep raising operations and moved from one part of a ranch to another part thereof or from one ranch to another ranch, which is only incidentally operated or moved on a highway as a trailer.

10. A trap wagon, as defined in Vehicle Code Section 36016, moved from one part of a ranch to another part of the same ranch or from one ranch to another, which is only operated or moved on a highway incidental to agricultural operations. The fuel tank or tanks of the trap wagon shall not exceed 1,000 gallons total capacity.

11. Any vehicle which is operated upon a highway only for the purpose of transporting agricultural products and is in no event operated along a highway for a total distance greater than one mile from the point of origin of the trip.

12. A portable honey-extracting trailer or semi-trailer.

13. A fertilizer nurse tank or trailer that is not self-propelled and which is moved unladen on the highway and auxiliary to the use of a spray or fertilizer applicator rig.

14. Any cotton trailer when used on the highways for the exclusive purpose of transporting cotton from a farm to a cotton gin, and returning the empty trailer to such farm.

15. A truck tractor or truck tractor and semi-trailer combination which is owned by a farmer and operated on the highways, (1) only incidental to a farming operation, (2) not for compensation, and (3) for a distance of not more than two miles (on the highway) each way. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on all wheels, and only to semi-trailers used in combination with such a truck tractor and exclusively in production or harvesting of tomatoes. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.

16. Any farm tractor used upon a highway to draw a farm trailer carrying farm produce, or to draw any trailer or semi-trailer carrying other implements of husbandry, between farms, or from a farm to a processing or handling point and returning with or without the trailer.

Regulation 1533.1. (Contd.)

Appendix B.

PARTIAL EXEMPTION CERTIFICATE **STATE BOARD OF EQUALIZATION**

Qualified Sales and Purchases of Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

I, as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.[1]

Type of Farm Equipment and Machinery (or parts[2] thereof)*

_____

_____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (If applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable)[3]
TITLE		TELEPHONE NUMBER
ADDRESS	CITY	STATE, ZIP

1 Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.

2 If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.

3 If you are not required to hold a seller's permit, please enter "Not Applicable."

Regulation 1533.2. DIESEL FUEL USED IN FARMING ACTIVITIES OR FOOD PROCESSING.

Reference: Section 6357.1, Revenue and Taxation Code

(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms "farming activities" and "food processing" are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal

Regulation 1533.2. (Contd.)

is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the

Regulation 1533.2. (Contd.)

processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975–81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except

Regulation 1533.2. (Contd.)

diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of-state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

Regulation 1533.2. (Contd.)

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on

Regulation 1533.2. (Contd.)

its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) PURCHASE'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the

Regulation 1533.2. (Contd.)

diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) RECORDS. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.

History: Adopted April 18, 2002, Effective September 1, 2001.

Regulation 1533.2. (Contd.)

Appendix A

PARTIAL EXEMPTION CERTIFICATE STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts[1] thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.[2]

Type of Farm Equipment and Machinery (or parts thereof) _____

_____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER
TITLE		PERMIT NUMBER (If applicable)[3]
ADDRESS	CITY	STATE, ZIP

1 If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.

2 Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.

3 If you are not required to hold a seller's permit, please enter "Not Applicable."

Regulation 1540. ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS.

Reference: Sections 6006, 6010.3, 6015, Revenue and Taxation Code.

(a) ADVERTISING AGENCIES.

(1) GENERAL. Advertising agencies provide clients with both services and tangible personal property. Services include, without limit, consultation, consumer research, and media placement. Tangible personal property includes, without limit, video and audio productions, print advertisements, brochures, finished artwork, and other printed matter. When an advertising agency provides services unrelated to the transfer of tangible personal property or when the tangible personal property transferred is incidental to the services, the charges for those services are nontaxable.

Application of tax to the sale of tangible personal property and any services related to the sale is dependent on the type of property being sold and the relationship of the advertising agency to the client.

(2) SPECIFIC SITUATIONS.

(A) Electronic or Digital Artwork. Electronic or digital art is the process of using computer software and hardware to compile or compose finished art. Elements of the process include: creation of original artwork or photographs, scanning of artwork or photographs, composition and design of text, insertion and manipulation of scanned and original digital artwork, photographs, or text.

A transfer of electronic or digital art from an advertising agency, commercial artist or designer to a client or to a third party on behalf of a client that includes text or images or a combination of both, is not taxable if, (1) the file containing the electronic or digital art is transferred through remote telecommunications, such as a modem, or (2) the file is downloaded on the client's computer by the advertising agency, commercial artist or designer and the client does not obtain title to or possession of any tangible personal property, such as a diskette or compact disk. The advertising agency, commercial artist, or designer should document the downloading of electronic artwork in the manner set forth in subdivision (d)(2). Transfer of a file qualifying as electronic or digital pre-press instruction as defined by the provisions of Regulation 1541, Printing and Related Arts, is nontaxable.

A transfer of title to or possession of a file on electronic media, such as a diskette or compact disc, is subject to tax as stated in subdivision (d)(2).

(B) Agency Acting as an Agent for Its Client. An agent is one who represents another, called the principal, in dealings with third persons. (Civil Code, Section 2295.) To the extent an advertising agency acts as an agent of its client in acquiring tangible personal property, it is neither a purchaser of the property with respect to the supplier nor a seller of the property with respect to its principal. Because of the unique relationship between advertising agencies and clients, it is rebuttably presumed that an advertising agency qualifies as an agent when acquiring tangible personal property on behalf of its client. However, an agency is not an agent of its client with respect to tangible personal property fabricated or produced in-house by the agency's own employees and sold to its client.

Regulation 1540. (Contd.)

As an agent for its client, sales or use tax is due on the purchase price from the suppliers to the advertising agency. Tax does not apply to the charge made by an advertising agency to its client for reimbursement, including tax reimbursement, charged by a supplier or to charges or fees for an agency's services directly related to such acquisitions of tangible personal property.

An advertising agency may not issue a resale certificate when making purchases as an agent. It will be presumed that an advertising agency who issues a resale certificate to a supplier is purchasing tangible personal property on its own behalf for resale and is not acting as an agent for its client. However, the advertising agency may provide evidence to prove that the presentation of the resale certificate was erroneous and that the advertising agency was acting as an agent of its client. If the resale certificate was issued in error, the advertising agency is liable for use tax on the cost of tangible personal property purchased under the certificate unless: (1) the agency has already paid tax to the supplier or to the Board, or (2) the client has self-reported the tax.

(3) ADVERTISING AGENCIES ACTING AS RETAILERS.

(A) Election of Non-Agent Status. An advertising agency may elect non-agent status with respect to sales to its client. This election must be supported by a specific written statement in its contract or agreement with the client. Alternatively, a statement may be included on an agency's invoice to its client. Statements should include the following or similar language: "(Agency name) does not qualify as an agent of (client name) for purposes of this transaction."

An agency that elects non-agent status is a retailer with respect to tangible personal property sold to its clients. The agency may issue a resale certificate to its suppliers for tangible personal property that it is planning to resell to clients or to incorporate into property that will be sold to clients.

The taxable selling price is the separately stated charge for the tangible personal property. If there is no separately stated charge, the taxable selling price may be calculated as shown in subdivision (b).

(B) Items Produced or Fabricated by an Agency In-House. Advertising agencies are retailers of tangible personal property produced or fabricated by their own employees. Advertising agencies are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees. However, in the case of intermediate production or printing aids used by the agency's employees to fabricate tangible personal property, it will be presumed that an advertising agency passes title to the aids to the client prior to use by the agency and the measure of tax will be computed in the same manner as provided in Regulation 1541 for special printing aids. Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials.

Except for artwork, tax is due on the taxable selling price of tangible personal property fabricated or produced by the agency's employees. Artwork shall be taxed in the manner set forth in subdivision (b)(1) or (d). An advertising agency should

issue a resale certificate for items that become an ingredient or component part of such tangible personal property and for intermediate production or printing aids. The term "ingredient or component part of other tangible personal property" includes only those items that become physically incorporated into the property and not those which are merely consumed or used in the production of the property sold.

(b) LUMP-SUM SALES OF TANGIBLE PERSONAL PROPERTY.

(1) An agency that has a contract or agreement to sell tangible personal property for a lump-sum amount is a retailer of the tangible personal property and tax applies to the lump-sum selling price, except for artwork. An advertising agency, commercial artist or designer making a lump-sum sale of tangible personal property to a client may issue a resale certificate to a supplier.

On sales of artwork for which an advertising agency, commercial artist or designer makes a lump-sum charge that includes both the nontaxable services defined in subdivision (d)(1) and finished art, it will be rebuttably presumed that 75% of the lump-sum charge is for the nontaxable services.

(2) TAXABLE SELLING PRICE. If advertising agencies, commercial artists or designers combine charges for nontaxable services, such as media placement, with the charges for tangible personal property of which the agencies, artists or designers are the retailers, they shall report a "taxable selling price" for the tangible personal property that includes the total of: (1) direct labor, (2) the cost of purchased items that become an ingredient or component part of the tangible personal property and the cost of any intermediate production or printing aids, and (3) a reasonable markup. An advertising agency, commercial artist or designer must keep sufficient records to document the basis for the reported taxable selling price.

(3) SPECIFIC NONTAXABLE CHARGES. The following and similar fees, commission, and services are nontaxable if separately stated. If not separately stated, these charges are not considered direct labor when calculating a taxable selling price as defined in subdivision (b)(2).

(A) Agent fees added to purchases of tangible personal property by agencies established as agents for their clients as compensation for their performances of services related to such purchases.

(B) Media commissions derived by agencies for placement of advertising whether paid by the medium, by another agency, or by the client. The service of placing of advertising is not a service that is a part of a sale of tangible personal property.

(C) Commissions paid to agencies by suppliers. Examples of such commissions are those paid to an agency by a premium manufacturer (or distributor) or a direct-by-mail supplier.

(D) Consultation and concept development fees related to client discussion, development of ideas and other services. Tangible personal property produced as a result of these services is incidental to the service and nontaxable.

Regulation 1540. (Contd.)

(E) Research or account planning that entail consumer research and the application of that research to the client's business or industry.

(F) Quality control supervision that entails the proofing and review of printing and other products provided by outside vendors.

(G) Separately stated charges for the formulation and writing of copy.

(4) TAXABLE CHARGES FOR AGENCIES ACTING AS RETAILERS. All other commissions, fees or services exclusively related to the production or fabrication of tangible personal property are taxable and are considered part of direct labor. Such charges include retouching of photographs or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. Retouching for the purpose of repairing or restoring a photograph to its original condition is not taxable.

(5) CHARGES AND TRANSACTIONS GOVERNED BY OTHER REGULATIONS.

(A) Video or Film Productions. If video or film productions provided by an advertising agency to clients are qualified production services, the application of tax is determined by Regulation 1529, *Motion Pictures.*

(B) Audio Productions. An audio production provided by an advertising agency to a client falls under the provisions of Regulation 1527, *Sound Recording.* Tax will apply as defined by that regulation.

(C) Typography. Tax applies to charges for typography or composed type obtained from outside vendors as provided in Regulation 1541, *Printing and Related Arts.*

(c) COMMERCIAL ARTISTS AND DESIGNERS.

GENERAL. Commercial artists and designers provide services, electronic artwork, and tangible personal property to their clients. Services include, but are not limited to, the creation and development of ideas, concepts, looks, or messages. Electronic artwork can be transferred either through remote telecommunications, such as a modem, or by electronic media such as diskettes or compact disks. Tangible personal property includes both electronic media on which electronic artwork is transferred to the client and hard copies of the electronic artwork, or manually created art. "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or used for display. It includes, but is not limited to, electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographs, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental graphic design services are not "finished art."

An advertising agency that provides creative or development services for the sole purpose of furnishing finished art to their clients is subject to tax as provided in subdivision (d).

Regulation 1540. (Contd.)

(d) APPLICATION OF TAX TO COMMERCIAL ARTISTS, DESIGNERS AND ADVERTISING AGENCIES.

(1) SERVICES. Services performed to convey ideas, concepts, looks or messages to a client may result in a transfer, enhancement or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as "design charges," "preliminary art," "concept development," or any other designation that clearly indicates that the charges are for such services and not for finished art, they are nontaxable unless the contract of sale provides that the commercial artist or designer or advertising agency will pass to the client title or the right to permanent possession of the electronic media or hard copy.

A commercial artist or designer or advertising agency who provides nontaxable services is the consumer of tangible personal property used in the performance of such services and tax applies to the sale of property to the commercial artist or designer or advertising agency.

(2) ELECTRONIC ARTWORK AND FINISHED ART. A transfer of electronic artwork from a commercial artist or designer or advertising agency to a customer or to a third party on behalf of the customer is not taxable if the file containing the electronic artwork is transferred through remote telecommunications, or if the file is loaded on the customer's computer by the commercial artist or designer or advertising agency, and the customer does not obtain title to or possession of any tangible personal property, such as electronic media. The graphic artist or advertising agency should document his or her transfer and loading of electronic artwork on the client's computer by a statement on the invoice or contract with the following language: "This electronic artwork was loaded onto my computer by (graphic artist's or seller's name). No electronic media, such as diskettes or compact disks, or hardcopies containing the artwork were transferred to me." This statement should be signed or initialed by the client. When such a statement is timely completed, it will be rebuttably presumed that the transfer of electronic artwork is nontaxable. To be timely completed, the statement must be initialed or signed at the time the file is loaded or at the point the transfer is invoiced to the client. In lieu of the statement, the commercial artist or designer or advertising agency may provide other substantive evidence indicating that the artwork was transferred in an exempt manner.

The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless transferred or installed in the manner set forth in the preceding paragraph, tax applies to all charges for finished art, including to all charges for any rights, as provided in subdivision (d)(4), sold with the finished art, such as, without limitation, copyrights or distribution and production rights. If charges for finished art are combined with nontaxable services described in subdivision (d)(1), tax may be reported on a calculated selling price, as defined in subdivision (b)(2) provided the retail selling price also includes the value of rights as provided in subdivision (d)(4). In lieu of using a calculated selling price, commercial artists and designers or advertising agencies may use the method described in (b)(1), that is, it will be rebuttably presumed that 75% of a combined charge is for the nontaxable services.

Regulation 1540. (Contd.)

If the commercial artist or designer or advertising agency uses any intermediate production or printing aids in the creation of the finished art, it will be presumed that title to the aids was passed to the client prior to use by the commercial artist or designer or advertising agency. The measure of tax for these aids will be computed in the same manner as provided by Regulation 1541 for special printing aids. Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials.

(3) SIGNAGE. Tax does not apply to the services to create single copies of blueprints, diagrams, and instructions for signage provided as a result of environmental graphic design. Reproduction charges for additional copies are taxable.

(4) REPRODUCTION RIGHTS. Charges for the transfer by a tangible medium of a photograph or of finished art for purposes of reproduction are taxable even though there is no transfer of title to the person reproducing the photograph or work of art. Charges for the right to use the photograph or finished art which has been transferred by tangible medium in the production of tangible personal property are taxable. Charges for a license, copyright, or subpart of a copyright (such as a right to reproduce or to prepare derivative works) to exploit the photograph or finished art are taxable if they are sold along with the photograph or finished art transferred by tangible media or they are sold by a subsequent contract entered into within one year of the original transfer of the photograph or finished art.

Tax does not apply to a sale of an additional license, copyright, or the subpart of a copyright, or to the receipt of royalties received from the exploitation of a copyright, or subpart thereof, if such sale or receipt of royalties occurs more than one year from the date of the original transfer of the physical media containing the photograph or work of art so exploited. Such copyrights or royalties are not considered to have been sold along with finished art transferred by tangible media for the purposes of this subdivision and are deemed sales of nontaxable intangible property.

This limitation does not apply to sales or transfers for reproduction by a subsequent owner of the photograph or finished art, such as a stock photo or stock artwork house; however, where the stock photo or stock artwork house is merely acting as an agent for the original artist or photographer, the above limitation applies.

(5) WEBSITES. The design, editing or hosting of an electronic website in which no tangible personal property is transferred to the customer is not subject to tax.

(e) ITEMS PURCHASED BY AN ADVERTISING AGENCY OR BY AN ARTIST OR DESIGNER. An advertising agency, or commercial artist, or designer is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to the agency, artist, or designer.

Regulation 1540. (Contd.)

History: Amended December 14, 1949.
Amended September 13, 1961.
Amended June 20, 1967.
Amended October 8, 1968.
Amended by renumbering November 3, 1971, effective December 3, 1971.
Amended November 14, 1974, effective December 22, 1974. Rewrote regulation, added section on agency status of ad agencies, detailed taxable status of specific services and expenses, changed taxable status of ''copy writing,'' and defined ''fee.''
Amended March 9, 1976, effective April 18, 1976. Defined when use of photographs is a product ingredient.
Amended June 22, 1983, effective October 6, 1983. In subsection (a)(2)(A) added last two sentences to second paragraph. In subsections (b)(1) and (b)(2), added cross reference to subsection (a)(2) and deleted former last sentence of subsection (b)(2) relating to resale certificates.
Amended February 2, 1994, effective June 22, 1994. Added clarifying language to accommodate tax application to preliminary art prepared on data processing equipment.
Amended January 5, 2000, effective April 23, 2000. Subdivision (a): In the title the word ''Agency'' changed to ''Agencies,'' and phrase ''as Agent of . . . Non Agent'' deleted. Subdivision (a)(1): former language deleted and new language ''Advertising . . . nontaxable'' added; also language of first un-numbered paragraph deleted and replaced with phrase ''Application . . . client.'' Subdivision (a)(2) former title ''Determination of Status'' deleted and new title ''Specific Situations'' added. Subdivision (a)(2)(A) former title ''Items Acquired from Outside Sources'' deleted and new title ''Electronic or Digital Artwork'' added; also former language deleted and new language ''Electronic . . . text'' added; language of former first un-numbered paragraph deleted and replaced with ''A transfer . . . is nontaxable;'' and language of former second un-numbered paragraph deleted and replaced with ''A transfer . . . in subdivision (d)(2).'' Subdivision (a)(2)(B) former title ''Items Prepared by Agency'' deleted and new title ''Agency Acting as an Agent for Its Client'' added; also former language deleted and replaced with ''As agent . . . its client;'' and two new un-numbered paragraphs added. New Subdivision (a)(3) titled ''Advertising Agencies Acting as Retailers'' added. Subdivision (b) former title deleted and new title ''Lump-Sum Sales of Tangible Personal Property'' added. Subdivision (b)(1) former language deleted and replaced with ''An agency that . . . to a supplier;'' also former language of first un-numbered paragraph deleted and replaced with ''On sales . . . nontaxable services;'' and former third and fourth un-numbered paragraphs deleted. Subdivision (b)(2) former title ''Agency Acting as Agent'' deleted and new title ''Taxable Selling Price'' added; also former language deleted and replaced with ''If advertising . . . selling price;'' and first un-numbered paragraph deleted. Subdivision (b)(3) former title ''Services and Expenses—When Nontaxable'' deleted and new title ''Specific Nontaxable Charges'' added. Also former language deleted and replaced with ''The following . . . in subdivision (b)(2)'' added. New Subdivisions (b)(3)(A) through (b)(3)(G) added. Subdivision (b)(4) former title ''Specific Applications'' deleted and new title ''Taxable Charges for Agencies Acting as Retailers'' added; also new language ''All other . . . not taxable'' added. Former subdivisions (b)(4)(A) through (b)(4)(L) deleted. New subdivision (b)(5) added. Subdivision (c) former

language deleted; also replaced the language of first un-numbered paragraph with "General. . . . 'finished art';" and new second un-numbered paragraph added. Subdivision (d) former title "Items Purchased by Agency or by Artist or Designer" deleted and new title "Application of Tax to Commercial Artists, Designers and Advertising Agencies" added; also former language deleted. New Subdivisions (d)(1) to (d)(5) added. New Subdivision (e) added.

Regulation 1541. PRINTING AND RELATED ARTS.

Reference: Sections 6006–6012, Revenue and Taxation Code.
For Advertising Agencies, see Regulation 1540.
For Mailing Services, see Regulation 1504.
For Publications, exemption of certain, see Regulation 1590.

(a) DEFINITIONS.

(1) SPECIAL PRINTING AID. The term "special printing aid" means a reusable manufacturing aid which is used by a printer during the printing process and is of unique utility to a particular customer. Examples of special printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, film, single color or multicolor separation negatives, and flats.

(2) PRINTING PROCESS. The term "printing process" includes, but is not limited to, letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser, inkjet, and photocopying.

(3) REPRODUCTION PROOF. A direct impression of composed type forms containing type matter only or type matter combined with clip art, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.

(4) MECHANICAL OR PASTE-UP. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the platemaker. Also referred to as camera-ready art or camera-ready copy.

(5) CLIP ART. Prepackaged art (including photographic images), not produced to the special order of the customer, commercially available on CD ROM, other electronic media or by computer program for use in digital page layout. Images that are enlarged, reduced or rotated are not considered "produced to the special order of the customer." When distributed in digital form, clip art is often referred to as "click art".

(b) APPLICATION OF TAX.

(1) SALES BY PRINTERS. Tax applies to charges for printing of tangible personal property for consumers, regardless of whether or not the paper and other materials are furnished by the consumer. The measure of tax is the total gross receipts or sales price of the sale with no deduction on account of (a) the cost of the raw materials or other components, (b) labor or service costs of any step in the process of

producing, fabricating, processing, printing, or imprinting the tangible personal property, or (c) any other expenses or services that are a part of the sale. Services that are a part of the sale of tangible personal property to consumers include, but are not limited to charges for overtime, set-up, die cutting, embossing, folding (except as provided in subdivision (g) below), and other binding operations. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them. Receipts attributable to such costs are includable in the measure of tax.

Tax applies to a printer's sale of special printing aids as provided in subdivision (c).

(2) PURCHASES BY PRINTERS. Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the printer and also to any sale subsequent to its use by the printer. Such property includes, but is not limited to, machinery (e.g., printing presses, cameras, electronic pre-press equipment, plate makers), office equipment, and printing aids. Printers, however, may purchase special printing aids for resale as explained in subdivision (c).

(c) SPECIAL PRINTING AIDS. In General. In recognition of the unique utility that special printing aids have to the sale of printed material, and the need to avoid burdening businesses with unnecessary paperwork, the following presumptions shall apply.

(1) With respect to sales of printed material ultimately subject to sales tax, or sales to the U. S. Government, it shall be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer, irrespective of whether or not the printer separately itemizes the special printing aids. It shall be further presumed that the printer, or other reseller, discussed in the following paragraph, made no use of the special printing aids prior to their sale. Accordingly the printer may purchase the special printing aids for resale.

''Ultimately subject to sales tax'', means either the printer's sale of the printed material and special printing aids is subject to sales tax or is an exempt sale to the U. S. Government, or if the printer's sale of the printed material is for resale, a subsequent sale of the printed material and special printing aids is subject to California sales tax or is an exempt sale to the U. S. Government.

When the printer's sale of printed material is a sale for resale, as described in the above paragraph, unless the printer timely takes a valid resale certificate in good faith that states the special printing aids are to be purchased for resale, tax is due on the selling price of the special printing aids whether or not the selling price is separately itemized. The selling price of the special printing aids is deemed to be the sales price of the special printing aids, or their components, to the printer regardless of the amount of the separately stated charge, if any, for the special printing aid. The printer need not separately charge sales tax reimbursement to their customer and if

Regulation 1541. (Contd.)

the printer has paid sales or use tax on the selling price of the special printing aids or their components to the printer, no additional tax is due.

The term ''special printing aids'' on a resale certificate shall be sufficient to cover all special printing aids as defined in subdivision (a)(1).

(2) If a printer does not wish to sell special printing aids in connection with the sale of printed material ultimately subject to sales tax or sold to the U. S. Government, described in (c)(1) above, the following statement should be included on the sales invoice: ''The selling price of the printed material does not include the transfer of title to the special printing aids.'' The printer would then be the owner and consumer of the special printing aids. Tax would apply to both the retail sale of the printed material and the cost to the printer of the special printing aids.

(3) With respect to all other sales of printed material, as for example, sales in interstate commerce, sales of exempt newspapers or periodicals, or sales of exempt printed sales messages, it shall also be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer irrespective of whether or not the printer separately itemizes the special printing aids. It shall be further presumed that the printer made no use of the special printing aids prior to their sale. Sales tax is due on the selling price of the special printing aids whether or not the selling price of the special printing aids is separately stated. The selling price of the special printing aids is deemed to be the sales price of the special printing aids, or their components, to the printer regardless of the amount of the separately stated charge, if any, for the special printing aid.

The printer need not separately charge sales tax reimbursement to their customer and if the printer has paid sales or use tax on the selling price of the special printing aids or their components to the printer, no additional tax is due.

However, sales tax is not due on the selling price of the special printing aids discussed in (c)(3) if the printer timely takes a valid resale certificate in good faith that states the special printing aids are to be purchased for resale. The term ''special printing aids'' on a resale certificate shall be sufficient to cover all special printing aids as defined in subdivision (a)(1).

Persons issuing resale certificates for special printing aids as discussed in (c)(3) are then liable for the tax on their selling price of the special printing aids irrespective of whether or not the printer separately itemized the printing aids to the person issuing the resale certificate and notwithstanding that the printed material is exempt from tax as for example, a sale in interstate commerce, a sale of exempt newspapers or periodicals or a sale of exempt printed sales messages. In no event shall the selling price of the special printing aids be less than the selling price of the special printing aids, or their components, to the printer.

If the printer's sale includes both a sale of printed material ultimately subject to sales tax, as described in (c)(1) above, and a sale of printed material as described in (c)(3) (''split sale''), tax is due on the selling price of the special printing aids. Absent a separate itemization, as long as tax is reported on an amount equal to at least the

selling price of the special printing aids or their components to the printer, no further tax will be due on the selling price of the special printing aids.

(4) If a printer does not wish to sell special printing aids in connection with all other sale of printed material, as discussed in (c)(3) above, the following statement should be included on the sales invoice: ''The selling price of the printed material does not include the transfer of title to the special printing aids.'' The printer would then be the owner and consumer of the special printing aids. Tax would apply to the cost to the printer of the special printing aids.

(5) No other proof shall be required with respect to passage of title on special printing aids.

(d) COLOR SEPARATORS. The application of tax to printers as explained in subdivisions (b) and (c) also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the color separator. Examples of such property include, but are not limited to, filters and screens, trial proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold.

Color separators or printers may purchase property such as photographic film for making transparencies, masks, internegatives, interpositives, halftone negatives, composite color separation negatives, goldenrod paper and mylar plastic used in making flats, scotch tape used in stripping negatives into flats, developing chemicals which become a component part of negatives and positives, proofing material and ink used in making final proofs, progressive proofs, and similar items, which are similar in function to special printing aids as defined in (a)(1), all commonly referred to as ''color separator working products'' for resale when title to such property passes to the customer prior to use by the color separator or the printer as described in subdivision (c). The term ''color separator working products'' on a resale certificate shall be sufficient to cover all such products.

Charges for alterations of film work for $100 or less shall be considered charges for restoring property to its original condition and not subject to tax. Charges greater than $100 shall be considered charges for fabrication labor and subject to tax.

(e) COMPOSED TYPE.

(1) IN GENERAL. Tax does not apply to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. See subdivision (e)(3) below for the application of tax to charges for transfers of composed type combined with artwork.

Regulation 1541. (Contd.)

Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys, proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of nontaxable typography or typesetting services, such as clip art that is combined with text on the same page.

Composed type includes type together with lined borders and plain, straight, fancy, or curved lines. Composed type also includes charts, tables, graphs, and similar methods of providing information.

(2) PHOTOCOMPOSITION (INCLUDING PHOTOTYPESETTING AND COMPUTER TYPESETTING). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, desktop publishing, Varityper or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition) method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting machine ready to be cut and pasted up for reproduction or computer generated type), if that product contains text only or text combined with clip art, whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.

The transfer of camera-ready copy containing text only or text and clip art in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer is not subject to tax. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.

Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork other than clip art.

Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.

Regulation 1541. (Contd.)

(3) ARTWORK. Artwork, other than clip art combined with composed type on the same page, is not composed type. The term ''artwork'' includes, but is not limited to, illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. If the basis for billing is on a per page basis, any page with artwork is subject to sales tax and any page with only text, or text and clip art is not subject to tax. If the basis for billing is lump sum, the ratio of pages containing artwork to the total number of pages, applied to the lump sum charge, represents the retail selling price of the artwork and is subject to tax, but in no event shall the retail selling price of the artwork be less than the selling price of the artwork, or its components, to the typographer.

However, if the ratio computed above is 10% or less, the true object of the sale shall be deemed to be a sale of typography services and the typographer is the consumer of the artwork. Tax applies to the selling price of the artwork, or its components to the typographer. Tax does not apply to the sale of the typography service as explained in (e)(1).

(f) TRANSFERS OF INFORMATION ON COMPUTER DISK OR OTHER ELECTRONIC MEDIA.

The transfer by the seller of the original information created by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press is not subject to tax when transferred by computer disk or other electronic storage media and the original information is a custom computer program. Such a process, currently termed ''electronic or digital pre-press instruction,'' creates a new program which shall be considered a custom computer program as defined under section 6010.9 of the Revenue and Taxation Code and is not subject to tax if the electronic or digital pre-press instruction is prepared to the special order of the customer. The electronic or digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a ''canned'' or prewritten computer program which is held or existing for general or repeated sale or lease, even if the electronic or digital pre-press instruction was initially developed on a custom basis or for in-house use.

(g) MAILING. Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.

(h) SIGNS, SHOW CARDS, AND POSTERS. Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer.

Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in such work, and tax applies with respect to the sale of such property to him.

Regulation 1541. (Contd.)

History: Effective July 1, 1939.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended June 10, 1959.

Amended September 2, 1965, applicable as amended August 1, 1965.

Amended June 20, 1967.

Amended October 8, 1968.

Amended by renumbering November 3, 1971, effective December 3, 1971.

Amended December 14, 1972, effective January 21, 1973.

Amended November 29, 1988, effective February 10, 1989. Amended subdivision (f)(2) to provide that copies of reproduction proofs are excluded from the definition of ''sale'' and ''purchase''.

Amended September 1, 1999, effective December 3, 1999. Subdivision (a) re-titled ''Definitions'' and the content, specifying the application of tax to various obsolete processes, deleted; also, language inserted to define certain terms current in the industry and used throughout the regulation. Subdivision (b) re-titled ''Application of Tax'' and the current language deleted; new subdivisions (b)(1) and (b)(2) added. Subdivision (c) re-titled ''Special Printing Aids,'' and the current language deleted; new subdivisions (c)(1), (c)(2), (c)(3), (c)(4) and (c)(5) added. Subdivision (d), re-titled ''Color Separators''; references to new subdivisions (b) and (c) added; also added examples of property consumed by color separators; in unnumbered paragraph provides examples of items printers and color separators can purchase for resale and cross-references to subdivisions (a)(1) and (c) added. Subdivision (e) renamed ''Composed Type'', old title deleted. Subdivision (e)(1) re-titled ''In General'' and its wording deleted; new language added to specify that tax does not apply to the fabrication or transfer by a typesetter or typographer of composed type, etc., to printers to use in the preparation of printed matter, and that typographers and typesetters are the consumers of the materials they use in preparing their products; also charts, graphs, tables, and similar methods of providing information are included in the definition of ''composed type.'' Subdivision (e)(2) re-titled ''Photocomposition'' and the prior wording deleted. New language added to specify that tax does not apply to transfers of text only or text combined with clip art whether the product is on paper, film or camera-ready copy; however, the transfer of plates or mats for use in the printing process are taxable. Subdivision (e)(3) renamed ''Artwork'' and the previous language deleted; new language added to clarify that artwork, other than clip art, is not composed type and its transfer is subject to tax, to list examples of artwork, and to specify what is included in the entire charge for transfers of artwork. Subdivision (e)(4) deleted. Subdivision (f) heading and former subdivisions discussing obsolete typesetting methods deleted and renamed ''Transfers of Information on Computer Disk or Other Electronic Media.'' Subdivision (g) heading and former content regarding obsolete uses of impressed mats deleted and re-titled ''Mailing.'' New language added to specify that separately stated charges for postage, addressing or activities undertaken in the process of preparing for mailing are not subject to tax. Subdivision (h) heading ''DUPLICATION BY TYPEWRITERS'' and content deleted. Subdivision (i) deleted with heading and content absorbed by subdivision (h).

Note: See Sales Tax General Bulletin 50-24 following Regulation 1525.

Regulation 1541.5. PRINTED SALES MESSAGES.

Reference: Section 6379.5, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) "PRINTED SALES MESSAGES" means and is limited to catalogs, letters, circulars, brochures, and pamphlets printed for the principal purpose of advertising or promoting goods or services. The term includes such items as department store catalogs, brochures advertising automobiles and vacations, circulars advertising professional services, and coupon books. The term does not include campaign literature and other fund-raising materials, stationery, reply envelopes, except as provided for in (b) of this regulation, order forms, sales invoices, containers for sample merchandise, newspapers or periodicals, calendars, notepads, cash register tapes, or directories unless they meet the principal purpose of advertising or promoting goods or services.

(2) "PRINTED TO THE SPECIAL ORDER" means designed and prepared according to the specific request of the purchaser. The term is also applicable to additional or supplemental orders, when the original order was printed to the special order of the purchaser.

(3) "MAILING HOUSE" means any person engaged in the business of stamping, addressing, sealing or otherwise preparing property for mailing for compensation.

(4) "COMMON CARRIER" means any person engaged in the business of transporting property for hire or compensation and who offers his services indiscriminately to the public or to some portion of the public.

(5) "COST" means any consideration given for the acquisition of the property, whether directly or indirectly. Examples of indirect costs include subscription fees, franchise fees or any general overhead billing.

(6) "ANY OTHER PERSON" as used herein means any person, other than the purchaser or the purchaser's agent, who takes physical delivery of the printed sales messages and who exercises dominion and control over the property.

(b) APPLICATION OF TAX. Operative January 1, 1987, tax does not apply to the sale or use of printed sales messages which are:

(1) Printed to the special order of the purchaser;

(2) Mailed or delivered by the seller, the seller's agent or a mailing house acting as the agent for the purchaser, through the United States Postal Service or by common carrier;

(3) Received by any other person at no cost to that person who becomes the owner of the printed material.

(4) If all of the above conditions in (b)(1) through (b)(3) are not met, tax applies to the charges for the printed sales messages to the same extent as to charges for printed matter generally.

Regulation 1541.5. (Contd.)

(5) To satisfy the common carrier requirement, it is only necessary that a common carrier be involved in some stage of the delivery.

(6) The tax exemption applies regardless of whether or not the purchaser of printed sales messages offers for sale the goods or services advertised in the printed sales messages.

(7) Tax does not apply to charges for containers, such as envelopes or wrapping paper, when sold with the printed sales messages for shipment or delivery, or when sold to persons who place the printed sales messages in the container and sell the printed sales messages together with the container.

(8) Generally, tax applies to sales of reply envelopes and order forms. However, reply envelopes, order forms, or other printed matter will be considered part of the printed sales message when such property is inserted in, stapled, glued, or otherwise affixed to the printed sales message in such a manner that it becomes a component or integral part of the printed sales message and is sold together with the printed sales message. Accordingly, the total charge in such cases is deemed to be for printed sales messages and not subject to tax.

(9) When printed sales messages are attached to reply envelopes and the reply envelopes are provided for the primary purpose of securement of a return payment on a billing, or business reasons other than the promotion of goods or services, tax applies to charges for such reply envelopes.

(10) A purchaser of printed sales messages may act as the agent of the seller of the printed sales messages to purchase from a third party supplier envelopes or other printed matter which become incorporated by the seller into the printed sales message and are sold together with the printed sales message. The purchaser must clearly establish with respect to any acquisition of printed matter that it is acting as agent for the seller of printed sales messages. To establish that a particular acquisition was made as an agent, the purchaser must (1) clearly disclose to the supplier the name of the seller for whom the purchaser is acting as agent, and (2) obtain, prior to acquisition, and retain written evidence of agent status with the seller of printed sales messages. The purchaser (agent) may not charge the seller, exclusive of any agency fee, an amount in excess of the amount paid to the third party supplier for the purchase of the envelopes or other printed matter (see Regulation 1540). The sale by the seller (third party supplier) under this agency relationship is a sale for resale to the seller of the printed sales message. Accordingly, the agent should provide the supplier with a resale certificate, purchase order, or other such document containing the principal/seller's name, address, permit number, signature of the agent or principal/seller, date of execution, and a statement that the property is purchased "for resale" (see Regulation 1668). Unless the resale certificate, purchase order, or other such document is given on behalf of the seller of printed sales messages pursuant to the agency agreement, it will be presumed that the purchaser is acting on its own behalf. At no time will the purchaser of the printed sales messages act as an agent of the seller with regards to the delivery of the printed sales messages.

Regulation 1541.5. (Contd.)

(c) SUPPORTING DOCUMENTATION. Any seller claiming an exemption for the sale of printed sales messages must obtain and retain supporting evidence of the delivery of the property.

(1) Delivery by the Seller. A seller who mails exempt printed sales messages through the United States Postal Service or by common carrier, should obtain and retain U.S. Postal receipts or bills of lading and obtain and retain a timely exemption certificate, taken in good faith, from the purchaser. The exemption certificate should be similar to the following:

"I hereby certify that the items purchased are printed sales messages and that the printed sales messages described herein which I shall purchase from_____

_____

will be delivered by the seller or the seller's agent through the U.S. Postal Service or by common carrier at no cost to another person who becomes the owner of the printed material. If any of such printed material is delivered other than as specified above, I understand that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased:

_____

_____

Date_____, _____

Purchaser:_____

(Company Name)

Address:_____

Signature:_____

(Signature of Authorized Person)

Title:_____

Seller's Permit No. of Purchaser (if any)_____"

(2) Delivery by Mailing House as Agent for Purchaser. When the seller of printed sales messages delivers the property to a mailing house acting as agent for the purchaser, the contract of sale should specify to whom the property was delivered, and the seller should obtain and retain a timely exemption certificate, taken in good faith from the purchaser, similar to the following:

Regulation 1541.5. (Contd.)

"I hereby certify that the items purchased are printed sales messages and that the printed sales messages described herein which I shall purchase from_____
_____,
delivered by the seller to the mailing house designated below, will be delivered by the mailing house, acting as my agent, through the United States Postal Service or common carrier at no cost to another person who becomes the owner of the printed material. If any such printed material is delivered other than as specified above, I understand that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased:_____
_____

Mailing house_____
(Name)
_____
(Address)
Date_____, _____
Purchaser:_____
(Company Name)
Address:_____
Signature:_____
(Signature of Authorized Person)
Title:_____
Seller's Permit No. of Purchaser (if any)_____"

(3) A copy of the exemption certificate described in subdivision (c)(1) or (c)(2), accepted in good faith, shall relieve the seller from liability for the sales tax for the sale of printed sales messages delivered in accordance with subdivisions (b)(2), (b)(3), and (b)(10) of this regulation. If the seller fails to deliver the printed sales messages in such a manner, the seller will not be relieved from liability for the sales tax, on the ground that an exemption certificate was obtained with respect to the transaction.

(4) If a purchaser certifies in writing to a seller that the printed mater is a printed sales message or that the printed sales messages purchased will be delivered in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax and it is determined that the printed matter is not a printed sales message or the purchaser arranges for the delivery of the printed sales messages in some other manner, the purchaser shall be liable for payment of sales tax as if the purchaser were a retailer making a retail sale of the printed matter at the time of such use and the sales price of the printed matter to the purchaser shall be deemed the gross receipts from such retail sale.

(5) If a purchaser wishes to designate on each purchase order that the property is an exempt printed sales message, the seller should obtain a qualified exemption certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order constitutes an exempt printed sales message within the provisions of this regulation or whether tax applies to the order. If each purchase order does not so specify, it will be assumed that the property

covered by that purchase order is not an exempt printed sales message. If the purchase order includes both exempt printed sales messages and printed matter subject to tax, the purchase order must specify which items are exempt printed sales messages and which items are subject to tax.

(6) When the purchaser and seller of printed sales messages enter into an agency agreement for the purchase of envelopes or other printed matter, pursuant to subdivision (b)(10), the purchaser must clearly disclose to the third party supplier the name of the seller for whom the purchaser is acting as an agent prior to, or at the time of purchase. This condition will be met by including on all purchase orders provided to the third party supplier a statement containing the elements noted on the following example:

"This order is placed for and on behalf of_____ [printer/principal's name]; seller's permit No._____ [printer/principal's permit number] located at_____ [address of printer/principal] for whom_____ [purchaser/agent's name] is acting as agent.

"The order is for _____[number of envelopes] envelopes to be used as containers for printed sales messages. The envelopes are to be delivered to _____[mailing house name] for inclusion of the printed sales message.

Date: _____ _____
(Signature of Purchaser or Authorized Agent)"

(7) Pursuant to subdivision (b)(10), prior to the acquisition of the envelopes or other printed matter, the purchaser and seller of the printed sales messages must agree that the purchaser is acting as an agent for the seller with respect to the purchase of envelopes or other printed matter which become incorporated by the seller into the printed sales message sold. This condition will be met by including a statement in a letter of agreement or other such document similar to the following example:

"You are hereby authorized to act as our agent in the procurement on our behalf of _____[number of envelopes] envelopes purchased for resale under seller's permit number _____[printer/seller's permit number] from _____[third party supplier's name], located at _____[address of third party supplier] for inclusion of printed sales messages to be sold and delivered pursuant to Regulation 1541.5.

Date:_____ 19_____ _____
(Signature of Printer/Seller)"

(8) The fact that the seller/principal of the printed sales messages may not formally reimburse the purchaser/agent with respect to the acquisition of envelopes or other printed matter from the third party supplier will not invalidate the agency

relationship between the seller and purchaser of printed sales messages when all other provisions of this regulation are met.

(d) EXAMPLES OF THE APPLICATION OF TAX UNDER SPECIFIC CIRCUMSTANCES.

(1) A real estate company contracts with a printer to design and prepare a brochure describing homes for sale in an area. The brochures are delivered by the seller to a mailing house for redelivery by common carrier to local merchants at no charge to the merchants. The merchants voluntarily display on the store premises the brochures which are available to the public free of charge. The merchants may dispose of the brochures in any manner they see fit. Tax does not apply to the charges for the brochures by the printer since the mailing house delivered the brochures by common carrier to a person other than the purchaser.

(2) The same real estate company in Example 1 requests the printer to prepare a second distribution of the same brochures in the same manner one month later. Tax does not apply to the charges for the second distribution, since the original printed matter was prepared to the special order of the purchaser and met the other conditions of the exemption.

(3) A manufacturer of automotive oil contracts with a printer to design and prepare a brochure describing the unique features of the oil. The brochures are delivered by the seller to a mailing house for redelivery by the U.S. Postal Service to automotive parts stores at no charge to the stores. The automotive parts stores voluntarily display on the store premises the brochures which are available to the public free of charge. Although the automobile parts store sells the oil, there is no direct or indirect cost to the store for displaying the brochures, that is, the wholesale cost is not determined by the distribution of the brochures. Tax does not apply to the charges for the brochures by the printer since the mailing house delivered the brochures by the U.S. Postal Service to a person other than the purchaser and all other conditions of the exemption were met.

(4) A fast-food franchiser contracts with a printer to prepare and deliver by a common carrier to the franchisee, coupons for a free soft drink. The franchisee distributes the coupons to its patrons at the premises. The franchisee pays a flat monthly fee to the franchiser for general expenses incurred by the franchiser for promotion of the products sold by the franchise. Although no specific charge was made by the franchiser to the franchisee, an indirect charge was made by way of the monthly fee, and, accordingly, tax applies to the charge for the printed matter.

(5) A company contracts with an advertising agency, who is acting as a seller, to prepare and deliver printed sales messages. The advertising agency contracts with a third party to do the printing and mailing. When the advertising agency separately bills the printed material to the company, and all other requirements for exemption are met, tax does not apply to the advertising agency's charges for the printed matter, since the seller need not be the actual printer to qualify for an exemption from the tax.

(6) A department store contracts with a printer to prepare sales catalogs. The printer delivers the catalogs through the U.S. Postal Service to the department store

where the catalogs are available at no charge to the store's patrons. Tax applies to the charges made by the printer since delivery was made to the purchaser.

(7) The same department store in Example (6) requests the printer to deliver 75 percent of the catalogs through U.S. Postal Service to be distributed to individuals at no cost to those individuals. The printer delivers 25 percent of the catalogs to the department store and separately lists and prices on the invoice to the department store the charges for the printing aids used in the preparation of the printed sales messages. Tax would not apply to the charges by the printer on 75 percent of the printed material; tax would apply to the 25 percent delivered to the department store and to the entire charge for the printing aids.

(8) An attorney requests a printer to prepare and mail a letter to potential clients advertising the attorney's professional services. The printer inserts a reply envelope into the folded letter and places both into a larger envelope and mails the material through the U.S. Postal Service. The letter qualifies as an exempt sales message. The outer envelope is an exempt container sold with the exempt printed sales message. The reply envelope is a component or integral part of the printed sales message when inserted with the letter into the larger enveolpe and sold with the exempt printed sales message.

(9) A furniture store requests a printer to prepare and mail billings and furniture advertisements to the store's customers. Both the billings and the advertisements are placed by the printer in the same envelope and mailed through the U.S. Postal Service. When the charges for the advertisement material are separately stated, tax does not apply to such charges. Tax does apply to the charges for the preparation of the billings and charges for the envelopes containing the billings, since the primary use of the envelopes is to mail billings and the addition of the printed sales messages is only secondary.

(10) A distributor requests a printer to prepare and mail through the U.S. Postal Service sales catalogs and order forms. The distributor also contracts with an envelope company to prepare reply envelopes to be incorporated into the catalog. The envelope company is requested by the distributor to deliver the reply envelopes to the printer, who will staple a reply envelope with an order form into the center of each catalog. The catalogs are subsequently delivered to the recipients free of charge through the U.S. Postal Service. Tax does not apply to the charges made by the printer for the catalogs or order forms. The order forms were sold by the printer along with the sale of the catalogs and became component parts of the catalogs. Tax applies to the distributor's purchase of the reply envelopes, since the reply envelopes were not component parts of the catalogs at the time they were purchased. However, when the distributor purchases the envelopes from the envelope company as an agent of the seller of the catalogs (in this case the printer), and such agency relationship is disclosed at the time of purchase, the reply envelopes will be considered sold with the catalogs. Accordingly, tax does not apply to the purchase of the envelopes (purchased for resale on behalf of the printer) or the printer's subsequent sale of the reply envelopes. In this case, the reply envelopes are sold along with the catalogs and become component parts when inserted.

Regulation 1541.5. (Contd.)

(e) SPECIAL PRINTING AIDS. The exemption provided under this regulation is limited to sales of printed sales messages and does not affect the application of tax with respect to ''special printing aids'' or other materials used in the preparation of printed sales messages. Tax applies to the sale of ''special printing aids'' as provided in Section 1541(e) of Title 18.

History: Adopted September 2, 1987, effective November 13, 1987. Added Regulation 1541.5 to provide that the sale of printed sales messages as prescribed are exempt from tax.

Amended November 18, 1998, effective February 14, 1999. Subdivision (b)(8) amended by striking phrase '', even . . . message'' after ''forms'' in first sentence and adding words ''inserted in'' to second sentence. Subdivision (b)(10) added. Subdivision (c)(1) amended by adding phrase ''items . . . the'' to first sentence of first unnumbered paragraph and phrase ''is . . . or'' to second sentence. Subdivision (c)(2) amended by adding phrase ''that . . . and'' to first sentence of first unnumbered paragraph. Subdivision (c)(3) amended by striking word ''and'' from between ''(b)(2)'' and ''(b)(3)'' and adding words '', and (b)(10)'' to first sentence; phrase ''or . . . regulation'' deleted from second sentence. Subdivision (c)(4) amended by adding phrase ''seller . . . or'' and ''it . . . purchaser'' to first sentence. Subdivisions (c) (6–8) added. Subdivision (d)(8) amended by deleting phrase ''places . . . envelope'' and adding phrase ''inserts . . . both'' in second sentence; deleting word ''not'' adding ''when . . . message'' and deleting phrase ''and . . . taxable'' in last sentence. Last three sentences added to subdivision (d)(10).

Regulation 1543. PUBLISHERS.

References: Sections 6006, 6007, 6010, 6010.3, 6011, 6012, 6015, 6094, 6244, 6362, 6379.5 and 6396, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) AUTHOR. Author means and includes any person who creates an original manuscript for the purpose of publication. For purposes of this regulation, the following persons are also authors:

(A) Developmental editors. A developmental editor means and includes any person who consults with an author (as defined above) to develop the concepts in a manuscript or reviews the copy edited manuscript and recommends visual concepts.

(B) Copy editors. A copy editor means and includes any person who reviews a manuscript for grammatical consistency and clarity.

(C) Manuscript reviewers. A manuscript reviewer means and includes any person who reviews a manuscript for technical accuracy and acceptability to the proposed audience. For example, a reviewer may review the manuscript of a book on gardening for technical accuracy and suitability of the gardening advice for a particular climate.

Regulation 1543. (Contd.)

(D) Photo researchers. A photo researcher means and includes any person who assists other authors or publishers in obtaining permission and rights from third parties to use photographic images to illustrate a manuscript.

(E) Translators. A translator means and includes any person who produces a manuscript that is a translation of material from a different language.

(2) DESIGNER. Designer means and includes any person who plans and prepares a general layout of typographical and illustrative elements for printed literature.

(3) ART DIRECTOR. Art Director means and includes any person who prepares general specifications (in the form of verbal instructions or rough sketches) for an illustrator or photographer.

(4) PRODUCTION FUNCTION. A production function is a segment of the process of producing camera-ready art or camera-ready copy, and includes but is not limited to the following:

(A) Manuscript mark-up: The application of type specifications to a manuscript for typesetting, when done manually.

(B) Formatting: Manuscript mark-up, when done electronically.

(C) Typesetting, Typography or Composition: Composition of type by any method, within the meaning of Revenue and Taxation Code Section 6010.3.

(D) Proofreading: A reading of typeset copy for correctness in comparison with the original manuscript.

(E) Alterations: Changes made to typeset copy or camera-ready copy.

(F) Dummy: A mock-up or layout of a page showing position and overall form, used for approval. A dummy can be assembled manually or generated by a computer program. A dummy is never incorporated physically into a mechanical or paste-up.

(G) Mechanical or Paste-Up: Reproduction (''repro'') copy, both text and illustrative material, that is ready to be photographed and made into lithographer's film. Also referred to as camera-ready art or camera-ready copy.

(H) Production Coordination or Production Direction: Coordination and scheduling of the various components of a project.

(I) Production Editing: Maintaining editorial integrity of the author's work during the production process.

(5) PUBLISHER. Publisher means and includes any person who owns the rights to reproduce, market and distribute printed literature.

(6) PRELIMINARY ART. Preliminary art means roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which are prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be furnished by the seller to his or her client.

Regulation 1543. (Contd.)

(7) FINISHED ART. Finished art means the final art used for actual reproduction by photo-mechanical or other processes.

(8) PHOTOSTAT. Photostat means a copy produced by photographic means, often used in layout, dummy work, or ''for position only'' on camera-ready art.

(9) SYNDICATORS. The term syndicator means and includes any person who receives original manuscripts or reproduction proofs thereof, including columns, cartoons, and comic strip drawings, from authors and distributes those manuscripts to publishers for publication.

(b) APPLICATION OF TAX.

(1) AUTHORS.

(A) The transfer by an author to a publisher or syndicator, for the purpose of publication, of an original manuscript or copy thereof, including the transfer of an original column, cartoon, or comic strip drawing, is not subject to taxation. Tax does not apply even if the manuscript is transferred in machine-readable form. The transfer of any paper, tape, diskette or other tangible personal property transferred as a means of expressing an idea is not taxable. However, tax applies to the sale of mere copies of an author's work.

(B) Tax applies to charges for transfers of photographs and illustrations, whether or not the photographs or illustrations are copyrighted. Transfers of photographs or illustrations illustrating text written by the photographer or illustrator are not taxable when they are merely incidental to the editorial matter.

(2) SYNDICATORS. The transfer by a syndicator to a publisher of impressed mats or proofs of syndicated columns, cartoons, or comic strip drawings for the purpose of publication is not subject to tax.

(3) DESIGNERS AND ART DIRECTORS. Fees paid to a designer or art director for his or her ability to design, conceive or dictate ideas, concepts, or specifications are not subject to tax if the designer or art director does not transfer to the client or to any other person on behalf of the client title or possession of any tangible personal property used to convey the ideas. The designer or art director is the consumer of any paper, tape, film, diskette or other tangible personal property used. Tax applies to the sale of such tangible personal property to the designer or art director.

(4) PRODUCTION FUNCTIONS.

(A) Tax applies to the gross receipts from the retail sale of camera-ready art or camera-ready copy. The measure of tax includes charges for the performance of all production functions, whether the charges are separately stated or not.

(B) A contract under which a person performs the following functions only is not subject to tax: Manuscript mark-up, formatting, typesetting, proofreading, production coordination, and production editing. If such functions are separable in the sense that there is no contract for camera-ready copy or camera-ready art until after such functions are completed, charges for such functions are nontaxable.

Regulation 1543. (Contd.)

(5) CONTRACT TO PERFORM SERVICES AND TO FURNISH TANGIBLE PERSONAL PROPERTY. One person may, under a single agreement, contract both to perform author, design, or art direction services, and to produce camera-ready copy or art. If, under the terms of the agreement, the client retains the right to approve the manuscript, layout, or general specifications before authorizing preparation of camera-ready copy or art, and if the author, designer, or art director does not transfer to the client title to the layouts or possession of the layouts other than for the purpose of review and approval only, then separately stated charges for performance of the services are not taxable. In the absence of specific contractual language, proof of client approval shall be evidenced by contemporaneous notation of receipt of approval in the records of the author, designer, or art director. No other proof shall be required.

(6) ILLUSTRATIONS. Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art, as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction. The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as roughs, visualizations, layouts, comprehensives or other preliminary art. Proof of ordering or producing the preliminary art, prior to the date of the contract or approval for finished art, shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller. No other proof shall be required. Tax applies to the total charges made for finished art.

(7) SALES BY PUBLISHERS. Sales of printed literature are subject to tax unless the sale is for resale or is specifically exempted by law, e.g., sales of printed sales messages and sales in interstate and foreign commerce.

(8) TRANSPORTATION CHARGES. In general, tax applies to charges for the transportation of tangible personal property except under certain conditions. For rules relating to transportation charges, see Regulation 1628, Transportation Charges.

Separately stated charges for services related directly to the transportation of printed material to the customer are not subject to the tax, e.g., addressing (by hand or by mechanical means), folding, enclosing, or sealing. Tax applies, however, to charges for envelopes.

(9) PURCHASE OF PROPERTY FOR RESALE. Tax applies to the purchase of tangible personal property that is consumed in any production function and does not become a part of the finished product. However, a person may purchase such property for resale if title to the property passes to that person's client prior to its use. Tangible personal property so purchased must be separately listed and priced on the person's sales invoice to the client and sales tax charged when appropriate. Art work is considered to be used if it is photocopied. If artwork is purchased together with a photostat of the artwork and the purchaser uses only the photostat but not the artwork, the artwork may be purchased for resale. Tax applies to the charge made for the photostat.

Regulation 1543. (Contd.)

(c) EXAMPLES OF THE APPLICATION OF TAX UNDER SPECIFIC CIRCUMSTANCES.

(1) A firm provides various services to a publisher. In performing a contract with the publisher, the firm buys a color separation from a third party. The firm does not make a copy of the color separation or use it in any way, but resells it to the publisher. The firm may give a resale certificate to the third party but tax applies to the sale to the publisher.

(2) The firm in Example (1) uses the color separation before reselling it to the publisher. Both the firm and the publisher are consumers, and both sales are subject to tax.

(3) The firm in Example (1) buys both the color separation and a photostatic copy (''stat'') of it from the third party who separately states the price of each item on his invoice. The firm retains the stat but resells the color separation to the publisher without using it in any way.

The firm may give a resale certificate to the third party for the color separation, but tax applies to the third party's sale of the stat. Tax also applies to the firm's sale of the color separation to the publisher.

(4) A firm contracts with a publisher to perform a contract in three stages, as follows:

(A) The firm creates an original manuscript of a book. The publisher reviews the first draft, comments on it, and approves it. The firm then does developmental editing, in which the writer and editors develop the manuscript for sound editorial structure and organization. The publisher reviews the resulting second draft, comments on it, and approves it. The firm then does copy editing, in which editors review the manuscript for grammatical consistency and clarity. After this, the firm passes title to the manuscript to the publisher for the purpose of publication. Under the contract, the firm can proceed with further work only with the publisher's approval.

Tax does not apply to the sale of the finished manuscript or to any of the steps of writing and editing it.

(B) In the second stage, the publisher returns the accepted manuscript to the firm for typesetting into galleys, which the publisher reviews and approves. The firm then arranges the galleys into page form, which the publisher reviews and approves. The firm then produces camera-ready art, which the publisher reviews for approval or alterations. The publisher then accepts and takes title to the camera-ready art.

Tax applies to the firm's gross receipts from the sale of the camera-ready art, including formatting, typesetting, proofreading, and production coordination, whether separately stated or not. To preserve the exempt status of the receipts described in Example (4)(A), above, the receipts in Example (4)(A) should be separately stated from the receipts in this Example (4)(B).

Regulation 1543. (Contd.)

(C) In the third stage, the publisher returns the camera-ready art to the firm for printing. The firm subcontracts the printing to a printer. The firm manages the quality of the printing. A representative of the publisher visits the printer to approve the work. At the firm's instruction, the printer ships the completed books to the publisher's warehouse.

The publisher may furnish a resale certificate to the firm, who may in turn furnish a resale certificate to the printer (provided the firm does not use the completed books in any way). Tax applies to sales by the publisher to consumers.

(5) A publisher owns an existing manuscript. The publisher contracts with an editorial design firm for developmental editing, copy editing, and design specifications. The firm reviews the manuscript and makes recommendations to the publisher for developing it into publishable form, including recommended layout and a general approach to design (e.g., trim size). After the publisher accepts these recommendations, a designer (at the firm or a subcontractor) prepares sample sketches and dummies to express the idea to the publisher. After the publisher approves the sketches and dummies, the designer creates type specifications. A developmental editor and a copy editor (at the firm or a subcontractor) perform development and copy editing services. The edited manuscript, dummies, and type specifications are transferred to the publisher.

Tax does not apply to the editing services because they are author's services. Tax does not apply to the dummies and type specifications if the charges for the dummies and type specifications are separately stated and if possession and title is retained by the editorial design firm.

(6) A publisher has an office in California and an office in New York. The publisher's California office purchases camera-ready art from a California production firm with title passing in California. However, the production firm, on instructions from the publisher, ships the camera-ready art directly to the publisher's New York office.

Tax does not apply to the production firm's gross receipts from the sale of the camera-ready art, because the sale is in interstate commerce.

History: Adopted July 31, 1990, effective March 17, 1991.

Amended December 11, 1991, effective April 18, 1992.

Chapter 85, Statutes 1991, repealed the exemption from tax for the sale of newspapers and periodicals and for sale of a photograph when possession, but not title, was transferred to be produced one time only in a newspaper regularly issued at average intervals not exceeding three months. Chapter 88, Statutes of 1991, changed the effective date from July 1, 1991 to July 15, 1991.

Amended July 24, 1996, effective November 23, 1996. Added subdivision (a)(9); amended subdivision (b)(1)(A) to include sales by an author of an original manuscript or copy thereof, including an original column, cartoon, or comic strip drawing, even if in machine-readable form; added new subdivision (b)(2) and re- numbered former subdivisions (b)(2–8) accordingly.

Regulation 1546. INSTALLING, REPAIRING, RECONDITIONING IN GENERAL.

References: Sections 6006, 6010, 6011, 6012, 6015, Revenue and Taxation Code.
Tire Retreading and Recapping, see Regulation 1548.
Accommodation loans by repairers, see Regulation 1669.
Returns, Defects, and Replacements, see Regulation 1655.

(a) INSTALLATION GENERALLY. Charges for labor or services used in installing or applying the property sold are excluded from the measure of the tax. Such labor and services do not include the fabrication of property in place.

(b) REPAIRMEN.

(1) WHEN RETAILERS. If the retail value of the parts and materials furnished in connection with repair work is more than 10 percent of the total charge, or if the repairman makes a separate charge for such property, the repairman is the retailer and tax applies to the fair retail selling price of the property.[1]

If the retail value of the property is more than 10 percent of the total charge, the repairman must segregate on the invoices to his customers and in his records the fair retail selling price of the parts and materials from the charges for labor of repair, installation, or other services performed.[2] ''Total charge'' means the aggregate of the retail value of the parts and materials furnished or consumed in making the repairs, charges for installation, and charges for labor of repair or other services performed in making the repairs, including charges for in-plant or on-location handling, disassembly and reassembly. It does not include pick-up or delivery charges.

If the retailer does not make a segregation, the retail selling price of the parts and materials will be determined by the board based on information available to it.

(2) WHEN CONSUMERS. If the retail value of the parts and materials furnished in connection with the repair work is 10 percent or less of the total charge, as defined in (b)(1) above, and if no separate charge is made for such property, the repairman is the consumer of the property,[3] and tax applies to the sale of the property to him.

(3) LUMP-SUM MAINTENANCE CONTRACTS.

(A) In General—Definitions. ''Mandatory maintenance contract''. A maintenance contract is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the maintenance contract from the seller. ''Optional maintenance contract''. A maintenance contract is optional

[1] Parts furnished for repairing such property as motor vehicles, airplanes, bicycles, machinery, refrigerators, farm implements, musical instruments, radios, television sets, boats and furniture.

[2] Section 9884.8 of the Business and Professions Code provides in part, with respect to automotive repair dealers, that ''. . . Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. . . .''

[3] Parts furnished for repairing such property as tires (retreading and recapping, see Regulation 1548), tubes, clothing, fishing rods, watches, and jewelery (See Regulation 1553).

Regulation 1546. (Contd.)

within the meaning of this regulation when the buyer is not required to purchase the maintenance contract from the seller, i.e., he is free to contract with anyone he chooses.

(B) Mandatory Maintenance Contracts. If the repair work is performed under a mandatory lump-sum maintenance contract providing for the furnishing of parts, materials, and labor necessary to maintain the property, the repairer is regarded as the retailer of the material furnished. Accordingly, if the property upon which the maintenance will be performed is sold at retail, the measure of tax includes any amount charged for the lump-sum maintenance contract, whether or not separately stated. The sale of the parts and materials to the repairer furnishing them under such a contract is a sale for resale and is not taxable.

(C) Optional Maintenance Contracts. If the repair work is performed under an optional lump-sum maintenance contract providing for the furnishing of parts, materials, and labor necessary to maintain the property, the repairer is regarded as the consumer of the parts and materials furnished.

(4) EXCHANGE OF USED FOR RECONDITIONED SIMILAR PROPERTY. If the method of repairing or reconditioning certain tangible personal property involves commingling property delivered to a repairman or reconditioner with similar property so that the customer receives repaired or reconditioned property which may not be the identical property delivered to the repairman or reconditioner but which is exactly the same kind of property or derived from exactly the same kind of property as that so delivered, tax applies to the amount charged by the repairman or reconditioner for the repaired or reconditioned property.

(5) REPAIR JOBS COVERED BY INSURANCE. An amount represented as the sales price of parts in an accepted bid is the taxable measure required to be reported by the repairman unless there is a subsequent modification of the bid agreement and the customer or the insurer is informed of the change, provided, however, that the sales price of the parts is not less than the cost of the parts actually used. The bid agreement may be modified by an invoice or a priced repair order given to the customer or the insurer showing the sales price of the property actually furnished by the repairman. If a bid is so modified and the customer or insurer is notified of the change, the amount represented as the sales price of the parts on the modified bid is the amount upon which tax must be reported.

When the accepted bid is in writing, the subsequent modification to the bid agreement must also be in writing. The customer or the insurer should be notified of such modification prior to completion of the sale (e.g., delivery of the repaired automobile).

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended November 5, 1970, effective December 10, 1970.
Amended September 18, 1973, effective October 27, 1973.
Amended May 21, 1975, effective June 29, 1975. Defined "total charge" and related the percentage test of whether a repairman is a retailer or consumer to that term.

Regulation 1546. (Contd.)

Amended October 22, 1975, effective November 29, 1975. Required separation of material and labor where material is more than 10 percent of repair bill.

Amended December 7, 1978, effective February 18, 1979. Amends subsection (b)(1) to delete language on excess tax reimbursement.

Regulation 1548. RETREADING AND RECAPPING TIRES.

Reference: Section 6006, Revenue and Taxation Code.

(a) RETREADING AND RECAPPING CUSTOMER'S OWN TIRES. Tire retreaders and recappers are the retailers of the tangible personal property furnished to consumers and tax applies to sales of such property. If a lump-sum charge is made for retreading or recapping, 75 percent thereof is considered to be the sales price of the property.

(b) SALES OF RETREADED OR RECAPPED TIRES GENERALLY. Tax applies to sales of retreaded or recapped tires, the sales price of which includes any amount allowed for the customer's old tires or other merchandise traded in (see Regulation 1654, Barter, Exchange, Trade-ins). If the method of retreading or recapping tires involves the commingling of old tires delivered to the retreader or recapper with similar property so that the customer receives retreaded or recapped tires which may not be the identical tires delivered to the retreader or recapper, but which are similar to those delivered, the tax applies to the amount charged by the retreader or recapper for the tires.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous ruling.
Amended and renumbered October 29, 1971, effective December 3, 1971.

Regulation 1549. FUR REPAIRERS, ALTERERS AND REMODELERS.

References: Sections 6006, 6015, Revenue and Taxation Code.

(a) IN GENERAL. Repairers, alterers and remodelers of furs are retailers of the fur sold in connection with repairing, altering and remodeling of fur garments.

Fur repairers, alterers, and remodelers must segregate on the invoices presented to their customers and in their records the fair retail selling price of the fur furnished by them, from the charges for the labor of repairing, altering, or remodeling the fur garment. If the retailer does not make a segregation of these charges, the retail selling price of the fur will be determined by the Board based on information available to it.

The repairers, alterers and remodelers are the consumers of the thread, buttons, lining and materials other than fur used in connection with such repairing, altering and

Regulation 1549. (Contd.)

remodeling unless a separate charge for such property is made on the invoices to the customers at the fair retail selling price, in which case they are the retailers of the property.

(b) FABRICATION LABOR. Where the services performed on the fur garment by repairers, alterers, or remodelers result in producing, processing, or fabricating tangible personal property or are a step in producing, processing, or fabricating tangible personal property, the entire charge, including fabrication labor and materials, is subject to tax.

(c) EXAMPLES OF THE APPLICATION OF TAX UNDER SPECIFIC CIRCUMSTANCES. Listed below are 12 situations involving the measure of taxability on repairing or remodeling fur garments. The answer ''Repair'' indicates that the tax applies to the retail selling price of materials furnished by the furrier. The answer ''Taxable'' indicates that the total charge is subject to tax.

(1) A customer brings in a fur coat and requests that it be restyled as a coat.—Repair.

(2) A customer brings in a coat and requests that it be remodeled into a jacket.—Repair.

(3) A customer brings in a coat and requests that it be made into a cape.—Taxable.

(4) A customer brings in a coat and requests that it be made into a stole.—Taxable.

(5) A customer brings in a jacket and requests that it be remodeled into a cape.—Taxable.

(6) A customer brings in a jacket and requests that it be remodeled into a stole.—Taxable.

(7) A customer brings in a cape and requests that it be remodeled into a stole.—Repair.

(8) A customer brings in a stole and requests that it be remodeled into a cape.—Repair.

(9) A customer brings in a coat and requests that it be remodeled, and it is necessary to use additional fur to add collar and cuffs which have not heretofore existed on the coat.—Repair.

(10) A customer comes in and requests that a garment be relined.—Repair.

(11) A customer comes in with an animal scarf and requests that the scarf be restyled into a new style animal scarf.—Repair.

(12) A customer brings in an animal scarf and requests that it be remodeled into a stole or cape.—Taxable.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended by renumbering August 5, 1969, effective September 6, 1969.
Amended September 28, 1977, effective November 25, 1977. Required separation of material and labor on bill. Clarified fabrication labor.
Amended December 7, 1978, effective February 18, 1979. Deletes language on excess tax reimbursement from Section (a).

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1550. REUPHOLSTERERS.

References: Sections 6006, 6012, 6015, Revenue and Taxation Code.

(a) GENERAL. This regulation applies to reupholsterers in general, including, but not limited to, reupholsterers of household furniture, automobiles, boats, and airplanes. Effective January 1, 1975, the term "reupholsterers" as used in this regulation includes box spring and mattress renovators.

Reupholsterers generally perform four functions when completing a contract for their services.

(1) The sale of material and parts.

(2) The fabrication of back and seat cushions and the cutting and sewing of new material used for upholstery covering.

(3) Labor for stripping old materials and applying new material to tangible personal property.

(4) Repair labor such as retying springs and refinishing the exposed wooden areas of furniture, i.e., arms, legs, etc.

(b) SALES OF MATERIALS AND PARTS. Reupholsterers are the retailers of materials and parts they sell in connection with reupholstering jobs. These include but are not limited to: fabrics for furniture covering, cushions, foam rubber, padding, burlap, dust covers, seat decking, spring units, legs, arms and casters.

Reupholsterers also are the retailers of items with small unit values or furnished in small quantities on any particular job. These are commonly referred to as findings and include such items as brads, buttons, cardboard strips, edge roll, edge wire, glue, spring clips, tacks, tacking strips, thread, twine, web cord and varnish. If charges for the findings are not segregated, the tax on such findings may be computed and reported in the manner specified in paragraph (e) below.

(c) FABRICATION LABOR. Charges for fabrication labor are taxable. Cutting and sewing materials for coverings for furniture being reupholstered, including back and seat cushions, are steps in the process of completing a new article and are fabrication labor. Labor for making new furniture from material furnished directly or indirectly by the customer is fabrication labor.

(d) EXEMPT LABOR. Labor charges for repairing furniture and for applying new materials to furniture are exempt providing such charges are segregated in reupholsterers' records from charges for materials and fabrication labor.

(e) COMPUTATION OF EXEMPT LABOR. Reupholsterers are required to segregate material charges (other than charges for findings) from labor charges in their records. If no segregation is made between taxable fabrication labor and exempt installation or repair labor, it will be considered that 80 percent of total labor charges represent exempt labor. The remaining 20 percent of total labor charges will be regarded as the measure of taxable fabrication labor and findings.

Regulation 1550. (Contd.)

(f) METHOD OF REPORTING. Reupholsterers who segregate in their records the sales price of materials, charges for fabrication labor, and charges for exempt labor may report their taxable sales by reporting total sales less a deduction for exempt labor.

If fabrication labor and sales of findings are not segregated in the reupholsterers' records, the allowable deduction for exempt labor will be an amount equal to 80 percent of the total labor charges.

A combination of the two reporting methods cannot be used for the same reporting period.

History: Adopted November 3, 1969, effective December 5, 1969.
Amended October 17, 1973, effective November 18, 1973.
Amended November 13, 1974, effective December 15, 1974. Included box spring and mattress renovators as reupholsterers.
Amended December 7, 1878, effective February 18, 1979. Deletes subsection (f) which pertained to Billings of Customers and which required that amounts represented to customers on sales tax reimbursement must be separately stated on the sales invoice. Renumber former subsection (g) to (f).

Regulation 1551. REPAINTING AND REFINISHING.

References: Section 6006, Revenue and Taxation Code.
Painters, Polishers and Finishers, see Regulation 1524.
Resale Certificates, see Regulation 1668.

(a) REPAINTING AND REFINISHING FOR CONSUMERS. Tax does not apply to single or lump-sum charges for repainting or refinishing used articles. Tax applies in such case to the sale to the refinisher of the paint and other materials used in the process, as he is regarded as the consumer of such property. If the refinisher uses paint or other materials purchased under a resale certificate, or without payment of use tax if purchased outside the State or in interstate commerce, he must report and pay tax measured by the cost of the materials to him.

If, however, the refinisher makes a separate charge at the fair retail selling price for the paint or similar finishing material that is applied to and becomes a component part of the used articles, he is the retailer of such paint or finishing material and tax applies to the amount of the separate charge.

(b) REPAINTING AND REFINISHING FOR SELLERS. A refinisher of used articles for sellers who will resell the articles in the regular course of their businesses will be regarded as selling for resale the paint or similar finishing material that becomes a component part of the used articles. The refinisher should take a resale certificate under these circumstances.

Regulation 1551. (Contd.)

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous ruling.
Amended by renumbering August 5, 1969, effective September 6, 1969.
Amended February 5, 1975, effective March 13, 1975. Provided for charge of tax where materials used are separately stated for consumers and, as to resellers, that a resale certificate should be furnished.

Regulation 1553. MISCELLANEOUS REPAIR OPERATIONS.

Reference: Section 6006, Revenue and Taxation Code.

(a) BOOKBINDERS. Bookbinders are consumers, rather than retailers, of the materials, such as cloth, leather, cardboard, glue, and thread, used in rebinding used book for a single or lump-sum charge, and tax applies to the sale of such materials to the bookbinder. If, however, the bookbinder makes a separate charge for such property at the fair retail selling price, he is the retailer of the materials and tax applies to the amount of the separate charge.

When bound books are sold at retail, tax applies to the gross receipts without any deduction for the cost of binding, even when done by the seller of the books. Tax also applies to the entire charge for the initial binding of new books furnished to a bookbinder for binding, unless the customer of the bookbinder will sell the books in the regular course of business, in which case he may furnish a resale certificate to the bookbinder.

Tax applies to the entire charge for binding done in connection with the furnishing of a finished product, i.e., a bound book, including a book produced with either a hard or soft cover by binding together materials such as magazines, newspapers, or business records.

(b) MOTOR AND TRANSFORMER REWINDING. Tax applies to sales of materials and supplies furnished in connection with the rewinding of motors and transformers. If a lump-sum price is charged for the materials and labor, 50 percent thereof is regarded as the sales price of the supplies and materials.

(c) SHOE REPAIRMEN. Shoe repairmen are retailers of the tangible personal property furnished in connection with repair work and tax applies to the retail selling price of such property. If a lump-sum or single charge is made for both materials and labor, 25 percent thereof is considered the retail selling price of the materials.

Tax applies to retail sales by shoe repairmen of such items as shoes, polishes, and laces.

(d) TENNIS RACKET RESTRINGING AND REPAIRING. Persons engaged in repairing and restringing tennis rackets are retailers of the strings and other tangible personal property furnished, and tax applies to the retail selling price thereof. If a lump-sum charge is made for materials and labor, 50 percent thereof is regarded as the retail selling price of the materials furnished.

Regulation 1553. (Contd.)

(e) WATCH AND JEWELRY REPAIRMEN. Watch and jewelry repairmen are consumers of watch, clock and jewelry repair parts and material such as crystals, findings and chain links, used in repairing watches, clocks and jewelry. Tax applies with respect to the sale to them of such property. They are, however, retailers of wrist watch straps, metal bands, watches, clocks, chains, and other tangible personal property which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such retail sales.

History: Effective August 1, 1933.
Adopted August 5, 1969, as a restatement of former rulings 32 (Cal. Admin. Code 1952); 33 (Cal. Admin. Code 1953); 34 (Cal. Admin. Code 1954); 35 (Cal. Admin. Code 1955), effective September 6, 1969.
Amended November 3, 1969, to include former Ruling 27 (Cal. Admin. Code 1947), effective December 5, 1969.
Amended January 8, 1975, effective February 16, 1975. Included bound magazines, newspapers, and business records as finished products.

Regulation 1565. AUCTIONEERS.

Reference: Sections 6006.6, 6015, Revenue and Taxation Code.

Persons engaged in the business of making retail sales at auction of tangible personal property owned by such person or others are retailers, and are, therefore, required to hold sellers' permits and pay tax measured by the gross receipts from such sales.

The amount upon which tax is computed includes the amount charged for merchandise returned by a customer at an auction sale, if the sale is made under an agreement or understanding at the time of sale that the property will not be delivered or that any amount paid will be returned to the bidder.

Sales tax does not apply, however, when an owner of property delivers it to an auctioneer for auction and bids in his own property at the auction.

History: Effective August 1, 1933 (first paragraph).
Effective September 11, 1957 (second paragraph).
Amended and renumbered August 5, 1969, effective September 6, 1969.

Regulation 1566. AUTOMOBILE DEALERS AND SALESMEN.

References: Sections 6015, 6092, 6242, 6249, 6277, Revenue and Taxation Code.
Accommodation Loans to Customers, see Regulation 1669.
Credit Sales and Repossessions Generally, see Regulation 1641.
Demonstration, see Regulation 1669.
Leased Vehicles, see Regulation 1610.
Other Retailers, Sales of Vehicles by, see Regulation 1610.
Resale Certificates Generally, see Regulation 1668.
Special Provisions Affecting Vehicles, see Regulation 1610.

Regulation 1566. (Contd.)

(a) DEALER AID TO SALESMEN. An automobile dealer, pursuant to Section 6015, is regarded as the retailer of tangible personal property sold by his salesmen in their own behalf if he aids his salesmen in making such sales in either of the following ways:

(1) By reporting the salesmen's sales on the dealer's report of sales to the Department of Motor Vehicles.

(2) By executing conditional sales agreements with respect to such salesmen's sales in which the dealer appears as the seller.

Dealers who aid their salesmen by acting as guarantors on conditional sales agreements executed by the salesmen or by requiring or permitting the salesmen to use the dealer's showroom or other facilities in making such sales are not required to pay tax on the sale of the vehicles. The purchasers from these salesmen, and from salesmen making sales without dealer aid, must pay the use tax to the Department of Motor Vehicles.

(b) RESALE CERTIFICATES FROM NONDEALER RETAILERS. A dealer who is licensed or certificated pursuant to the California Vehicle Code and who sells a vehicle to a retailer who is not regularly engaged in selling or leasing vehicles should accept a resale certificate only if it contains a statement that the specific vehicle is being purchased for resale in the regular course of business.

Unless the person named as the purchaser on the resale certificate is also named on the dealer's report of sale and application for registration, either singly or jointly as registered owner, the sale will be regarded as a retail sale subject to sales tax, and the resale certificate will not be honored, whether or not it contains a statement that the specific vehicle is being purchased for resale in the regular course of business.

(c) SALES TO MEMBERS OF THE ARMED SERVICES. A dealer (or manufacturer or dismantler) who is licensed or certificated pursuant to the California Vehicle Code must report and pay sales tax to the board with respect to the sale of a vehicle in California to a member of the armed services regardless of the service member's place of residence. A dealer (or manufacturer or dismantler) so licensed or certificated who sells a vehicle outside of California to a member of the armed services for use in California must collect use tax from the service member and remit it to the board unless the sale is made to a service member on active duty, prior to the effective date of discharge and the intention to use the vehicle in California results from official transfer orders to California and not from the service member's own independent determination. The service member will be considered to have made an independent determination to use the vehicle in California if the contract to purchase the vehicle is made after the service member receives official transfer orders to California or if at the time the contract to purchase the vehicle is made the service member arranges to take receipt of the vehicle in California. With respect to purchases made prior to January 1, 1977, however, the service member shall not be deemed to have purchased the vehicle for use in this state, whether the vehicle is delivered instate or out of state if the contract to purchase the vehicle was made prior

Regulation 1566. (Contd.)

to the receipt of official transfer orders to California. The preceding sentence shall not affect the application of sales tax with respect to vehicles delivered in this state.

(d) OUT-OF-STATE PURCHASES OF VEHICLES—90-DAY TEST.

(1) For the purpose of determining whether a vehicle which is purchased outside California is purchased for use in this state it is presumed that the vehicle was purchased for use here if it enters California within 90 days after its purchase. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the purchaser did not intend to use the vehicle in this state.

(2) Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the vehicle was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California or time of storage for shipment to California, will be accepted as proof of an intent that the vehicle was not purchased for use in California. Accordingly, when a vehicle is purchased in a foreign country or in another state and is later shipped to California, the period of use for purposes of the 90-day test will be measured by the interval from the time the purchaser takes possession at the out-of-state point to the time when the vehicle is delivered to a shipping agent or placed in storage for shipment to California.

This subsection applies with respect to vehicles ordered on or after October 1, 1970.

History: Adopted August 7, 1957, as restatement of previous ruling, effective September 11, 1957.
Amended September 18, 1963, effective as amended October 1, 1963.
Amended and renumbered August 22, 1969, effective September 24, 1969.
Amended August 5, 1970, effective October 1, 1970.
Amended November 16, 1977, effective December 25, 1977. Clarified taxable sales to service members and noted new interpretation of such sales effective January 1, 1977.

Regulation 1567. BANKS AND INSURANCE COMPANIES.

Reference: Sections 6203 and 6352, Revenue and Taxation Code.
Mutual Life Insurance Co. v. *City of Los Angeles* (1990) 50 Cal.3d 402.

(a) BANKS.

(1) SALES BY BANKS. Sales tax applies to the sale by banks, other than federally-chartered banks exempt from direct state taxation under federal law such as federal reserve banks and federal home loans banks, of tangible personal property sold at retail in this state.[1] Use tax applies to the storage, use, or other consumption in this state of tangible personal property purchased at retail from a bank for storage,

[1] Sales and use taxes imposed upon banks with respect to all income years, as defined in Revenue and Taxation Code Section 23042, beginning on and after January 1, 1980.

Regulation 1567. (Contd.)

use, or other consumption in this state, the sale of which is exempt from sales tax. Banks, whether or not exempt from direct state taxation, which are engaged in business in this state and making sales of tangible personal property the storage, use, or other consumption of which is subject to use tax, must collect the tax from the purchaser and pay the amount of tax to the board.

(2) SALES TO BANKS. Sales tax applies to the sale to banks, other than federally-chartered banks exempt from direct state taxation under federal law, of tangible personal property sold at retail in this state. Banks, other than federally-chartered banks exempt from direct state taxation under federal law, are required to pay use tax to the same extent and in the same manner as other persons storing, using, or otherwise consuming tangible personal property in this state. Retailers engaged in business in this state and making sales to banks of tangible personal property the storage, use, or other consumption of which is subject to use tax must collect the tax from the purchaser and pay the amount of the tax to the board.

(b) INSURANCE COMPANIES.

Sales tax applies to retail sales in this state to insurance companies. Although sales tax does not apply to sales by insurance companies, they are required to collect use tax from consumers when making sales or leases of tangible personal property, and to pay the amount of the tax to the board to the same extent and in the same manner as other retailers selling or renting tangible personal property for storage, use, or other consumption in this state.

Use tax does not apply to the storage, use or other consumption in this state by insurance companies of tangible personal property.

History: Effective July 1, 1935.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended September 2, 1965, applicable as amended August 1, 1965.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended August 17, 1976, effective September 19, 1976. Deleted footnote and noted that sales to national banks are taxable, subject to noted exceptions.

Amended and added January 9, 1980, effective February 29, 1980. Added subsections and headings (a)(1), (a)(2), and (b), and footnotes (1) and (2) conforming to new legislation and operative dates.

Amended April 6, 1983, effective July 3, 1983. In subdivision (a)(1), inserted ''whether or not exempt from direct state taxation, which are'' and deleted ''other than federally-chartered banks exempt from direct state taxation under federal law''. In subdivision (a)(2), in first sentence inserted ''other than federally-chartered banks exempt from direct state taxation under federal law,'' and deleted footnote 2.

Amended August 4, 1994, effective January 13, 1995. Deleted the phrase ''used in the course of their insurance operations'' from paragraph (b), effectively implementing the decision in the case of *Mutual Life Ins. Co.* v. *City of Los Angeles* (1990) 50 Cal.3d 402.

Regulation 1568. BEER, WINE AND LIQUOR DEALERS.

References: Section 6012, Revenue and Taxation Code.
Federal Areas, sales on, see Regulation 1616.
Federal Taxes Generally, see Regulation 1617.

The measure of tax with respect to retail sales of beer, wine and spirituous liquors is the entire amount charged therefore, inclusive of the amount of other State or federal taxes imposed with respect to the property.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered August 5, 1969, effective September 6, 1969.

Regulation 1569. CONSIGNEES AND LIENORS OF TANGIBLE PERSONAL PROPERTY FOR SALE.

References: Section 6015, Revenue and Taxation Code.
Sales by court-appointed officers, see Regulation 1573.

A person who has possession of property owned by another, and also the power to cause title to that property to be transferred to a third person without any further action on the part of its owner, and who exercises such power, is a retailer when the party to whom title is transferred is a consumer. Tax applies to his gross receipts from such a sale.

Pawnbrokers, storage men, mechanics, artisans, or others selling the property to enforce a lien thereon, are retailers with respect to sales of the property to consumers and tax applies to the receipts from such sales.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered November 3, 1969, effective December 5, 1969.

Regulation 1570. CHARITABLE ORGANIZATIONS.

References: Sections 6365, 6366.3, 6371, 6375, 6408, 6409, Revenue and Taxation Code.

(a) SALES BY CHARITABLE ORGANIZATIONS. DEFINITION. For purposes of this regulation, the term ‘‘charitable organization’’ means and includes any organization which meets all of the following conditions:

(1) The organization must be formed and operated for charitable purposes and must qualify for the ‘‘welfare exemption’’ from property taxation provided by section 214 of the Revenue and Taxation Code.

(2) The organization must be engaged in the relief of poverty and distress.

(3) The organization’s sales or donations must be made principally as a matter of assistance to purchasers or donees in distressed financial condition.

Regulation 1570. (Contd.)

(4) The property sold or donated must have been made, prepared, assembled or manufactured by the organization.

(A) The welfare exemption referred to in condition (1) is available to property owned and operated by a charitable organization under certain conditions. Among them is the requirement that the property be used in the actual operation of a charitable activity. Property used merely to raise funds is not used in a charitable activity even though the funds will be devoted to a charitable purpose. An example of a retail location being engaged in a charitable activity is a store employing handicapped persons as store personnel which devotes its profits to the store operation and an associated closed workshop for the handicapped.

(B) In order to receive the sales tax exemption it is necessary for the organization to receive the welfare exemption on the retail location for which the seller's permit is held. The welfare exemption must be claimed annually by March 15 with the county assessor on forms provided for this purpose. If the organization does not own the store premises, it must receive the welfare exemption on its personal property, i.e., inventory, furnishing, and fixtures.

(C) Conditions (2) and (3) are fulfilled if the primary purpose of the organization is to relieve poverty and distress and to aid purchasers and donees by selling its property at reduced prices or donating its property so as to be of real assistance to the purchasers and donees. Incidental sales to persons other than indigents will not preclude the organization from receiving the benefits of Revenue and Taxation Code section 6375.

(D) Condition (4) is fulfilled when the property is picked up at various locations and brought together (assembled) at one or more locations for purposes of sale or donation, even though nothing further remains to be done to the property to place it in saleable condition. Property is deemed ''prepared'' when it is made ready for sale or donation by such processes as cleaning, repairing, or reconditioning.

(b) SALES BY CHARITABLE ORGANIZATIONS. Sales by a charitable organization are exempt from the sales tax and the purchaser is exempt from the use tax provided all of the conditions of paragraph (a) above are met.

(c) SALES TO CHARITABLE ORGANIZATIONS.

(1) Effective January 1, 1990, neither the sales tax nor the use tax apply to tangible personal property purchased by a charitable organization for the purpose of donation by the organization provided all of the conditions of paragraph (a) above are met. Tax applies, however, to sales to the organization of supplies such as tools and office supplies and other articles not otherwise exempt.

(2) Any seller claiming an exemption from the sales tax for property sold to a charitable organization for subsequent donation may obtain from the organization and retain an exemption certificate in accordance with the requirements of Section 1667, Title 18, California Code of Regulations (Regulation 1667, ''Exemption Certificates'').

Regulation 1570. (Contd.)

(d) SELLER'S PERMITS REQUIRED. Organizations qualifying for exemption under Section 6375 are retailers and are required to hold seller's permits even though all of their sales are exempt from tax.

(e) MEDICAL HEALTH INFORMATION LITERATURE. Use tax does not apply to the storage, use, or other consumption in this state of medical health information literature purchased by any organization formed and operated for charitable purposes which qualifies for the exemption provided by section 214, the ''welfare exemption,'' which is engaged in the dissemination of medical health information; provided that such purchases are made from a national office, or another branch of that national office, of the same organization.

(f) HEALTH AND SAFETY MATERIALS. Use tax does not apply to the storage, use, or other consumption in this state of health and safety educational materials and insignia routinely sold in connection with health and safety and first aid classes, purchased or sold by any national organization formed and operated for charitable purposes which qualifies for the exemption provided by section 214, the ''welfare exemption,'' which is engaged in the dissemination of health and safety information; provided that such purchases are made from a national office or another branch or chapter of such office of the same organization.

(g) MEDICAL IDENTIFICATION TAGS. Tax does not apply to the sale of, or the storage, use, or other consumption of, medical identification tags furnished by an organization exempt from taxes under Revenue and Taxation Code section 23701. The term ''medical identification tags'' includes any tag worn by a person for the purpose of alerting other persons that the wearer of such tag has a medical disability or allergic reaction to certain treatments.

History: Effective September 18, 1959.

Amended and renumbered June 4, 1970, effective July 9, 1970.

Amended August 16, 1978, effective October 6, 1978. In (d) added medical health information literature; in (e) added health and safety materials.

Amended November 14, 1979, effective January 5, 1980. Added (f), (g), (h) and (i).

Amended June 25, 1981, effective November 1, 1981. In (f) deleted the termination date of the exemption.

Amended November 16, 1988, effective January 28, 1989. Paragraph (g), ''Original Works of Art,'' and paragraph (h), ''Property Purchased to Replace Destroyed Museum Property,'' have been deleted from Regulation 1570 and moved to new Regulation 1586, ''Public Works of Art.''

Amended May 1, 1990, effective July 13, 1990. Moved portion of the first paragraph of subdivision (a) relating to sales by charitable organizations to new subdivision (b) and added definition of ''charitable organization'' in subdivision (a), renumbered subdivision (b) as (c) and amended it to provide that sales to and purchases by charitable organizations for the purpose of donation are exempt. Renumbered subdivision (c) as (d) and deleted reference to Board form BT-719, ''Certificate of Exemption - Charitable Organizations''. Renumbered subdivisions (d), (e) and (f) as (e), (f), and (g), respectively.

Regulation 1570. (Contd.)

Amended effective March 2, 1994, Subsection (c) was amended to add ''Revenue and Taxation Code'' before ''Section 6375,'' subsection (f) was amended to add the word ''charitable'' after ''operated for,'' subsection (g) was amended to delete the word ''alert'' from ''medical alert tags'' and add the word ''identification'' i.e. ''medical identification tags.''

Regulation 1571. FLORISTS.

Reference: Section 6012, Revenue and Taxation Code.

Tax applies to amounts charged by a florist to his customers for the delivery of flowers, wreaths, etc., to points within California, even though he instructs another florist to make the delivery, but in such case tax does not apply to amounts received by the florist making the delivery.

Tax applies to amounts charged by florists who receive orders for the delivery of flowers, wreaths, etc., to points outside this state and instruct florists outside this state to make the delivery.

The measure of tax includes charges made for telegrams or telephone calls whether or not the charges are separately stated. A ''relay'' or other service charge, made in addition to the charge for the telegram or telephone call, must also be included in the measure of tax.

Tax does not apply to amounts received by California florists who make deliveries in this state pursuant to instructions received from florists outside this state.

History: Originally effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous ruling.
Amended and renumbered January 5, 1971, effective February 18, 1971.

Regulation 1572. MEMORIAL DEALERS.

Reference: Sections 6006, 6010–6012, Revenue and Taxation Code.

(a) MEMORIAL DEALERS AS RETAILERS. Memorial dealers are retailers of the tombstones, markers, and other memorials sold by them, and the consumers of materials, such as cement, used in setting the memorial in the cemetery. The term memorial dealer includes cemeteries which sell memorials.

(b) MEASURE OF TAX—CEMETERY INSTALLATIONS BY MEMORIAL DEALERS. When the memorial dealer agrees to furnish a memorial and to set it in the cemetery, the dealer must segregate on the invoice presented to his customer, and in his records, the fair retail selling price of the memorial from the charge for setting the memorial in the cemetery. Tax applies to the sale to the customer measured by the fair retail selling price of the memorial, including charges for

Regulation 1572. (Contd.)

cutting, shaping, polishing, or lettering the memorial, or for transporting the memorial to the cemetery. Tax does not apply to the charge for the labor of setting the memorial in the cemetery. Tax applies to the sale to or the use by the memorial dealer of the material consumed in the installation of the memorial.

(c) CEMETERIES CONSTRUCTING FOUNDATIONS. When a cemetery constructs a foundation upon which a memorial dealer places a memorial the cemetery is the consumer of the materials furnished in the construction of the foundation and tax applies to the sale to or the use by it of the material consumed in constructing the foundation. This is the case, whether a cemetery collects charges for the foundation from the memorial dealer or directly from the customer of the memorial dealer.

(d) SEGREGATION OF CHARGES. If the memorial dealer or cemetery does not segregate the retail selling price of the memorials from the charges for installation of the memorials and the construction of the foundations, a segregation of these charges will be determined by the Board based on information available to it.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered August 5, 1969, effective September 6, 1969.
Amended February 28, 1978, effective March 30, 1978. Required separation of material and labor on bill.
Amended December 7, 1978, effective February 18, 1979. Subsection (d) was amended to delete language pertaining to excess tax reimbursement.

Regulation 1573. COURT ORDERED SALES, FORECLOSURES AND REPOSSESSIONS.

Reference: Sections 6006, 6015, and 6019, Revenue and Taxation Code.

(a) SALES ORDERED BY STATE COURTS. Tax applies to the sale of tangible personal property by an officer of the court such as a sheriff, commissioner, assignee for the benefit of creditors, executor or administrator (including a bank), or other officer appointed by a court to make the sales if the officer is a retailer with respect to that sale.

Generally, an officer is a retailer if he makes three or more sales of tangible personal property for substantial amounts, or a substantial number of sales for relatively small amounts, in any period of 12 months in the conduct or liquidation of a single business or estate. Sales of vehicles required to be registered or subject to identification under the Vehicle Code or of vessels or aircraft are not counted in determining the number of sales for this purpose.

An officer is a retailer with respect to every sale of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 of that code,

Regulation 1573. (Contd.)

of a vessel, or of an aircraft. This is true whether or not the officer makes a series of sales of other tangible personal property from the same business or estate. The purchaser of such a vehicle, vessel or aircraft is generally required to pay use tax.

(b) FORECLOSURE SALES. Tax does not apply to sales of tangible personal property at public auction pursuant to the provisions of a security agreement if the property is purchased by the secured party who sold the property to the debtor. Tax applies to other foreclosure sales and to other sales by the secured party or the debtor to the same extent as it applies to sales generally.

(c) REPOSSESSIONS. Tax does not apply to a repossession of tangible personal property by a seller from a purchaser who has not completed his payments provided the purchaser does not receive an amount from the seller, including the cancellation of the unpaid balance, that is greater than his purchase price.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended by renumbering November 3, 1971, effective December 3, 1971.
Amended May 15, 1974, effective June 16, 1974.

Regulation 1574. VENDING MACHINE OPERATORS.

Reference: Sections 6015, 6066–6068, 6353, 6359, 6359.4, 6359.45, 6363, 6364, 6370, Revenue and Taxation Code.
Canteen Corporation v. State Board of Equalization (1985), 174 Cal. App. 3d 952.
Taxable Sales of Food Products, see Regulation 1603.
Parent-teacher associations as consumers, see Regulation 1597.
Nonreturnable containers, see Regulation 1589.

(a) GENERAL.

(1) PERMITS. Persons operating vending machines dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax or dispensing food products at retail for more than 15 cents must obtain permits to engage in the business of selling tangible personal property. One permit is sufficient for all machines of one operator.

A statement in substantially the following form must be affixed upon each vending machine in a conspicuous place:

"This vending machine is operated by

_____
Name of Operator

_____
Address of Operator

who holds Permit No._____ issued pursuant to the Sales and Use Tax Law."

Regulation 1574. (Contd.)

(2) RECORDS. Adequate and complete records must be kept by the operator showing the location or locations of each machine operated by him or her, the serial number thereof, purchases and inventories of merchandise bought for sale through all such machines, the prices charged by the operator, the gross receipts derived from the operation at each location, the receipts from exempt sales, and the sales price to the operator of all tangible personal property of which the operator is the consumer. Records must be kept of the receipts derived from each machine at a location if differing kinds of merchandise are vended through separate machines at that location.

(3) SCHEDULE SHOWING ALLOCATION BY COUNTY. If the machines are operated in more than one county, a schedule must be attached to the return showing the tax allocable to each county. If a person purchases property under a resale certificate and dispenses it through a vending machine under circumstances where he is considered to be the consumer of the property, a schedule must be attached to the return showing the use tax due thereon allocable to each county.

(4) SALES TO OPERATORS NOT FURNISHING RESALES CERTIFICATES. Persons making sales of tangible personal property of a kind the gross receipts from the retail sale of which are taxable, to operators of vending machines to be resold through such machines, must notify this board of the name and address of each operator who fails to furnish a valid resale certificate. In the event such persons fail to so notify the board, or desire to assume tax liability for the operations of particular vending machines, then, pursuant to Revenue and Taxation Code Section 6015, they are required to return the tax to the state, measured by the receipts from the retail sale of the property.

(b) APPLICATION OF TAX.

(1) IN GENERAL. Persons operating vending machines dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax must report and pay to the state the tax upon gross receipts from all sales of such property made through such machines. Sales of tangible personal property through vending machines are presumed to be made on a tax-included basis. Gross receipts from retail sales of tangible personal property through the vending machines are total receipts less the amount of sales tax reimbursement included therein.

(A) PHOTOCOPIES. Tax applies to the gross receipts from sales of photocopies through coin- or card-operated copy machines. However, library districts, municipal libraries, county libraries, or any vendor making sales pursuant to a contract with a library district, municipal library, or county library are consumers of photocopies sold at retail through a coin-or card-operated copy machine located at a library facility.

(B) SALES BY PARENT-TEACHER ASSOCIATIONS. Parent-teacher associations or equivalent associations under Regulation 1597(e) (18 CCR 1597 (e)), are consumers of tangible personal property dispensed through vending machines and are not required to hold seller's permits by reason of such activities.

Regulation 1574. (Contd.)

(C) SALES BY NONPROFIT, CHARITABLE, OR EDUCATION ORGANIZATIONS. Nonprofit, charitable, or education organizations dispensing tangible personal property for 15 cents or less through a vending machine are the consumers of such property and are not required to hold a seller's permit by reason of such activities.

(D) SALES OF WATER. Sales of purified drinking water through vending machines where the water enters the machine through local supply lines and is dispensed into the customer's own containers are exempt from the tax under Revenue and Taxation Code Section 6353.

(2) FOOD PRODUCTS.

(A) Effective January 1, 1986, tax applies to the gross receipts from the retail sale of food products, including candy and confectionery, dispensed through a vending machine at retail for more than 15 cents unless otherwise exempted as provided below. Since sales through vending machines are presumed to be made on a tax-included basis, total receipts from the taxable retail sale of food products through vending machines should be adjusted to compensate for the sales tax included therein. The term "food products" does not include carbonated beverages. A vending machine operator is a consumer of, and not a retailer of, food products, including candy and confectionery, dispensed through a vending machine at retail for 15 cents or less, effective January 1, 1986. Tax is measured by the sale price to the vending machine operator of such items unless otherwise exempt. If the property sold to the operator is an exempt food product or a nonreturnable container, no tax is payable regardless of the nature of the product when dispensed through the vending machine, and regardless of whether facilities for consumption are furnished at locations of the vending machines. For the purposes of this subdivision, the term "candy and confectionery" includes candy-coated gum products.

(B) Operative January 1, 1988, tax does not apply to the sales, and the vending machine operator is the consumer, of any food products, including candy and confectionery other than beverages or hot prepared food products, sold through a coin-operated bulk vending machine if the amount of each sale is twenty-five cents ($0.25) or less. For purposes of this regulation, "bulk vending machine" means a vending machine containing unsorted food products, including candy and confectionery, which, upon insertion of a coin, dispenses those products in approximately equal portions, at random, and without selection by the customer. For the purposes of this subdivision, the term "candy and confectionery" includes candy-coated gum products.

(C) Beginning January 1, 1988, a partial exemption from the tax is allowed any retailer who receives gross receipts through vending machines from the sale of cold food products, hot coffee, hot tea and hot chocolate which are subject to the tax. The following percentages of the gross receipts from the sales of such products are subject to the tax: 77% for the calendar year 1988, 55% for the calendar year 1989, and 33% thereafter. This partial exemption does not apply to sales of hot prepared food products (except hot coffee, hot tea and hot chocolate) and receipts from such sales may not be included in the computation of the exemption.

Regulation 1574. (Contd.)

"Gross receipts from the sale of cold food products, hot coffee, hot tea and hot chocolate" represents total receipts after adjusting for sales tax included. Therefore, in order to determine taxable receipts, an adjustment must be made to compensate for sales tax included in total receipts. Following is an example of the computation using the 7¼ percent rate:

Total receipts from sales of cold food products, hot coffee, hot tea and hot chocolate through vending machines	$10,000.00
Factor	32.2289%
Taxable receipts	$3,222.89
Tax rate	7.25%
Tax included	$233.66
Exempt receipts	$6,543.45

Proof: $10,000 – 233.66 = $9,766.34
$9,766.34 × 33% = $3,222.89

Gross receipts from the sale of cold food products, hot coffee, hot tea and hot chocolate subject to the tax may be calculated for the year 1990 and forward using the following percentages for the tax rates indicated:

TAX RATE	PERCENTAGE	TAX RATE	PERCENTAGE
6.00%	32.3593%	7.50%	32.2030%
6.50%	32.3070%	7.625%	32.1900%
6.625%	32.2940%	7.75%	32.1771%
6.75%	32.2809%	7.875%	32.1641%
6.875%	32.2679%	8.00%	32.1512%
7.00%	32.2549%	8.125%	32.1383%
7.125%	32.2419%	8.25%	32.1254%
7.25%	32.2289%	8.375%	32.1125%
7.375%	32.2160%	8.50%	32.0996%

To compute the cold food factor for other tax rates the formula is as follows:
Cold food factor percentage = 100 ÷ [3.0303 + tax rate (decimal form)]
Example: Cold food factor at 7.25% = 100 ÷ (3.0303 +.0725) = 100 ÷ 3.1028 = 32.2289%

(D) Tax does not apply to sales of any food products, whether sold through a vending machine or otherwise, to students of a school by public or private schools, school districts, student organizations, or any blind person (as defined in Section 19153 of the Welfare and Institutions Code) operating a restaurant or vending stand in an educational institution under Article 5 (commencing with Section 19625) of Chapter 6 of Part 2 of Division 10 of the Welfare and Institutions Code.

(3) DEFINITIONS.

(A) FOOD PRODUCTS. For the period July 15, 1991 through November 30, 1992, the term "food products" does not include snack foods (as defined in Regulation 1602 (18 CCR 1602), "Food Products"), nonmedicated gum, candy, and confectionery. Sales during this period of such items through vending machines are subject to the tax unless exempted under subdivisions (b)(1) and (b)(2) above.

Regulation 1574. (Contd.)

(B) NONPROFIT ORGANIZATIONS. Nonprofit organizations include any group, association, or corporation which is formed for charitable, religious, scientific, social, literary, educational, recreational, benevolent or any other purpose, provided that no part of the net earnings of such organization inures to the benefit of any member, shareholder, director, officer, or any person having a personal and private interest in the activities of the organization. Examples of this type of organization are museums, veterans organizations, youth sportsmanship organizations, clubs such as the Kiwanis Club, fraternal societies, orders or associations operating under the lodge system such as the Loyal Order of the Moose, and student organizations.

(C) CHARITABLE ORGANIZATIONS. Charitable organizations include any group, association, or corporation created for or devoted to charitable purposes, the net earnings of which are used solely for charitable purposes such as the relief of poverty, advancement of education, the advancement of religion, the promotion of health and the promotion of government. Examples of this type of organization are libraries, museums, hospitals, senior citizen community centers, thrift shops, and organizations such as the Salvation Army and Goodwill.

(D) EDUCATION ORGANIZATIONS. Education organizations include any profit or nonprofit group, association, or corporation which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its education activities are regularly carried on. Examples of such organizations are primary and secondary schools, colleges, professional and trade schools, whether public, private, nonprofit or profit making.

(4) RESALE AND EXEMPTION CERTIFICATES.

(A) Vendors of Items for 15 Cents or Less Only. A purchaser who sells the property purchased only through vending machines for 15 cents or less may give an exemption certificate with respect to the purchase of nonreturnable containers, but may not give a resale certificate with respect to the purchase of any other property. The supplier is responsible for payment of sales tax on the gross receipts from the sales to the purchaser of property, the sale of which is subject to tax.

(B) Vendors of Items for 15 Cents or Less and Over 15 Cents. A purchaser who holds a valid seller's permit and who sells the property purchased only through vending machines both at prices of 15 cents or less and at prices of more than 15 cents may give a resale certificate with respect to the purchases of such property.

(C) Vendors Selling Both Through Vending Machines and Otherwise. A purchaser who holds a valid seller's permit and who sells the property purchased both through vending machines and other than through vending machines may give a resale certificate with respect to the purchases of such property.

(D) Vendors Not Segregating Purchases. A purchaser who does not wish to segregate the purchases of property which is sold through vending machines for 15 cents or less from purchases of like property which is otherwise sold, may reimburse his or her vendor for sales tax measured by the retail selling price of all such property provided the vendor is authorized to report and pay the tax to the state in the manner provided by Section 6015.

Regulation 1574. (Contd.)

History: Effective May 1, 1940.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended August 8, 1967.

Amended August 6, 1968.

Amended and renumbered December 10, 1969, effective January 11, 1970.

Amended December 15, 1971, applicable on and after December 15, 1971.

Amended February 16, 1972, effective March 25, 1972.

Amended July 31, 1974, effective September 6, 1974. Changed cold food taxable receipts factor due to increase in tax rate.

Amended September 19, 1975, effective October 26, 1975. Clarified tax on hot bakery goods, hot beverages and cold food products sold by schools and eliminated sections applicable to prior periods.

Amended December 7, 1977, effective January 19, 1978. In (a) (1) added alternate display method of vendor's name.

Amended October 18, 1978, effective December 17, 1978. Amends Sections (a), (a) (3)(A), (b), and (b)(1).

Amended December 7, 1978, effective February 18, 1979. Amends subsection (a)(1) to provide that sales through a vending machine will be considered tax included if there is an appropriate sign posted on the premises.

Amended December 7, 1978, effective February 18, 1979. Correction of error in (a).

Amended February 1, 1985, effective March 3, 1985. In (a) deleted ''RULES'' from title and the sentence following. In (a) (1) added ''or dispensing food products''; deleted (2) and (3) and renumbered remaining subsections. Added new subsection (b) which includes former (b) (3) and (4). Added new subsection (c).

Amended June 26, 1985, effective September 22, 1985. In subdivision (b)(2) corrects reference to Welfare and Institutions Code by changing the word ''Distribution'' to ''Institutions''. Adds new subdivision (b)(3) entitled ''Photocopies'' which provides that any library district, municipal library, or county library, and any vendor making sales pursuant to a contract with those libraries, is a consumer rather than a retailer of photocopies which it sells at retail through a vending machine located at a library facility. Also, renumbers subdivisions (b)(3) and (b)(4) to read subdivisions (b)(4) and (b)(5) respectively. In renumbered subdivision (b)(5), provides that nonprofit, charitable, or education organizations, which includes libraries, are consumers of tangible personal property dispensed through vending machines for 15 cents or less.

Amended April 9, 1986, effective July 3, 1986. In subdivision (a)(1), amended definition of vending machine operators required to obtain a seller's permit. In subdivision (b)(2), amended definition of vending machine operator's gross receipts. Subdivision (b)(5), amended provisions relating to sales of property through vending machines by nonprofit, charitable, or educational organizations.

Amended April 8, 1987, effective July 1, 1987. In subdivision (b)(5)(C), (b)(5)(D) and (c)(2)(D), added reference to application of tax to certain nonreturnable containers.

Amended June 2, 1988, effective August 26, 1988. In subdivision (b)(2)(C), added provisions that provide for a partial exemption from tax the gross receipts from

Regulation 1574. (Contd.)

the sale of food products sold through vending machines. In subdivision (b)(2)(A), added provisions that exclude carbonated beverages from the definition of food products.

Amended July 28, 1993, effective November 13, 1993.

Added subdivision (b)(1)(D) to provide that sales of purified drinking water through vending machines into customer's own containers under certain conditions is exempt from tax; (b)(2)(A) and (b)(2)(B) amended to provide that candy and confectionery are not food products effective July 15, 1991. Sales of candy and confectionery through vending machines for 15 cents or less (or 25 cents or less if a bulk vending machine) will continue to be exempt from tax and clarified that candy-coated gum is considered candy; (b)(2)(C) amended to update the example and reflect current tax rate; added (b)(3)(A) to explain that the term "food products" does not include snack foods, candy, nonmedicated chewing gum and confectionery for the period July 15, 1991 to November 30, 1992.

Amended June 20, 2001, effective October 20, 2001. Subdivision (a)(1)—second, third, and fourth unnumbered paragraphs deleted. Subdivision (b)(1)—wording in second sentence replaced with "Sale of . . . basis." New third sentence added. Subdivision (b)(2)(A)—"If . . . (a)(1)" in second sentence of first paragraph replaced with "Since . . . basis;" "taxable" inserted after "total receipts from the;" phrase "which . . . dispensed" deleted; "should" substituted for "may" in second sentence; second paragraph deleted. Subdivision (b)(2)(C)—Third paragraph deleted; tax rate table updated.

Regulation 1583. MODULAR SYSTEMS FURNITURE.

Reference: Sections 6006, 6011, 6012, 6015, 6016, and 7053, Revenue and Taxation Code.

Modular systems furniture is tangible personal property, whether or not affixed to realty. A contract to sell and install modular systems furniture is a contract for the sale of tangible personal property and is not a construction contract. Persons who contract to sell and install modular systems furniture are retailers of the items which they sell and install, and tax applies to the entire contract price less those charges excludable from gross receipts or sales price pursuant to Sections 6011 and 6012 of the Revenue and Taxation Code. Retailers who claim a deduction for such charges should maintain complete and detailed records to support the amounts claimed. Such records should include, but not be limited to, a separate accounting of charges for installation labor, such as labor to affix, bolt, fasten, or hardwire panels to realty and labor to fasten or affix fully constructed components to fully constructed panel systems or other components. Charges for fabrication labor, such as labor to attach, assemble, connect, construct, or fabricate panel systems or components, labor to attach or connect one panel to another to form workstations or cubicles, and labor to construct or fabricate the individual panels, components, or accessories are subject to tax.

For contracts to sell and install modular systems entered into on or after October 1, 1999, ten percent (10%) of the total contract price, excluding charges attributable to

Regulation 1583. (Contd.)

freestanding desks, credenzas, lateral files, bookcases, worktables, returns, convergents, corner units, storage towers, chairs, footrests, and other property not attached to panels, other components, or realty, but including all other charges, will be presumed to be a charge for labor to install or apply the property sold. Retailers may claim the ten percent (10%) labor deduction in lieu of separately accounting for the actual installation charges incurred.

History: Promulgated September 1, 1999, effective December 3, 1999.

Regulation 1584. MEMBERSHIP FEES.

Reference: Sections 6011.1, 6012, and 6012.1, Revenue and Taxation Code.

(a) APPLICATION OF TAX.

(1) IN GENERAL. Membership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when either

(A) the retailer sells its products only to members and the membership fee exceeds a nominal amount,

or

(B) regardless of the amount of the membership fee, the retailer sells its products for a lower price to a person who has paid the membership fee than to a person who has not paid the fee.

(2) INCIDENTAL SALES. Charges for membership fees not related to anticipated retail transactions are not subject to tax. For example, when a country club or similar organization charges fees (dues) to members and provides substantial service benefits, e.g., the use of golfing, tennis and swimming facilities, the membership fees are not related to sales even though the organization may establish minimum meal and drink purchase requirements for its members.

(3) CONSUMER COOPERATIVES. Initial or periodic membership fees received by consumer cooperatives, as defined in sections 6011.1 and 6012.1 of the Revenue and Taxation Code, are not subject to tax.

(b) NOMINAL AMOUNT.

(1) For purposes of this regulation, beginning January 1, 2001, the term ‘‘nominal amount’’ means an amount totaling $45 or less per year subject to increase as provided in subdivision (b)(2). For periods prior to January 1, 2001, the term ‘‘nominal amount’’ for purposes of this regulation meant an amount totaling $40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

Regulation 1584. (Contd.)

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest $5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, 2006 adjustment computation, the CCPI index on June 30, 2005, will be compared with the CCPI index on June 30, 2000. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, 2010 with the CCPI index on June 30, 2000.

(c) OPERATIVE DATE. The provisions of this regulation are operative January 1, 1996.

History: Adopted February 22, 1996, effective August 2, 1996.
Amended October 31, 2000, effective January 1, 2001. Subdivision (b)(1)—phrase "beginning January 1, 2001" added; number $40 replaced with $45 in first sentence; Phrase "For periods . . . per year" added in second sentence. Subdivision (b)(2)—"2006" replaced "2001," "2000" replaced "1995," and "2010" replaced "2005."

Regulation 1585. CELLULAR TELEPHONES, PAGERS, AND OTHER WIRELESS TELECOMMUNICATION DEVICES.

Reference: Sections 6006, 6010, 6011, 6012, and 6055, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) WIRELESS TELECOMMUNICATION DEVICE. A portable communication device such as a wireless telephone or pager requiring activation by a wireless telecommunications service provider or seller of utility services in order to send, receive, or send and receive transmissions via a network of wireless transmitters throughout multiple service areas, or otherwise. The term includes devices based on analog technology and devices based on digital technology.

(2) WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER. A utility regulated by the Public Utilities Commission or the Federal Communications Commission which offers or provides wireless communication or paging services.

(3) BUNDLED TRANSACTION. The retail sale of a wireless telecommunication device which contractually requires the retailer's customer to activate or contract with a wireless telecommunications service provider for utility service for a period greater than one month as a condition of that sale. A transaction is a bundled transaction within the meaning of this regulation without regard to the method in which the price is stated to the customer. Also, it is immaterial whether the wireless telecommunication device and utility service are sold for a single price or

Regulation 1585. (Contd.)

are separately itemized in the context of a sale or on a sales invoice. A transaction is a bundled transaction if goods and services are sold as a single package, whether wireless telecommunication service is supplied to the customer by the retailer or by an independent service supplier. In such transactions, wireless devices may be sold at a ''discounted'' price, as an inducement for the customer to enter into an extended service contract. The fact that a wireless telecommunication device, such as a PCS (Personal Communication Service) telephone, may, because of its technological specifications, be subject to activation with only one service supplier, does not alone mean that the sale of the device will be treated as a bundled transaction.

(4) UNBUNDLED SALES PRICE. The price at which the retailer has sold specific wireless telecommunication devices to customers who are not required to activate or contract for utility service with the retailer or with an independent wireless telecommunications service provider for utility service as a condition of that sale. If the retailer cannot establish an unbundled sales price to the satisfaction of the Board based upon its own sales records, the unbundled sales price of the device shall equal the fair retail selling price of that device. If tax is reported and paid on an amount equal to the cost of the device plus a markup on cost of at least 18 percent, such amount shall be regarded as the fair retail selling price of the device. The unbundled sales price of an obsolete wireless telecommunication device shall equal the actual selling price of that device.

(b) APPLICATION OF TAX.

(1) IN GENERAL. Tax applies to the gross receipts from the retail sale of a wireless telecommunication device. The retailer of the wireless telecommunication device is required to report and pay the tax.

(2) UNBUNDLED TRANSACTIONS. Tax applies to the gross receipts from the retail sale of a wireless telecommunication device prior to October 1, 1995, or sold in a transaction not described in subdivisions (a)(3), (b)(5), or (b)(6), measured by the actual gross receipts received by the retailer from the end-use customer from the sale of that device.

(3) BUNDLED TRANSACTIONS. Tax applies to the gross receipts from the retail sale of a wireless telecommunication device sold in a bundled transaction, measured by the unbundled sales price of that device. Tax applies to the unbundled sales price whether the wireless telecommunication device and utility service are sold for a single price or are separately itemized in the context of a sale or on a sales invoice. The retailer of the wireless telecommunication device is required to report and pay tax measured by the unbundled sales price of the device and may collect tax or tax reimbursement from its customer measured by the unbundled sales price. Tax does not apply to the charges in excess of the unbundled sales price made for telecommunication services.

(4) ACTIVATION FEES. Tax does not apply to a one-time charge for activating a new wireless telecommunication device with, or on behalf of, a wireless telecommunications service provider where the charge is separately stated and is not for the electronic or physical modification of the device in order for it to function

Regulation 1585. (Contd.)

within a wireless telecommunications service provider's service network. A one-time charge for activating a wireless telecommunication device is subject to tax if the activation consists of the physical or electronic modification or fabrication of a wireless telecommunication device in order for the device to function within a wireless telecommunications service provider's service network. The person collecting this fee is required to report and pay tax on that amount. Any subsequent charge for the physical or electronic modification or fabrication of that device which

Regulation 1585. (Contd.)

changes the customer's telephone number or which allows that customer to utilize a different wireless telecommunications service provider is subject to tax as set forth in Regulation 1546 (18 CCR 1546).

For purposes of this subdivision, "physical or electronic modification or fabrication of a wireless telecommunication device" does not include the manual input of activation information into the device solely by means of the device's own numeric or function keys, nor does it include the remote electronic input of activation information into the device.

(5) CONSIGNMENT TRANSACTIONS AND SALE OR RETURN TRANSACTIONS. In transactions of this type, a service provider furnishes an inventory of wireless telecommunication devices to an independent retailer without charge or at a nominal price. The independent retailer sells the devices to end-use customers, retaining the proceeds of sale. The end-use customer must contract for wireless service for a period greater than one month with the wireless service provider or, if the end-use customer does not enter such an extended service contract, the end-use customer is required to pay additional service consideration for the device to the service provider. Typically, a credit card imprint is taken by the retailer, to the benefit of the service provider, at the time of the sale, to guarantee payment of the additional consideration. This is a bundled transaction in which the measure of tax is the unbundled sales price. The service provider may collect sales tax reimbursement from the end-use customer. The nominal amount collected from the end-use customer is in the nature of a commission and is not subject to tax. The person providing the device to the end-use customer may not collect sales tax reimbursement from the end-use customer.

(6) SALES AT LESS THAN 50 PERCENT OF COST. Operative January 1, 1999, except with respect to transfers described in (b)(5), any person making any sale, whether at retail or for resale, in a bundled transaction or otherwise, of a wireless telecommunication device at a price, measured by the actual sales price in an unbundled transaction or the unbundled sales price, as determined under this regulation, in a bundled transaction, less than 50 percent of cost, must report and pay use tax measured by the cost to it of the device. If the sale at less than 50 percent of cost is a retail sale, sales tax does not apply to that retail sale. The person making the sale of the device is the consumer of the device for sales and use tax purposes and may not collect tax reimbursement from its customer. Likewise, persons who sell devices for resale at less than 50 percent of cost are consumers. They must report and pay use tax measured by the cost to them of the device. In this case, any subsequent retail sale of the device is subject to sales tax unless that sale is at less than 50 percent of cost. Sales tax reimbursement may be collected from the end-use customer based upon the retail selling price of the device to the end-use customer. This subdivision shall not, however, be applicable in any instance involving the sale of a functionally or economically obsolete wireless telecommunication device.

(c) BAD DEBT DEDUCTIONS.

(1) IN GENERAL. The provisions of Regulation 1642, "Bad Debts" (18 CCR 1642), apply to retailers making sales of wireless telecommunication devices pursuant to subdivision (b)(1).

Regulation 1585. (Contd.)

(2) CHARGE-BACKS TO THE RETAILER. Retailers reporting tax measured by the unbundled sales price of a wireless telecommunication device may take a bad debt deduction pursuant to Regulation 1642 when a payment or rebate from a wireless telecommunications service provider is charged-back to the retailer based on a customer's termination of its contract with the wireless telecommunications service provider before the date specified in the utility service contract. The amount of bad debt deduction claimed by a retailer may not exceed the difference between the gross receipts on which tax was reported and paid by the retailer, and the total amount collected and retained by the retailer from the sale of the wireless telecommunication device excluding any amounts collected from the customer as tax or tax reimbursement. Any tax or tax reimbursement collected by the retailer on the amount of bad debt deduction claimed by the retailer constitutes excess tax reimbursement and must be returned to the customer or paid to the Board unless the customer and retailer agree that this amount may be applied toward the amounts owed by the customer on the debt. The customer and retailer will be regarded as having agreed to the application of any excess tax reimbursement to the customer's debt where the retailer's books reflect both the debt owed by the customer and the corresponding credit for excess tax reimbursement.

History: Adopted October 15, 1998, effective February 11, 1999.

Regulation 1586. WORKS OF ART AND MUSEUM PIECES FOR PUBLIC DISPLAY.

Reference: Sections 6365 and 6366.3, Revenue and Taxation Code.

(a) GENERAL.

(1) ORIGINAL WORK OF ART. Tangible personal property which is an original work of art and which is purchased by or for donation to certain public or nonprofit organizations for the purpose of display to the public in museums or public places is exempt from the sales and use taxes under certain conditions.

(2) MUSEUM PIECES. Tangible personal property purchased by certain organizations to replace museum pieces which were destroyed by a calamity are exempt from the sales and use taxes under certain conditions.

(b) DEFINITIONS.

(1) "Original Work of Art" for purposes of this regulation means tangible personal property which has been created as a unique object intended to provide aesthetic pleasure to the beholder and/or to express the emotions of the artist. The form in which an original work of art is presented includes but is not limited to:

(A) visual art, e.g., a drawing, painting, mural, fresco, sculpture, mosaic, film, or photograph, a work of calligraphy, a work of graphic art (an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature),

Regulation 1586. (Contd.)

(B) crafts, e.g., crafts in clay, textile, fiber, wood, metal, plastic, glass, and like materials, or

(C) mixed media, e.g., a collage, assemblage, or any combination of the foregoing art media.

(2) ''Museum'' for purposes of this regulation means a place specifically designated for display of artifacts or objects of art which either:

(A) has a significant portion of its display space open to the public without charge during its normal operating hours;

(B) has its entire display space open to the public without charge for at least six of its normal operating hours during each month of operation; or

(C) has its entire display space open without charge to a segment of the student or adult population for educational purposes.

(c) APPLICATION OF TAX.

(1) ORIGINAL WORKS OF ART.

(A) Tax does not apply to the sale or use of original works of art which are purchased by:

1. this state, or any city, county, city and county, or other local governmental entity in this state;

2. any nonprofit organization which operates a public museum under contract for such governmental entity;

3. any nonprofit organization qualifying for exemption from state income tax pursuant to Section 23701d of the Revenue and Taxation Code. The works of art must be purchased for display in a museum either operated by the purchaser or by another nonprofit organization which qualified for exemption pursuant to Section 23701d. The museum in which the art is displayed must be open to the public regularly for not less than 20 hours per week and for not less than 35 weeks of the calendar year; or

4. any person for donation to the above governmental entities or nonprofit organizations. To qualify for exemption from the tax under this subparagraph, donated works of art must be delivered by the retailer of the art directly to the donee pursuant to the instructions of the buyer-donor. Written evidence of transfer of title to the works of art from the buyer-donor to the donee must be maintained by the retailer and the buyer-donor to support the exemption.

(B) The exemption provided by paragraph (c)(1) applies only to original works of art which are purchased to become part of the permanent collection of any of the following:

1. a museum;

2. a nonprofit corporation which (1) has qualified for exemption from the state income tax pursuant to Revenue and Taxation Code Section 23701d, (2) regularly loans not less than 85 percent of the value of its collection of works of art to one or more museums, and (3) is required by its articles of incorporation to loan

Regulation 1586. (Contd.)

its works of art and is otherwise prohibited by its articles from making any private use of its works of art. The works of art for which the exemption is claimed pursuant to this subparagraph must be placed on display at a museum in California for not less than 24 months during the three-year period commencing from the date of purchase; or

3. Operative January 1, 1988, this state and any city, county, city and county, or other local governmental entity in this state for display to the public in buildings, parks, plazas, or other places which are open to the public without charge for not less than 20 hours per week and for not less than 35 weeks of the calendar year.

(2) MUSEUM PIECES.

(A) Tangible personal property is exempt from the sales and use tax if purchased to replace destroyed objects of a museum's permanent collection when such property is purchased by:

1. a nonprofit museum regularly open to the public and operated by or for a local or state government entity,

2. a nonprofit museum regularly open to the public and operated by a nonprofit organization which has qualified for exemption from the state income tax pursuant to Section 27301d of the Revenue and Taxation Code, or

3. operative January 1, 1988, this state or any local governmental entity in this state as part of a public art collection for display in a space which is open to the public without charge.

(B) To qualify for the exemption, the property must be purchased and used exclusively for display purposes. However, the property purchased does not need to be similar in character to the property it is replacing. The exemption does not extend to display cases, shelving, lamps, lighting fixtures, or other items of tangible personal property utilized in the operations of the museum. The purchased property must be:

1. purchased to replace property which has been physically destroyed by fire, flood, earthquake, or other calamity,

2. purchased within three years from the date of the calamity, and

3. the aggregate amount of property purchased must not exceed the value of the property destroyed on the date the calamity occurred.

(d) RECORDS. Records must be maintained to substantiate any claim of exemption pursuant to this regulation. Such records must include, but are not limited to, documents indicating the name of the purchaser, the date of purchase, the purchase price, the date the property was first brought into this state (if applicable), and the dates and locations the work of art was on display at a museum.

History: Adopted November 16, 1988, effective January 28, 1989. Adopted Regulation 1586 to exempt from tax certain purchases of public art by this state or any local governmental entity for display to the public in public places as specified.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1587. ANIMAL LIFE, FEED, DRUGS AND MEDICINES.

Reference: Sections 6018.1, 6358, and 6358.4, Revenue and Taxation Code.

(a) ANIMAL LIFE. Tax does not apply to sales of any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), as for example, cattle, sheep, swine, baby chicks, hatching eggs, fish, and bees. Operative January 1, 1993, food animals include ostriches. Operative January 1, 1996, food animals include emus. Operative January 1, 2000, the term ''food animals'' includes any form of animal life classified by the California Department of Food and Agriculture, by regulation, as livestock or poultry intended for human consumption under sections 18848 and 25408 of the California Food and Agricultural Code. Tax shall not apply to sales of such newly defined food animals on or after the date the related California Food and Agricultural regulation is effective.

The term ''food animals'' does not include any forms of animal life which are commonly kept as pets or companions, the sale of which for food is prohibited by Penal Code section 598b, nor does it include any horse, the sale of which for human consumption is prohibited by Penal Code section 598c. For example, cats, dogs, horses, mink, and canaries are not food animals.

(b) FEED.

(1) DEFINITION. The term ''feed'' as used herein includes codliver oil, salt, bone meal, calcium carbonate, double purpose limestone granulars and oyster shells, but does not include sand, charcoal, granite grit, sulphur and medicines. It also includes any item which is purchased for use as an ingredient of a product which would constitute a feed were the product itself sold.

(2) APPLICATION OF TAX.

(A) In General. Tax does not apply to sales of feed for food animals or for any non-food animals which are to be sold in the regular course of business.

(B) Cellulose Casings. Tax does not apply to the sale or use of cellulose casings used in the manufacture and production of processed meat products which are ultimately resold as, or incorporated into, feed for food animals or non-food animals which are to be sold in the regular course of business.

(C) Medicated Feed. Tax does not apply to the sale of medicated feed, the primary purpose of which is prevention and control of disease of food animals or of non-food animals which are to be sold in the regular course of business. Tax also does not apply to sales of the particular ingredients purchased from different sellers by a purchaser who mixes them himself for feeding to such animal life, in such proportions that the product is an exempt medicated feed rather than a drug.

(c) DRUGS OR MEDICINES.

(1) DEFINITIONS. The term ''drugs or medicines, the primary purpose of which is the prevention and control of disease,'' as used herein, means and includes any livestock drug approved by the United States Food & Drug Administration, which are defined and registered pursuant to California Food & Agricultural Code

Regulation 1587. (Contd.)

Sections 14202, 14206, and 14281. The term also includes vitamins as well as insecticides which are labeled for livestock use and which are administered directly to the livestock. The term includes, but is not limited to, legend drugs, pills and capsules, liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps. ''Livestock'' includes poultry. ''Livestock drug'' means any drug, combination of drugs, proprietary medicine, or combination of drugs and other ingredients which is prepared for administration to livestock. On or after January 1, 1997, the term ''drugs and medicines'' also includes oxygen administered to food animals, as provided in (c)(2)(A) below.

(2) APPLICATION OF TAX.

(A) Oxygen. On or after January 1, 1997, tax does not apply to the sale or use of oxygen administered to food animals for the primary purpose of preventing or controlling disease, including oxygen injected into ponds or tanks that house or contain aquatic species raised, kept, or used as food for human consumption. However, tax does apply to the sale or use of oxygen administered to nonfood animals whether or not the animals are being held for sale in the regular course of business.

(B) Administered Directly. Prior to January 1, 1997, except as provided in Regulation 1506 (18 CCR 1506), subdivision (h), dealing with licensed veterinarians, tax applies to the sales or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly to animal life. Operative January 1, 1997, tax does not apply to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals. The sale or use of drugs or medicines as defined in subdivision (c)(1) administered directly to non-food animals are subject to tax regardless that such animals are being held for sale in the regular course of business.

(C) Mixed with Feed or Drinking Water. Prior to April 1, 1996, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) administered to animal life as an additive to feed (except as provided in (b)(2)(B) above) or to drinking water. Operative April 1, 1996, tax does not apply to the sale or use of such drugs or medicines administered as an additive to, or component of, feed or drinking water for food animals or for nonfood animals being held for sale in the regular course of business.

(d) EXEMPTION CERTIFICATES.

(1) FEED. Sellers of feed should secure feed exemption certificates with respect to sales of feed of a kind customarily used both to feed food animals and to feed non-food animals which is purchased for food animals, and with respect to sales of all feed which is purchased for non-food animals being held for sale in the regular course of business. The following form of certificate is suggested:

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1587. (Contd.)

"I hereby certify that all of the feed which I all purchase from_____
_____
will be purchased for use as feed for food animals or for non-food animals which are being held for sale in the regular course of business. This certificate shall be considered a part of each order which I give unless such order shall otherwise specify. This certificate shall be good until revoked in writing.

Signature_____
Address_____
Occupation_____
Seller's Permit No. (if any)_____"

Sellers of feed need not secure feed exemption certificates with respect to sales of feed of a kind ordinarily used only in the production of meat, dairy or poultry products for human consumption or with respect to sales in small units (two standard sacks of grain or less and/or four bales of hay or less) of feed of a kind customarily used either for food production or other purposes (feeding work stock), or with respect to sales of feed that is specifically labeled by the manufacturer for food animals. In the absence of evidence to the contrary, it will be presumed that all such feed are to be used in producing meat, dairy or poultry products for human consumption.

(2) DRUGS OR MEDICINES.

(A) Administered Directly. Operative January 1, 1997, persons who buy drugs or medicines as defined in subdivision (c)(1), which will be administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals, should give the vendor an exemption certificate similar to the example in subdivision (d)(2)(C) below.

(B) To be Mixed With Feed or Drinking Water. Operative April 1, 1996, persons who buy drugs or medicines as defined in subdivision (c)(1) to be mixed with feed or drinking water, for food animals or of non-food animals being held for sale in the regular course of business, should give the vendor an exemption certificate similar to the example in subidivision (d)(2)(C) below.

(C) Sellers of drugs or medicines to be mixed with feed or drinking water for food animals or for non-food animals being held for sale in the regular course of business, to be administered directly to a food animal, or, if oxygen, administered to a food animal such as by pumping or injecting the oxygen into the animal's living environment should request a certificate similar to the following from the buyer:

"I hereby certify that the drugs or medicines which I shall purchase from____
_____
_____ will be purchased

[ ] as an additive to feed or drinking water for food animals or for non-food animals being held for sale in the regular course of business,

[ ] for administration directly to a food animal, or

[ ] for oxygen administered to a food animal.

Regulation 1587. (Contd.)

This certificate shall be considered a part of each order which I give unless such order shall otherwise specify. This certificate shall be good until revoked in writing.

Signature_____
Address_____
Occupation_____
Seller's Permit No. (if any)_____"

(3) INVOICES RELATED TO EXEMPTION CERTIFICATES. Exemption certificates should be complete with the information specified in the above forms, including the names and addresses of the purchasers, in order to constitute adequate support for exemptions claimed by sellers. In addition, the invoices on sales claimed as exempt should specify the names of the purchasers in order to relate them to exemption certificates.

History: Effective July 1, 1947.

Amended July 23, 1947.

Amended and renumbered August 5, 1969, effective September 6, 1969.

Amended March 9, 1976, effective April 18, 1976. Added (c)(3) clarifying requirement of sellers to maintain completed exemption notices and related invoices.

Amended July 30, 1986, effective December 13, 1986. Amended subdivision (b)(2)(C) to provide that tax applies to sales of drugs or medicines administered to animal life directly or as an additive to drinking water except as provided.

Amended November 18, 1987, effective February 26, 1988. In subdivision (c)(1), defined term "small units" of feed.

Amended January 11, 1996, effective October 12, 1996. Amended subdivision (a) to define ostriches as food animals; added a reference to the California Code of Regulations to subdivision (b)(2)(C); corrected a clerical error in subdivision (c)(2).

Amended August 1, 1997, effective January 8, 1998. Amended subdivision (a) by adding reference to emus as food animals effective January 1, 1996. Former subdivision (b)(2)(C) redesignated (c) and renamed "Drugs or Medicines." New subdivisions (c)(1) and (c)(3) added. New subdivision (c)(2) added incorporating language of former subdivision (b)(2)(C), adding reference to use of products, cross-reference to new subdivision (c)(1), and adding new second sentence. Former subdivision (c) redesignated (d) and subdivision (d)(1) amended by adding phrase "which . . . business" to first paragraph; deleting language "I am engaged . . . that" and "in the production . . . products" from, and adding phrase "as feed . . . business" to first paragraph of certificate. New subdivision (d)(2)(A) added. First paragraph of former subdivision (c) incorporated into new subdivision (d)(2)(B) adding operative date, cross-reference to new subdivision (c)(1), phrase "or drinking . . . business," and cross-reference to new subdivision (d)(2)(C); second sentence deleted. Content of second paragraph of former subdivision (c)(2) incorporated into new subdivision (d)(2)(C) with phrases "or medicines", "or drinking water", and "or for non-food animals . . . food animal" added. In sample certificate, phrases "I . . . of"

deleted, ''or medicines'' added, and language beginning with ''for'' and running to end of first paragraph, along with blanks, deleted; and two new blocks added.

Amended July 29, 1999, effective October 1, 1999. New subdivision (b)(2)(B) ''Cellulose Casings,'' added. Renumbered old subdivision (b)(2)(B) ''Medicated Feed,'' as subdivision (b)(2)(C).

Amended February 23, 2000, effective May 18, 2000. Amended subdivision (a) to include in ''food animals'' any form of animal life or poultry classified by the California Department of Food and Agriculture as intended for human consumption, and to clarify ''food animals'' do not include animal life kept as pets and companions. Amended subdivisions (c)(1) and (d)(2)(C), and added subdivision (c)(2)(A) concerning oxygen administered to food animals. Redesignated former subdivisions (c)(2)–(3) to (c)(2)(B)–(C).

Regulation 1588. SEEDS, PLANTS AND FERTILIZER.

Reference: Section 6358, Revenue and Taxation Code.

(a) SEEDS AND PLANTS. Tax does not apply to sales of seeds and annual plants, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of the purchaser's business. Operative January 1, 1999, tax does not apply to sales of non-annual plants, the products of which ordinarily constitute food for human consumption, including fruit trees, berry vines, and grape rootlings or rootstock, or cuttings of every variety. Tax does not apply to sales of seed, the products of which will be used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of the purchaser's business.

(b) FERTILIZER.

(1) DEFINITION. The term ''fertilizer'' includes commercial fertilizers, agricultural minerals, and manure. The terms ''commercial fertilizers'' and ''agricultural minerals'' as used herein are defined in Sections 14522 (commercial fertilizer) and 14512 (agricultural minerals) of the Food and Agricultural Code. ''Manure'' means the excreta of any domestic animal or domestic fowl which is not artificially mixed with any material except a material which has been used for bedding, sanitary, or feeding purposes for such an animal or fowl or for the preservation of the manure. The term ''fertilizer'' does not include ''soil amendments'' or ''auxiliary soil and plant substances'' as these terms are defined (with the exception noted below) in Sections 14552 (soil amendments) and 14513 (auxiliary soil and plant substances) of the Food and Agricultural Code. For purposes of this regulation, ''manures sold without guarantees for plant nutrients'' as described in Section 14552 of the Food and Agricultural Code are not soil amendments.

(2) APPLICATION OF TAX. Tax does not apply to sales of fertilizer to be applied to land (including foliar application) the products of which are to be: (a) used as food for human consumption, (b) used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or (c) sold in the regular course of the purchaser's business.

Regulation 1588. (Contd.)

When insecticides are mixed with fertilizer and the mixture sold, that portion of the total price allocable to the fertilizer may be excluded from the measure of the tax if the mixed product is applied to land (including foliar application) the products of which are to be: (a) used as food for human consumption, (b) used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or (c) sold in the regular course of the purchaser's business.

History: Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended and renumbered March 24, 1970, effective April 29, 1970.

Amended August 20, 1985, effective November 22, 1985. In Subdivision (b)(1), defined the term ''fertilizer'' to include the terms ''commercial fertilizers,'' ''agricultural minerals,'' and ''manures'' as those terms are defined in the Food and Agricultural Code and provided this term does not include soil amendments nor does it include auxiliary soil and plant substances. Corrected references to sections of the Food and Agricultural Code and defined the term ''manure''. Deleted the footnote which repeated the text of the applicable Food and Agricultural Code sections.

Amended August 24, 1988, effective November 18, 1988. In subdivision (a) amended to provide that effective October 1, 1987, nonannual plants, such as fruit trees and berry vines, which are eligible to be purchased with federal food stamp coupons and are so purchased are exempt from the sales and use taxes.

Amended July 30, 1992, effective January 10, 1993. Paragraph (a) was amended to make clear that tax does not apply to sales of seed which will be used to grow feed for any animals which ordinarily constitute food for human consumption and not just for livestock and poultry. Paragraph (b)(1) was amended to correct references to sections of the Food and Agricultural Code. Paragraph (b)(2) was amended to clarify that to be exempt, the products grown must be used as *food* for human consumption or sold in the regular course of business and that the exemption applies to fertilizer which has been mixed with insecticides when sold for the same purposes as unmixed fertilizer.

Amended January 22, 1999, effective April 1, 1999. In subdivision (a), new second sentence added; un-numbered paragraph deleted. Phrase ''are to be'' replaced with ''(c)'' in subdivision (b)(2).

Amended October 7, 1999, effective December 3, 1999. Deleted reference to section 6373 of the Revenue and Taxation Code concerning food stamps as obsolete. Prior to January 1, 1999 sales of non-annual plants were taxable unless purchased with food stamp coupons. After operative date of amendment to section 6358 (Statutes of 1998, Chapter 323, (AB-2798)) sales of non-annual plants the products of which are food for human consumption became not taxable regardless of method of payment. Subdivision (a) corrected operative date to January 1, 1999 to comply with statutory change to section 6358 by AB 2798. Also added the words ''or rootstock'' after the word ''rootlings'' to recognize that they are synonymous terms used by the grape and tree fruit industry.

Regulation 1589. CONTAINERS AND LABELS.

Reference: Sections 6007, 6008, 6009, 6012, 6364, and 6364.5, Revenue and Taxation Code.

(a) DEFINITIONS. The term ‘‘containers’’ as used herein means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets and materials from which such containers are manufactured.

The term ‘‘returnable containers’’ as used herein means containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers or sellers of the commodities contained therein. A container, title to which is retained by the seller or for which a deposit is taken by such seller, is a returnable container.

A container used for shipment or delivery of food for human consumption is not customarily returned by the buyer when:

1. The container is sold together with the contents;
2. No deposit is charged on the container;
3. Title to the container is not retained;
4. There is no obligation to repurchase the container;
5. The container is of the type that is fungible; and
6. The container is repurchased without regard to whether it is the same container originally sold.

Example: A tomato paste processor purchased a new or used container. The processor fills the container with tomato paste or other processed food. The tomato paste, together with the container, is sold to a spaghetti sauce manufacturer. No deposit is charged on the container, title to the container is not retained, and there is no obligation to repurchase the container. The container is of a type that is fungible. The spaghetti sauce manufacturer sells the container to a warehouse or a food processor who in turn sells containers that may or may not include the original container to a tomato paste processor that may or may not be the original purchaser. This container is not customarily returned by the buyer.

Examples of returnable containers are: registered dairy products containers, steel drums, certain types of beer and soft drink bottles, wine barrels, chemical carboys, and gas cylinders.

All other containers are ‘‘nonreturnable containers.’’ Examples of nonreturnable containers are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits bottles.

The term ‘‘deposit’’ as used herein means an amount charged to the purchaser of the contents of the container with the understanding that such amount will be repaid when the container or a similar container is delivered to the seller. The term ‘‘deposit’’ as used herein does not include amounts representing redemption or recycling values of beverage containers pursuant to division 12.1 (commencing with

Regulation 1589. (Contd.)

Section 14500) of the Public Resources Code whether or not such amounts are separately stated to the purchaser of the contents of the container.

(b) APPLICATION OF TAX.

(1) CONTAINERS. Tax does not apply to sales of:

(A) Nonreturnable containers when sold or leased without the contents to persons who place the contents in the container and sell the contents together with the container.

(B) Nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.

(C) Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling. In the case of a lease of a returnable container that is a continuing sale, the lessor's first lease of the container for filling is taxable for the full term of the lease or thirty (30) days whichever is greater. The lessor's subsequent lease of the container for refilling for sale with the contents is not taxable.

(D) All containers when sold or leased with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax.

Tax applies to all other sales of containers except sales for the purpose of resale to other sellers of containers who purchase them for resale without the contents.

Operative April 1, 1998, tax does not apply to the sale or to the storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives held for medical purposes, including, but not limited to, blood collection units and blood pack units.

Deposits as defined herein are not taxable.

(2) LABELS. Tax does not apply to sales of labels or name-plates if:

(A) The purchaser affixes them to property to be sold and sells them along with and as a part of such property, as, for example, sales of name-plates of manufacturers or producers which are permanently affixed to each unit of products sold, such as automobiles and machinery.

(B) The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.

(c) PARTICULAR APPLICATIONS.

(1) PRICE TAGS. Tax applies to sales of such items as price tags, shipping tags and advertising matter used in connection with the sale of property or enclosed with the property sold.

Regulation 1589. (Contd.)

(2) FEED ANALYSIS TAGS. Tax does not apply to sales of feed analysis tags to be attached to containers of feeds and sold along with the container and contents.

(3) FEED BAGS. Feed bags sold to feed dealers who place feed in the bags and sell the feed together with the bags are nonreturnable containers,[1] and the sale of such bags to feed dealers is not taxable. It is immaterial whether the bags are made of burlap, cotton, paper, or other material, or whether there is a brand name or dealer's name imprinted on the bags.

If, however, any feed dealer charges a deposit to customers to secure the return of the bags, or otherwise requires his customers to return the bags to him, the bags become returnable containers and tax applies to the sale of the bags to the feed dealer.

(4) GIFT WRAPPING. Tax applies to the entire charge for "gift wrapping" (i.e., furnishing the materials and labor required to wrap an item for a customer so as to be suitable for use by him as a gift), whether or not the person who does the gift wrapping is the seller of the contents. If the person who does the gift wrapping is the seller of the contents, the gift wrapping is considered sold together with the contents, whether or not a separate charge is made for the gift wrapping. The person who does the gift wrapping may purchase the materials free of tax for resale.

However, tax does not apply to charges for gift wrapping exempt food products sold by the person who does the gift wrapping, unless the value of the gift wrapping exceeds the value of the food products.

History: Effective August 1, 1933.

Adopted January 1, 1945, as a restatement of previous rulings.

Amended and renumbered August 5, 1969, effective September 6, 1969.

Amended May 21, 1975, effective June 29, 1975. Deleted cement bags as returnable containers and added (c)(4) classifying gift wrappers as resellers and their labor as fabrication.

Amended October 7, 1987, effective December 30, 1987. In subdivision (a), expanded the definition of the term "deposit" to exclude redemption or recycling values of beverage containers in order to prevent any confusion which may arise when the California Beverage Container Recycling and Litter Reduction Act becomes effective. Because redemption or recycling values of beverage containers are not considered deposits, they therefore are includable in the gross receipts of the seller of the containers.

Amended April 23, 1996, effective August 8, 1996. New subdivision (b)(1)(B) added; existing subdivisions (b)(1)(B) & (C) re-designated (b)(1)(C) & (D), respectively. Obsolete effective date deleted from subdivision (c)(4).

Amended June 11, 1998, effective July 11, 1998. Amended subdivision (b) to incorporate provisions of Chapter 773, Statutes of 1997.

---

[1] The conclusion that feed bags are nonreturnable containers resulted from a statewide survey made by the board with the cooperation of the California Grain and Feed Association, which showed that substantially less than 50 percent of the feed bags are returned to the feed dealers by their customers for re-use.

Amended July 29, 1999, effective October 15, 1999. Subdivision (a): phrase ''of the contents'' deleted from second sentence in the first unnumbered paragraph; also new unnumbered second and third paragraphs added. Subdivision (b)(1)(C): new second and third sentence added. Subdivision (b)(1)(D) the words ''or leased'' added to the first paragraph after the word ''sold''.

Regulation 1590. NEWSPAPERS AND PERIODICALS.

References: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.3, 6362.7, and 6362.8, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) ''NEWSPAPER.'' The term ''newspaper'' as used herein conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(2) ''PERIODICAL.'' The term ''periodical'' as used herein is limited to those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them.[1] Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. An annual report of a corporation which is substantially different in style and format from the corporation's quarterly reports is not part of a series with the quarterly reports. The term ''periodical'' does not include books complete in themselves, even those that are issued at stated intervals, for example, books sold by the Book-of-the-Month Club or similar organizations; so-called ''pocket books,'' a new one of which may be issued once a month or some other interval; or so-called ''one-shot'' magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include shopping guides or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.

[1] This definition is based upon *Business Statistics Organization, Inc.* v. *Joseph,* 299 N.Y. 443, 87 N.E. 2d 505, and *Houghton* v. *Payne,* 194 U.S. 88, 48 L.Ed 888.

Regulation 1590. (Contd.)

(3) "INGREDIENT OR COMPONENT PART OF A NEWSPAPER OR PERIODICAL." The term "ingredient or component part of a newspaper or periodical" includes only those items that become physically incorporated into the publication and not those which are merely consumed or used in the production of the publication. For example, newsprint and ink are ingredients of a newspaper; however, a photograph does not become an ingredient or component part of a newspaper or periodical merely because the image of the photograph is reproduced in the publication.

Handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical.

(4) "PUBLISHER." "Publisher" means and includes any person who owns the rights to produce, market, and distribute printed literature and information.

(5) "DISTRIBUTOR." "Distributor" means any person who acquires newspapers or periodicals for subsequent distribution to retailers or newspaper carriers.

(6) "NEWSPAPER CARRIER." "Newspaper carrier" means any person who acquires newspapers from a publisher or distributor to deliver to consumers. The term includes a hawker. A "hawker" is an individual who sells single copies of newspapers to passersby on a street corner or other trafficked area. "Newspaper carrier" does not include persons selling newspapers or periodicals from a fixed place of business.

(7) "THIRD PARTY RETAILER." "Third party retailer" means and includes any person who sells at retail subscriptions to newspapers and periodicals who is not the publisher of the newspapers or periodicals. Typically, third party retailers solicit subscriptions in a single offering for a large number of different publications, require that payment be made to the account of the third party retailer, and undertake to resolve subscription problems. The term includes persons commonly known as direct mail, school, paid during service, cash, catalog, and telephone agents. "Third party retailer" does not include persons who solicit renewals of subscriptions on behalf of individual publishers.

(b) APPLICATION OF TAX.

(1) IN GENERAL. Effective July 15, 1991, the sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.

Tax does not apply to sales of tangible personal property to persons who purchase the property for incorporation as a component part of a newspaper or periodical which will be sold notwithstanding that the purchaser is not the seller of the newspaper or periodical.

See Regulation 1574 (18 CCR 1574) for the application of tax to sales through vending machines and Regulation 1628 (18 CCR 1628) for the application of tax to transportation charges.

Regulation 1590. (Contd.)

(2) DISTRIBUTIONS OF NEWSPAPERS AND PERIODICALS WITHOUT CHARGE. Effective October 2, 1991, tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.

Newspapers and periodicals distributed on a voluntary pay basis shall be considered as distributed without charge. Newspapers and periodicals are distributed on a voluntary pay basis when payment is requested from the consumer but is not required.

(3) SUBSCRIPTIONS. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.

Effective November 1, 1992, tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.

Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).

Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

(4) MEMBERSHIP ORGANIZATIONS. Generally, tax applies to sales of newspapers and periodicals by membership organizations. If the price is separately stated, tax applies to that amount. If the price is not separately stated, the measure of tax is the fair retail selling price of the publication.

The application of tax to distributions of newspapers and periodicals by nonprofit organizations is provided at subdivision (b)(5). The application of tax to sales of periodicals by subscription is provided at subdivision (b)(3).

(5) NONPROFIT ORGANIZATIONS.

(A) Internal Revenue Code Section 501(c)(3) Organizations. Effective November 1, 1991, until October 31, 1992, tax does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible

Regulation 1590. (Contd.)

personal property which becomes an ingredient or component part of any such newspaper or periodical, only as to issues distributed under either of the following circumstances:

1. The issues are distributed to the organization's members in consideration of the organization's membership fee; or

2. The issues are of a newspaper or periodical which neither receives revenue from, nor accepts, any commercial advertising.

Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.

For purposes of this subdivision, any governmental entity established and administered for the purposes provided in Internal Revenue Code Section 501(c)(3) shall be considered to be an organization that qualifies for tax exempt status under that section.

(B) Other Nonprofit Organizations. Effective November 1, 1991, tax does not apply to the sale or use of any newspaper or periodical distributed by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of or any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:

1. The issues are distributed to the organization's members in consideration, in whole, or in part, of the organization's membership fee;

2. The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than ten percent of the membership fee attributable to the period for which the newspaper or periodical is distributed, whether the publication is printed within or without this state. The cost of printing shall be determined as follows.

The cost of printing includes costs of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical (e.g., ink and paper) and costs of labor to print the newspaper or periodical. The cost of printing does not include costs not attributable to actual printing, such as costs of special printing aids, typography, and preparation of layouts.

If the organization contracts with an outside printer to print the newspaper or periodical, the organization shall obtain and retain documentation segregating the costs of printing from the printer's other charges.

If the organization is the printer of the newspaper or periodical, the cost of printing includes the aggregate of the cost of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical; labor of printing, including fringe benefits and payroll taxes; and other costs attributable to the actual printing of the newspaper or periodical.

If an organization has published the newspaper or periodical for a period exceeding twelve months and the method of printing has not changed, the organization may elect to consider the cost of printing for a reporting period to be equal to the amount paid or incurred for the same reporting period for the previous fiscal or calendar year.

Regulation 1590. (Contd.)

(6) NEWSPAPER CARRIERS. A newspaper carrier is not a retailer. The publisher or distributor for whom the carrier delivers is the retailer of the newspapers delivered. The publisher or distributor shall report and pay tax measured by the price charged to the customer by the carrier.

(7) CONSUMPTION OF PROPERTY. Tax applies to the sale to or use by a newspaper or periodical publisher of tangible personal property consumed in the manufacturing process. Tax does not apply to the cost of tangible personal property lost or wasted in the manufacturing process when that property was purchased for the purpose of incorporation into a newspaper or periodical to be sold or to be distributed in accordance with subdivision (b)(2).

(8) FIXED PRICE CONTRACTS. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.

(9) SCHOOL CATALOGS AND YEARBOOKS. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.

Tax applies to charges for the preparation of such publications made to public or private schools, county offices of education, school districts, or student organizations by printers, engravers, photographers and the like.

(c) EXEMPTION CERTIFICATES. Any seller claiming a transaction as exempt from sales tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8 should timely obtain an exemption certificate in writing from the purchaser. The exemption certificate will be considered timely if obtained by the seller at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property.

(1) CERTIFICATE A. Certificate to be used for purchases of tangible personal property for incorporation into newspapers or periodicals for sale in accordance with subdivisions (b)(1) or (b)(3), above.

(2) CERTIFICATE B. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed without charge in accordance with subdivision (b)(2), above.

(3) CERTIFICATE C. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3) in accordance with subdivision (b)(5)(A), above.

(4) CERTIFICATE D. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations in accordance with subdivision (b)(5)(B), above.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1590. (Contd.)

CERTIFICATE A

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE

Sales of tangible personal property for incorporation into a newspaper or periodical for sale

_____
(Name of Purchaser)

_____
(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

_____ That I hold valid seller's permit No._____ issued pursuant to the Sales and Use Tax Law.

_____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase from

_____
(Name of Vendor)

will become a component part of the newspaper or periodical *

_____
and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

_____

_____

Date: _____, 19 _____

_____
(Signature of Purchaser or Authorized Agent)

_____
(Title)

* Insert name and type of newspaper or periodical

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1590. (Contd.)

CERTIFICATE B

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed without charge

_____
(Name of Purchaser)

_____
(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

_____ That I hold valid seller's permit No._____ issued pursuant to the Sales and Use Tax Law.

_____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing *

_____

which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from

_____
(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of the such property.

Description of property to be purchased:

_____

_____

Date: _____, 19_____

_____
(Signature of Purchaser or Authorized Agent)

_____
(Title)

* Insert name and type of newspaper or periodical

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1590. (Contd.)

CERTIFICATE C

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

_____
(Name of Purchaser)

_____
(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

_____ That I hold valid seller's permit No._____ issued pursuant to the Sales and Use Tax Law.

_____ That the purchaser does not hold a permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing *

_____

The tangible personal property described herein which I shall purchase from

_____
(Name of Vendor)

will be sold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

_____ The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors,

_____ The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

_____

Date: _____, 19 _____

_____
(Signature of Purchaser or Authorized Agent)

_____
(Title)

* Insert name and type of newspaper or periodical

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1590. (Contd.)

CERTIFICATE D

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

_____
(Name of Purchaser)

_____
(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

_____ That the purchaser holds valid seller's permit No._____ issued pursuant to the Sales and Use Tax Law.

_____ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in business of selling or publishing *

_____

The tangible personal property described herein which I shall purchase from

_____
(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of property to be purchased:

_____

_____

Date: _____, 19 _____

_____
(Signature of Purchaser or Authorized Agent)

_____
(Title)

* Insert name and type of newspaper or periodical

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1590. (Contd.)

History: Originally published April 2, 1945 (Title 18).
Amended August 8, 1945, effective September 15, 1945.
Amended July 25, 1949, as an emergency.
Amended June 8, 1960, effective July 9, 1960.
Amended March 9, 1966, effective April 9, 1966.
Amended and renumbered April 8, 1970, effective May 10, 1970.
Amended February 6, 1975, effective March 15, 1975. Further defined "periodical" and added that a corporate annual report is not a periodical when done in different style from quarterly reports.
Amended December 7, 1977, effective January 19, 1978. Clarified in (b) (2) the tax status of school publications.
Amended March 1, 1989, effective June 9, 1989. Amended to add county offices of education to the list of organizations considered consumers and not retailers of catalogs and yearbooks prepared by and for them and distributed to students. Also amended to provide a signature and title line in the example of a publisher's exemption certificate.
Amended May 26, 1994, effective September 4, 1994. Deleted an obsolete effective date in subdivision (a)(2) and deleted an old footnote relating to subdivision (a)(2). Amended subdivision (a)(3) to clarify that newsprint and ink are ingredients of a newspaper. Added subdivisions (a)(4)–(6) and (7) to provide respective definitions for "publisher," "distributor," "newspaper carrier," and "third party retailer" as those terms are used in the regulation. Added references to the California Code of Regulations to subdivision (b)(1). Amended subdivision (b)(1) to clarify that there is no longer a general exemption for the sale and use of newspapers and periodicals. Added subdivisions (b)(2)–(9) to incorporate new statutory requirements enacted in 1991. Amended subdivision (c) to delete an obsolete exemption certificate and to provide for four new exemption certificates to be used depending on the applicable exemption. Deleted subdivision (d) as obsolete.

Regulation 1591. MEDICINES AND MEDICAL DEVICES

References: Sections 6006 and 6369, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) ADMINISTER. "Administer" means the direct application of a drug or device to the body of a patient or research subject by injection, inhalation, ingestion, or other means.

(2) DISPENSE. "Dispense" means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist, or podiatrist. Dispense also means and refers to the furnishing of drugs or devices directly to a patient by a physician, dentist, optometrist, or podiatrist acting within the scope of his or her practice.

(3) FURNISH. "Furnish" means to supply by any means, by sale or otherwise.

Regulation 1591. (Contd.)

(4) HEALTH FACILITY. "Health Facility" as used herein has the meaning ascribed to the term in section 1250 of the Health and Safety Code, which provides that:

"As used in this chapter 'health facility' means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer . . . . "

(5) PHARMACIST. "Pharmacist" means a person to whom a license has been issued by the California State Board of Pharmacy, under the provisions of section 4200 of the Business & Professions Code, except as specifically provided otherwise in Chapter 9 of the Pharmacy Law.

(6) PHARMACY. "Pharmacy" means an area, place, or premises licensed by the California State Board of Pharmacy in which the profession of pharmacy is practiced and where prescriptions are compounded. Pharmacy includes, but is not limited to, any area, place, or premises described in a license issued by the California State Board of Pharmacy wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail. Pharmacy shall not include any area specifically excluded by paragraph (b) of section 4037 of the Business and Professions Code.

(7) PRESCRIPTION. "Prescription" means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist, or podiatrist licensed in this state *and* given individually for the person or persons for whom ordered. The order must include all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the conditions for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order.

(8) PHYSICIANS, DENTISTS, OPTOMETRISTS, AND PODIATRISTS. "Physicians," "dentists," "optometrists," and "podiatrists" are persons authorized by a currently valid and unrevoked license to practice their respective professions in this state. "Physician" means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery,

Regulation 1591. (Contd.)

issued by the Medical Board of California or the Osteopathic Medical Board of California and includes an unlicensed person lawfully practicing medicine pursuant to section 2065 of the Business & Professions Code, when acting within the scope of that section.

(9) MEDICINES. ''Medicines'' means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for that use. The term medicines also includes certain articles, devices, and appliances as described in subdivision (b) of this regulation.

(b) ''MEDICINES''. The term ''medicines'' means and includes the following items:

(1) PREPARATIONS AND SIMILAR SUBSTANCES. Preparations and similar substances intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which are commonly recognized as a substance or preparation intended for such use qualify as medicines. Tax does not apply to the sale or use of such medicines sold or furnished under one of the conditions provided in subdivision (d)(1) through (d)(6).

''Preparations and similar substances'' include, but are not limited to, drugs such as penicillin, and other antibiotics, ''dangerous drugs'' (drugs that require dispensing only on prescription); alcohol (70% solution) and isopropyl; aspirin; baby lotion, oil, and powder; enema preparations; hydrogen peroxide; lubricating jelly; medicated skin creams; oral contraceptives; measles and other types of vaccines; topical creams and ointments; and sterile nonpyrogenic distilled water. Preparations and similar substances applied to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease qualify as medicines. ''Preparations and similar substances'' also include Total Parenteral Nutrition (also called TPN), Intradialytic Parenteral Nutrition (also called IDPN), and food provided by way of enteral feeding, except when the TPN, IDPN, or food provided by enteral feeding qualifies as a meal under Regulation 1503. For purposes of this regulation, TPN, IDPN, and enteral feeding are means of providing complete nutrition to the patient; TPN and IDPN are provided in the form of a collection of glucose, amino acids, vitamins, minerals, and lipids, TPN being administered intravenously to a patient who is unable to digest food through the gastrointestinal tract and IDPN being administered to hemodialysis patients as an integral part of the hemodialysis treatment; enteral feeding is the feeding of the patient directly into the gastrointestinal tract.

(2) PERMANENTLY IMPLANTED ARTICLES. Articles permanently implanted in the human body to assist the functioning of, as distinguished from replacing all or any part of, any natural organ, artery, vein or limb and which remain or dissolve in the body qualify as medicines. An article is considered to be permanently implanted if its removal is not otherwise anticipated. Tax does not apply to the sale or use of articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve

Regulation 1591. (Contd.)

in the body when such articles are sold or furnished under one of the conditions provided in subdivision (d)(1) through (d)(6).

Permanently implanted articles include, but are not limited to, permanently implanted artificial sphincters; bone screws and bone pins, dental implant systems including dental bone screws and abutments; permanently implanted catheters; permanently implanted hydrocephalus devices and their implanted pressure regulating components; implanted defibrillators and implanted leads; pacemakers; tendon implants; testicular gel implants; and ear implants. Sutures are also included whether or not they are permanently implanted. A non-returnable, nonreusable needle fused or prethreaded to a suture is regarded as part of the suture.

Implantable articles that do not qualify as ''permanently'' implanted medicines include, but are not limited to, Chemoport implantable fluid systems; Port-a-Cath systems used for drug infusion purposes; disposable urethral catheters; temporary myocardial pacing leads used during surgery and recovery; defibrillator programmer and high voltage stimulator used with an implanted defibrillator; and tissue and breast expanders. The sale or use of these items is subject to tax.

(3) ARTIFICIAL LIMBS AND EYES. Artificial limbs and eyes, or their replacement parts, including stump socks and stockings worn with artificial legs and intraocular lenses for human beings, qualify as medicines as provided by Revenue and Taxation Code section 6369 (c)(5). Tax does not apply to the sale or use of these items when sold or furnished under one of the conditions provided in subdivision (d)(1) through (d)(6).

(4) ORTHOTIC DEVICES. Orthotic devices and their replacement parts, other than orthodontic devices, designed to be worn on the person of the user as a brace, support or correction for the body structure are medicines as provided under Revenue and Taxation Code section 6369(c)(3). The sale or use of orthotic devices and their replacement parts is not subject to tax when sold or furnished under one of the conditions provided in subdivision (d)(1) through (d)(6). Orthotic devices and their replacement parts do not need to be furnished by a pharmacist, within the meaning of subdivision (d)(1), to be considered dispensed on prescription provided the devices are furnished pursuant to a written order of a physician or podiatrist. For the purposes of this regulation, orthotic devices furnished pursuant to a written order of a physician or podiatrist by, but not limited to, medical device retailers, clinics, physical therapists, device suppliers, intermediate care facilities, or other such persons, are deemed to be dispensed on prescription within the meaning of subdivision (d)(1).

Orthotic devices worn on the body of the person include, but are not limited to, abdominal binders and supports, ace bandages, ankle braces, anti-embolism stockings, athletic supporters (only for patients recovering from rectal or genital surgery), casts, and cast components, cervical supports, neck collars, cervical traction devices, clavicular splints, post-surgical corsets, elbow supports, head halters, pelvic traction devices, post-operative knee immobilizers and braces, legging orthoses, rib belts and immobilizers, rupture holders, sacral belts, sacro-lumbar back braces, shoulder immobilizers, slings, stump shrinkers, sternum supports, support

Regulation 1591. (Contd.)

hose (and garter belts used to hold them in place), thumb and finger splints, trusses, and wrist and arm braces. All of the above must be worn on the body of the person and act as a brace, support or correction for body structure to qualify as a medicine. If any part of the orthotic device is not worn on the person, the device is not a medicine for the purposes of this regulation.

Orthopedic shoes and supportive devices for the foot do not qualify as medicines unless they are an integral part of a leg brace or artificial leg or are custom-made biomechanical foot orthoses. ''Custom-made biomechanical foot orthosis'' means a device that is made on a positive model of the individual patient's foot. The model may be individually constructed from suitable model material such as plaster of paris, stone, or wax, and may be manually constructed or fabricated using electronic technology.

''Custom-made biomechanical foot orthosis'' do not include:

(A) any pre-made or pre-molded foot orthosis or shoe insert even if it has been modified or customized for an individual patient by the practitioner regardless of the method of modification;

(B) any foot orthosis fabricated directly on the patient's foot regardless of the method and materials used and regardless of its individual character; or

(C) any foot orthosis fabricated inside of the patient's shoe regardless of the method of manufacture and materials used and regardless of its individual character.

(5) PROSTHETIC DEVICES. Prosthetic devices and their replacement parts designed to be worn on or in the patient to replace or assist the functioning of a natural part of the human body, are medicines as provided under Revenue and Taxation Code section 6369(c)(4). The sale or use of prosthetic devices and their replacement parts is not subject to tax when sold or furnished under one of the conditions provided in subdivision (d)(1) through (d)(6). Prosthetic devices and their replacement parts do not need to be furnished by a pharmacist, within the meaning of subdivision (d)(1), to be considered dispensed on prescription provided the devices are furnished pursuant to a written order of a physician or podiatrist. For the purposes of this regulation, prosthetic devices furnished pursuant to a written order of a physician or podiatrist by, but not limited to, medical device retailers, clinics, physical therapists, device suppliers, intermediate care facilities, or other such persons are deemed to be dispensed on prescription within the meaning of subdivision (d)(1). For purposes of this regulation only, prosthetic devices include bags and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, each of which is used to dispense enteral feeding to the patient, including: gastrostomy tubes (also called G tubes) which are used to deliver the nutrition directly into the stomach; jejunostomy tubes (also called J tubes) which are used to deliver the nutrition directly into the intestinal tract; and nasogastric tubes (also called NG tubes) which are used to deliver the nutrition directly through the nasal passage to the stomach. For purposes of this regulation only, prosthetic devices also include needles, syringes, cannulas, bags, and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, each of which is used to dispense TPN or IDPN to the patient, provided each of these items is used primarily to dispense the TPN or IDPN.

Regulation 1591. (Contd.)

Prosthetic devices that are considered medicines when worn on or in the patient include, but are not limited to, acetabular cups, atrial valves, cervical cuff, dacron grafts, heart valves, orbital implant, nerve cups, rhinoplasty prosthesis, neuromuscular electrical stimulators, transcutaneous nerve stimulators, urinary incontinent devices, and wigs and hairpieces prescribed by a physician or podiatrist.

Prosthetic devices that do not qualify as ''medicines,'' include, but are not limited to, air compression pumps and pneumatic garments; noninvasive, temporary pace makers; and vacuum/constriction devices used to treat male impotency; auditory, ophthalmic and ocular devices or appliances; and dental prosthetic devices and materials such as dentures, removable or fixed bridges, crowns, caps, inlays, artificial teeth, and other dental prosthetic materials and devices. Sales of such items are subject to tax in the same manner as any other sale of tangible personal property.

(6) DRUG INFUSION DEVICES. Programmable drug infusion devices worn on or implanted in the human body which automatically cause the infusion of measured quantities of a drug on an intermittent or continuous basis at variable dose rates and at high or low fluid volume into the body of the wearer of the device qualify as medicines under Revenue and Taxation Code section 6369(c)(6). The sale or use of the qualifying infusion device is not subject to tax when the device is sold or furnished under one of the conditions provided in subdivision (d)(1) through (d)(6).

(c) EXCLUSIONS FROM THE DEFINITION OF "MEDICINES". Except as otherwise provided in subdivision (b), the following items are specifically excluded from the definition of medicines. Sales of these items are subject to tax in the same manner as any other sale of tangible personal property.

(1) Orthodontic, prosthetic (except as described in subdivision (b)(6)), auditory, ophthalmic or ocular devices or appliances.

(2) Articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof. ''Medicines'' does not include arch supports, cervical pillows, exercise weights (boots or belts), hospital beds, orthopedic shoes and supportive devices (unless an integral part of a leg brace or artificial leg), plastazote inserts, plastazote shoes, plastic shoes (custom or ready-made), sacro-ease seats, shoe modifications, spenco inserts, traction units (other than those fully worn on the patient), thermophore pads, or foot orthoses.

(3) Any alcoholic beverage the manufacture, sale, purchase, possession or transportation of which is licensed and regulated by the Alcoholic Beverage Control Act (Division 9, commencing with section 23000, of the Business and Professions Code).

(d) APPLICATION OF TAX—IN GENERAL. Tax applies to retail sales, including over-the-counter sales of drugs and medicines, and other tangible personal property by pharmacists and others. However, tax does not apply to the sale or use of medicines when sold or furnished under one of the following conditions:

Regulation 1591. (Contd.)

(1) prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a pharmacist in accordance with law, or

(2) furnished by a licensed physician, dentist or podiatrist to his or her own patient for treatment of the patient, or

(3) furnished by a health facility for treatment of any person pursuant to the order of a licensed physician, dentist or podiatrist, or

(4) sold to a licensed physician, dentist, podiatrist or health facility for the treatment of a human being, or

(5) sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof, or

(6) effective January 1, 1995, furnished by a pharmaceutical manufacturer or distributor without charge to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or to an institution of higher education for instruction or research. Such medicine must be of a type that can be dispensed only: (a) for the treatment of a human being, and (b) pursuant to

Regulation 1591. (Contd.)

prescriptions issued by persons authorized to prescribe medicines. The exemption provided by this subdivision applies to the constituent elements and ingredients used to produce the medicines and to the tangible personal property used to package such medicines.

(e) SPECIFIC TAX APPLICATIONS.

(1) PRESCRIPTIONS. No person other than a licensed physician, dentist, optometrist or podiatrist is authorized to prescribe or write a prescription for the treatment of a human being. Tax does not apply to the sale or use of medicines prescribed by a licensed physician, dentist, optometrist, or podiatrist for the treatment of a human being and dispensed on prescription filled by a pharmacist.

(2) LICENSED PHYSICIAN, DENTIST OR PODIATRIST. Tax does not apply to a specific charge made by a licensed physician, dentist or podiatrist to his or her own patient for medicines furnished for the treatment of the patient. Tax also does not apply to sales of medicines to licensed physicians, dentists or podiatrists for the treatment of a human being regardless of whether the licensed physician, dentist or podiatrist makes a specific charge to his or her patient for the medicines furnished.

(3) HEALTH FACILITY. Tax does not apply to sales of medicines by a health facility (as defined in subdivision (a)(4)) for the treatment of any person pursuant to the order of a licensed physician, dentist or podiatrist. Tax does not apply to sales of medicines to a health facility for the treatment of a human being regardless of whether or not a specific charge is made for the medicines.

(4) PHARMACEUTICAL MANUFACTURER OR DISTRIBUTOR. Tax does not apply to the storage, use or consumption of medicines furnished by a pharmaceutical manufacturer or distributor without charge to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being or furnished without charge to an institution of higher education for instruction or research provided the medicines furnished are of a type that can be dispensed only (1) on prescription by persons authorized to prescribe and (2) for the treatment of a human being. The exemption from tax includes the costs of the materials used to package the ‘‘sample’’ medicines, such as bottles, boxes, blister packs, patches impregnated with medicines, or pre-filled syringes, and the elements and ingredients used to produce the ‘‘samples’’ whether or not such items are purchased under a resale certificate in this state or outside this state. When a pre-filled syringe or other such delivery device is used to package and contain a sample medicine (i.e., pre-filled with the medicine) as well as to inject or otherwise administer the medicine to the patient, the exemption from tax will not be lost due to the fact that the device is used for a dual purpose. However, the use of empty syringes or other such delivery devices, furnished to the licensed physician separately or included in the packages with the medicines, is subject to tax.

This exemption applies in the same manner to the use of clinical trial medicines during the United States Food and Drug Administration’s drug development and approval process. ‘‘Clinical trial medicines’’ are substances or preparations approved as ‘‘Investigational New Drugs’’ by the United States Food and Drug Administration

Regulation 1591. (Contd.)

intended for treatment of, and application to, the human body, which are furnished by a pharmaceutical developer, manufacturer, or distributor to a licensed physician and subsequently dispensed, furnished, or administered pursuant to the order of the licensed physician. ''Clinical trial medicines'' do not include placebos. Placebos are not used for the treatment of a human being and, as such, do not qualify for the exemption provided under this subdivision. Thus, the use of placebos is subject to tax.

(5) ANTIMICROBIAL AGENTS USED BY HOSPITAL PERSONNEL. Tax does not apply to the sale or use of substances or preparations, such as antiseptic cleansers or scrubs, when such substances or preparations qualify as medicines and are used by hospital personnel on the patient or by hospital personnel on their own bodies to benefit the patient, and which constitute a critical component of the patient's treatment. Qualifying medicines used on the bodies of hospital personnel include antimicrobial agents used for preoperative scrubbing or hand cleansing prior to any patient contact such as Accent Plus Skin Cleanser; Accent Plus Perinal Cleanser; Bacti-Stat; Betadine; and Medi-Scrub. However, antimicrobial agents such as Accent Plus 1 Skin Lotion; Accent Plus 2 Body Massage; Accent Plus 2 Skin Crème; and Accent Plus Total Body Shampoo applied to the body of hospital personnel are not considered used in the treatment of the patient and the sale or use of these products is subject to tax.

(6) VITAMINS, MINERALS, HERBS, AND OTHER SUCH SUPPLEMENTS. In general, sales of vitamins, minerals, herbs and other such supplements are subject to tax. However, when vitamins, minerals, herbs and other such supplements are used in the cure, mitigation, treatment or prevention of disease, and are commonly recognized as a substance or preparation intended for such use, they will qualify as medicines for the purposes of Revenue and Taxation Code section 6369. As such, their sale or use is not subject to tax when sold or furnished under one of the conditions in subdivision (d)(1) through (d)(6).

(7) DIAGNOSTIC SUBSTANCES, TEST KITS, AND EQUIPMENT. Tax applies to the sale or use of diagnostic substances applied to samples of cells, tissues, organs, or bodily fluids and waste after such samples have been removed, withdrawn, or eliminated from the human body. Diagnostic substances are applied to the samples outside the living body (''in vitro'') in an artificial environment. They are not administered in the living body (''in vivo''). As the substances are not applied internally or externally to the body of the patient, they do not qualify as medicines under Revenue and Taxation Code section 6369.

Except as provided in Regulation 1591.1(b)(4), tax applies to the sale or use of test kits and equipment used to analyze, monitor, or test samples of cells, tissues, organs and blood, saliva, or other bodily fluids. Such items do not qualify as medicines regardless of whether they are prescribed for an individual by a person authorized to prescribe and dispensed pursuant to a prescription.

Regulation 1591. (Contd.)

(f) INSURANCE PAYMENTS

(1) MEDICAL INSURANCE AND MEDI-CAL. The exemption of retail sales of medicines is not affected by the fact that charges to the person for whom the medicine is furnished may be paid, in whole or in part, by an insurer. This is so even though a joint billing may be made by the retailer in the name of both the person and the insurer.

(2) MEDICARE.

(A) Medicare Part A. Tax does not apply to the sale of items to a person insured pursuant to Part A of the Medicare Act as such sales are considered exempt sales to the United States Government. Under Part A, the healthcare provider has a contract with the United States Government to provide certain services. Therefore, sales of medicines, devices, appliances, and supplies in which payment is made under Part A qualify as exempt sales to the United States Government.

(B) Medicare Part B. Tax applies to sales of items to a person in which payment is made pursuant to Part B of the Medicare Act. Sales made under Part B do not qualify as exempt sales to the United States Government even though the patient may assign the claim for reimbursement to the seller and payment is made by a carrier administering Medicare claims under contract with the United States Government. Under Part B, the seller does not have a contract with the United States Government. The contract is between the patient and the United States Government. Unless the sale is otherwise non-taxable (such as a sale of a medicine under suddivision (d)), the sale is subject to tax.

(3) EMPLOYER MEDICAL CONTRACTS. Certain employers have contracted with their employees to provide the latter with medical, surgical, and hospital benefits in a hospital operated by or under contract with the employer for a fixed charge. Usually the charge is by payroll deduction. These contracts are not insurance plans; rather, they are agreements to furnish specified benefits under stated conditions, one of which may be that no charge is to be made to the employee for prescribed medicines. The agreements may provide for making a charge for medicines furnished to out-patients but not to in-patients. This in no way affects the exemption of sales of medicines.

(g) RECORDS. Any pharmacy whether in a health facility or not must keep records in support of all deductions claimed on account of medicines. Section 4081 of the Business and Professions Code requires that all prescriptions filled shall be kept on file and open for inspection by duly constituted authorities.

Pursuant to section 4081 of the Business and Professions Code, physicians and surgeons and podiatrists must keep accurate records of drugs furnished by them. Any deduction on account of sales of medicines shall be supported by appropriate records.

Regulation 1591. (Contd.)

(1) The following written information constitutes acceptable documentation for retailers in those cases where sales are made of supplies which are ''deemed to be dispensed on prescription'' within the meaning of Revenue and Taxation section 6369:

Name of purchaser
Name of doctor
Date of sale
Item sold
The sale price

(2) ''DOUBLE DEDUCTION'' UNAUTHORIZED. The law does not, of course, permit a double deduction for sales of exempt medicines. For example, if an exemption is claimed on account of a sale of a prescription medicine, no additional deduction for the same sale may be taken as a sale to the United States Government under the Medicare Program.

(3) Persons making purchases of items in which their sale or use is not taxable under this regulation should give their suppliers an exemption certificate pursuant to Regulation 1667.

History: Effective January 1, 1962.
Amended May 16, 1962.
Amended September 18, 1963, effective as amended September 20, 1963.
Amended and renumbered December 10, 1969, effective January 11, 1970.
Amended May 4, 1971, effective July 1, 1971.
Amended September 14, 1972, effective September 15, 1972.
Amended January 18, 1973, effective January 26, 1973.
Amended October 20, 1977, effective October 28, 1977. Changed to conform to Revenue and Taxation Code section 6369 and 6369.2. Added orthotic and prosthetic devices to definition of ''medicines;'' excluded ''dentures'' from the definition of ''medicines;'' added mammary prostheses and ostomy appliances to items to be dispensed on prescription; added wheelchairs, crutches, canes, quad canes and walkers as exempt items. Changed all references to the term ''hospital'' to ''health facility'' as defined in section 1250 of the Health and Safety Code.
Amended March 1, 1978, effective April 29, 1978. In (b)(4) added list of specific orthotic devices; in (b)(5) added list of prosthetic devices; in (c)(1), (2) and (3) included specific items excluded from the term ''medicines''; in (g) made grammatical change; in (i) added list of specific items to be included under this section; in (j) added leases to transactions to which tax does not apply and provided that tax applies to all replacement parts; in (m) deleted references to former section 280 of Title 17, California Administrative Code, and added (1) specifying acceptable documentation for exempt sales and (3) suggesting use of Regulation 1667 ''Exemption Certificates.''
Amended July 27, 1978, effective July 31, 1978. In (b)(5) deleted dental crowns, caps and inlays from definition of ''medicines''; in (c)(1) added crowns, caps, inlays and other dental prosthetic materials and devices to exclusions from term ''medicines''; in (c)(2) added orthodontic appliances to exclusions from term ''medicines''; in (i) provided that orthotic and prosthetic devices shall be

Regulation 1591. (Contd.)

deemed to be dispensed on prescription; in (k) exempted replacement parts for wheelchairs, crutches, canes, quad canes and walkers from tax.

Amended September 27, 1978, effective November 18, 1978. In (b)(5) added intraocular lenses and ear implants; moved general exclusionary language from (c)(3) to (c); to (c)(2) added reference to footnote 3; and added reference to orthodontic appliances and devices to footnote 3.

Amended September 26, 1979, effective November 16, 1979. Adds (1); reletters former (1) and following subdivision.

Amended July 27, 1983, effective November 17, 1983. Added subdivision (b)(7); changed reference in first sentence of (c) from (b)(6) to (b)(7). Added ''and, on or after January 1, 1983, ''insulin syringes'' to subdivision (h) and added subdivision (m); relettered former subdivisions (m), (n), (o) to (n), (o), (p).

Amended August 24, 1988, effective October 7, 1989. In subdivision (b)(4) added provisions to include ''custom made biomechanical foot orthoses'' within the definition of the term medicines.

Amended October 26, 1993, effective February 17, 1994. Amended subdivision (k) to provide the exemption from tax for white canes used by the legally blind; removed obsolete dates in subdivisions (b)(4), (b)(7), (h), and (m).

Amended June 27, 1996, effective August 23, 1996. Amended subdivisions (b)(4) and (5) to correct spelling errors; added new subdivision (n), and renumbered former subdivisions (n), (o), and (p) as (o), (p), and (q), respectively.

Amended November 19, 1996, effective December 19, 1996. Added new (a)(7) to incorporate provisions of Assembly Bill 3836 (Chapter 857, Statutes of 1994).

Amended August 10, 1998, effective October 17, 1998. Amended subdivisions (a)(6), (d), (e) to reflect changes in sections of the Business and Professions Code; corrected spelling errors in subdivisions (b)(4)(A) and (b)(5); changed ''which'' to ''that'' in subdivision (g); removed obsolete date in subdivision (k); amended subdivisions (*l*)(1) and (*l*)(3)(B) to reflect changes in sections of the California Vehicle Code.

Amended November 18, 1999, effective March 10, 2000. Deleted the references to sections 6369.1, 6369.2, 6369.4 and 6369.5 for those parts of former Regulation 1591 that were repromulgated as Regulations 1591.1, 1591.2, 1591.3 and 1591.4. Subdivision (a) formerly titled ''Generally'' was deleted and replaced with new subdivision (a) titled ''Definitions.'' Subdivision (b) retitled ''Medicines;'' also added the phrase ''the following items'' to the end of the first sentence. Subdivision (b)(1) added new title ''Preparations and Similar Substances'' and amended language for clarity; new sentence added to the end of the first paragraph; also added new unnumbered paragraph. Subdivision (b)(2) added new title ''Permanently Implanted Articles;'' amended the first sentence for clarity; former second sentence deleted; new second and third sentences added; also two new unnumbered paragraphs added. Subdivision (b)(3) added new title ''Artificial Limbs and Eyes;'' amended the first sentence for clarity; new last sentence added. Subdivision (b)(4) added new title ''Orthotic Devices;'' amended first sentence for clarity; deleted the part of the former first sentence after the semi-colon; deleted former second, third and fourth sentences and replaced them with new sentences which define when orthotic devices qualify as exempt medicines; examples (A), (B) and (C) consisting of items which do not qualify as custom-made biomechanical foot orthosis, were moved to become the new third unnumbered paragraph; the former second unnumbered paragraph, becomes the first unnumbered paragraph and is amended for clarity; new last sentence added; also new second

Regulation 1591. (Contd.)

unnumbered paragraph added. Subdivision (b)(5), added the title "Prosthetic Devices;" deleted the phrase "other . . . devices" from the first sentence and included its content in a new third unnumbered paragraph; added the phrase "are . . . 6369(c)(4)" to the end of the first sentence; also added new second, third and fourth sentences to the first paragraph; and new second and third unnumbered paragraphs added. Subdivision (b)(6) deleted and prior content moved to subdivision (b)(3). Former subdivision (b)(7) renumbered (b)(6) and retitled "Drug Infusion Devices;" added the phrases "a drug on . . . volume" and "qualify . . . section 6369(c)(6)." to the first sentence; also added a new second sentence. Subdivision (c), deleted the word "Term" in the title and replaced it with the phrase "the Definition of;" in the first paragraph deleted the cross-reference "(b)(2) through (b)(7) above" and replaced it with "subdivision (b)" in the first sentence; remainder of first sentence amended for clarity; also new second sentence added. In subdivision (c)(1) added cross-reference to new subdivision (b)(6). Subdivision (d) formerly titled "Who is a Registered Pharmacist" was deleted and its content transferred to new subdivision (a)(5) titled "Pharmacist." The language of former subdivision (a) "General" was moved to new subdivision (d) titled "Application of Tax —In General." New subdivisions (d)(1) through (d)(6) added. Subdivision (e) formerly titled "What Constitutes a Prescription" deleted and most of its content repromulgated as subdivision (a)(7). New subdivision (e) retitled "Specific Tax Applications." New subdivision (e)(1) added, detailing who can write a prescription. Subdivision (f) "Licensed Physician, Dentist or Podiatrist" renumbered as subdivision (e)(2). Subdivision (g) "Health Facility" renumbered as new subdivision (e)(3); the first sentence up to the colon deleted; also deleted the first unnumbered paragraph in former subdivision (g) and repromulgated it as (a)(4); and added the phrase "by a health facility" and a reference to (a)(4) in the first sentence. New subdivision (e)(4) added. New subdivision (e)(5) added to conform the regulation to the decision in *Purdue Frederick Co.* v. *SBE* (1990) 218 Cal.App.3d 1021 and to codify in regulatory form interpretations of the case now contained in annotations. New subdivisions (e)(6) and (e)(7) added. Former subdivisions (h) through (n) deleted. Former subdivision (o) redesignated as subdivision (f) "Insurance Payments." New subdivision (f)(1) titled "Medical Insurance and Medi-Cal" added, using the language of former subdivision (o). New subdivision (f)(2) titled "Medicare" added. Former subdivision (p) relettered (f)(3). Former subdivision (q) "Records," relettered (g); changed reference from section 4331 to section 4081 of the Business and Professions Code and added the words "and surgeons" in the second sentence; also changed the reference from section 4051 to section 4081 of the Business and Professions Code in first unnumbered paragraph. Subdivision (g)(1) added the phrase "Revenue and Taxation Code" to the first sentence. Subdivision (g)(3) added the phrase "in which their sale or use is" to first sentence; also changed the term "exempt" to "not taxable."

Amended December 13, 2000, effective April 12, 2001. Subdivision (b)(1), unnumbered paragraph—third and fourth sentences added to include liquid nutrition products in the definition of "substances and preparations." Subdivision (b)(2), first unnumbered paragraph, phrase added to clarify that dental implant systems, including dental bone screws and abutments are considered "permanently implanted articles." Subdivision (b)(5), fifth and sixth sentences added to clarify that specified devices used to administer liquid nutrition are included in the term "prosthetic devices."

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1591.1. SPECIFIC MEDICAL DEVICES, APPLIANCES, AND RELATED SUPPLIES

Reference: Sections 6006, 6369, and 6369.1, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) PHYSICIANS, DENTISTS, OPTOMETRISTS, AND PODIATRISTS. ''Physicians,'' ''dentists,'' ''optometrists,'' and ''podiatrists'' are persons authorized by a currently valid and unrevoked license to practice their respective professions in this state. ''Physician'' means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Osteopathic Medical Board of California and includes an unlicensed person lawfully practicing medicine pursuant to section 2065 of the Business & Professions Code, when acting within the scope of that section.

(2) PRESCRIPTION. ''Prescription'' means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist, or podiatrist licensed in this state *and* given individually for the person or persons for whom ordered. The order must include all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the conditions for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order.

(b) SPECIFIC APPLICATIONS.

(1) HEMODIALYSIS PRODUCTS. Tax does not apply to the sale or use of hemodialysis products supplied on order of a licensed physician and surgeon to a patient by a pharmacist or by a manufacturer, wholesaler, or other supplier authorized by section 4054 or 4059 of the Business and Professions Code to distribute such products directly to the patient.

(2) MAMMARY PROSTHESES AND OSTOMY APPLIANCES AND RELATED SUPPLIES. Tax does not apply to the sale or use of mammary prostheses and ostomy appliances and related supplies required as a result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste when sold or furnished under one of the conditions provided in Regulation 1591 subdivision (d)(1) through (d)(6). The mammary prostheses devices and ostomy appliances and related supplies do not need to be

furnished by a pharmacist, within the meaning of subdivision (d)(1), to be considered dispensed on prescription as long as they are furnished pursuant to a written order of a person authorized to prescribe.

Ostomy appliances and related supplies must be used in postoperative situations or sold as an accommodation to patients following surgery in order to qualify as medicines. When used as an adjunct to surgical procedures, the sale or use of these items is subject to tax unless the appliances remain in the patient for postoperative purposes.

Qualifying mammary prostheses and qualifying ostomy appliances and related supplies include, but are not limited to, bras to hold a mammary prosthesis in place, filler pads, lymphedema arm sleeves, adhesive spray and remover: catheters used as a result of an artificial opening created in the human body; colostomy bags; deodorant used on the person of the user; karaya rings; antacid used externally as a skin ointment; skin gel; nonallergic paper tape and gauze; skin bond cement; tincture of benzoin applied topically as a protective; urinary drainage appliances; closed stoma bags; drainable stoma bags; loop ostomy supplies and tubing; and endotracheal and tracheotomy tubes and tracheostomy tubes used for the evacuation of metabolic waste when used post-operatively or for home care.

(3) KIDNEY DIALYSIS MACHINES. The term ‘‘ostomy appliances’’ and ‘‘related supplies’’ includes kidney dialysis machines, replacement parts for the kidney dialysis machines, and the catheters, dialysis fluid additives, volumetric infusion pumps, tubing, blood sets, fistula sets, and shunts used in conjunction with such machines. In order to qualify as a ‘‘related supply,’’ an item must be a necessary and integral part of the machine itself, or a substance or preparation intended for external or internal application to the human body of the patient undergoing dialysis.

(4) CATHETERS. Generally, sales of catheters are subject to tax in the same manner as other sales of tangible personal property. However, sales of the following types of catheters are not subject to tax.

(A) Intra-aortic balloon pump catheters and coronary angioplasty balloon catheters.

However, sales of related supplies are subject to tax. The term ‘‘related supplies’’ includes, but is not limited to, coronary guiding catheters, coronary guide wires, guide wire introducers, sheath introducer systems, torquing devices, hemostatic valves, inflation devices, and syringes.

(B) Catheters which are permanently implanted in the human body and assist the functioning of a natural organ, artery, vein, or limb and remain or dissolve in the body.

(C) Catheters used for drainage purposes through which an artificial opening is created in the human body. Such catheters qualify as ostomy materials and related supplies.

(D) Catheters or similar types of devices used for drainage purposes through natural openings in the human body to assist or replace the functioning of a natural

Regulation 1591.1. (Contd.)

part of the human body. Such catheters are designed to be worn on or in the body of the user and qualify as prosthetic devices.

(5) INSULIN AND INSULIN SYRINGES. ‘‘Insulin’’ and ‘‘insulin syringes’’ furnished by a pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of Revenue and Taxation Code section 6369(e). As such, the sale or use of insulin and insulin syringes furnished by a pharmacist to a person for treatment of diabetes, as directed by a physician, is exempt from tax.

Glucose test strips and skin puncture lancets furnished by a registered pharmacist that are used by a diabetic patient to determine his or her own blood sugar level and the necessity for and amount of insulin and/or other diabetic control medication needed to treat the disease in accordance with a physician’s instructions are an integral and necessary active part of the use of insulin and insulin syringes or other anti-diabetic medications and, accordingly, are not subject to sale or use tax pursuant to subsection (e) of Revenue and Taxation Code section 6369. These medical supplies are not medicines and their sale or use does not qualify for tax exemption under subsections (a) or (b) of Revenue and Taxation Code section 6369.

History: Promulgated December 9, 1999, effective March 10, 2000.

Regulation 1591.2. WHEELCHAIRS, CRUTCHES, CANES, AND WALKERS.

Reference: Sections 6006, 6369, and 6369.2, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) PHYSICIAN. For purposes of this regulation, ‘‘physician’’ means and includes any person holding a valid and unrevoked physician’s and surgeon’s certificate or certificate to practice medicine and surgery, issued by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. Physician, as defined, includes doctors of medicines (MD), doctors of osteopathy (DO), and doctors of podiatric medicine (DPM).

(2) PRESCRIPTION. ‘‘Prescription’’ means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist, or podiatrist licensed in this state *and* given individually for the person or persons for whom ordered. The order must include all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the conditions for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order.

(3) HEALTH FACILITY. ''Health Facility'' as used herein has the meaning ascribed to the term in section 1250 of the Health and Safety Code, which provides that:

''As used in this chapter 'health facility' means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer . . . .''

(b) TAX APPLICATION. Tax does not apply to the sale or use, including leases that are continuing sales and purchases, of wheelchairs; crutches; canes; quad canes; white canes used by the legally blind; walkers; and replacement parts for these devices when sold to an individual for the personal use of that individual as directed by a licensed physician. Electric three-wheel scooters that are similar in both design and function to a conventional electric wheelchair, qualify as a wheelchair for the purposes of Revenue and Taxation Code section 6369.2. When the scooters are sold or leased to an individual for the personal use of that individual as directed by a licensed physician their sale or use qualifies for an exemption from tax.

''Replacement parts'' include, but are not limited to, batteries for electric wheelchairs; belts and cushions sold to replace or supplement the basic items originally sold with wheelchairs, lap boards and trays attached to wheelchairs and considered a part of the wheelchair; and rubber tips, wheels, and other such items prescribed for an individual to replace an original component of the device sold. ''Replacement parts'' do not include items such as mechanical devices that aid the patient in eating or writing unless the items are part of the device itself, or restraints or other such items sold to an individual, but which do not become a part of the wheelchair or other such prescribed device.

(c) SALES TO HEALTH FACILITIES. Sales, or leases that are continuing sales and purchases, of wheelchairs, crutches, canes, and walkers to hospitals or other health facilities for use by patients while at the facilities are subject to tax. Such sales or leases are not considered sold to an individual for the individual's personal use as directed by a physician. However, when wheelchairs, crutches, canes, and walkers are ordered by a hospital or health facility on behalf of a specific patient, as directed by a physician, the items may be considered to be purchased by an individual for his or her own personal use as required under Revenue and Taxation Code section 6369.2 and, therefore, the sale will qualify for exemption from tax.

(d) SALES TO INSURED PERSONS. The exemption for qualifying retail sales of wheelchairs, crutches, canes, quad canes, white canes used by the legally blind, walkers, and replacement parts for these devices is not affected by the fact that

Regulation 1591.2. (Contd.)

charges to the individual to whom such items are sold, may be paid, in whole or in part, by an insurer. This is so even though a joint billing may be made by the retailer in the name of both the person and the insurer.

History: Promulgated November 18, 1999, effective March 10, 2000.

Regulation 1591.3. VEHICLES FOR PHYSICALLY HANDICAPPED PERSONS.

Reference: Sections 6006, 6369, and 6369.4, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) PHYSICALLY HANDICAPPED PERSONS. For purposes of this regulation, ''physically handicapped'' persons include disabled persons described in Vehicle Code section 5007 as qualified for special parking privileges.

(2) VEHICLE. For purposes of this regulation, ''vehicle'' includes all devices that qualify under Vehicle Code section 670 as ''vehicles'' including, but not limited to, automobiles, vans, trucks, mobilehomes and trailercoaches. ''Vehicles'' qualifying under this regulation mean and include:

(A) Vehicles which are owned and operated by physically handicapped persons and,

(B) Vehicles which are used in the public or private transport of physically handicapped persons and which would otherwise qualify for a distinguishing license plate pursuant to Vehicle Code section 5007 if the vehicle were registered to the physically handicapped person or persons.

(b) APPLICATION OF TAX. Tax does not apply to the sale or use of items and materials used to modify a vehicle for physically handicapped persons when such items are necessary to enable the vehicle to be used to transport a physically handicapped person or persons. Tax does not apply whether the property is installed by the retailer or is sold for installation by other persons. However, sales or purchases of tools and supplies used in modifying the vehicle and which are not incorporated into, attached to, or installed on the vehicle are subject to tax.

Items and materials considered necessary to enable a vehicle to be used to transport a physically handicapped person include, but are not limited to, an interlock system; upper torso restraint; an airbag of a unique type to raise or lower the vehicle for loading or unloading; running boards on lower side of vehicle; a bolt cam used to restrain a wheelchair inside a van; seat belts; a tire carrier to hold a spare and which is installed within reach of a handicapped person; AC lights to illuminate the ramp or elevator area; hardware for privacy curtains; air compressor for use with medical equipment; a 12-volt receptacle to supply power to medical equipment; a 4-point tie down system to restrain a wheelchair; and an allocable portion(s) of the various interior packages, interior materials, and conversions necessary to modify the vehicle for transport of physically handicapped persons.

Regulation 1591.3. (Contd.)

Items and materials that are generally not considered necessary to enable a vehicle to be used to transport a physically handicapped person include, but are not limited to, an upper torso durable pad (unless part of the restraint); portable ramps (telescopic); air conditioners (unless necessary for the transport of certain types of disabled persons); a fire extinguisher; a CB radio (unless shown to be necessary to the transport of certain types of disabled persons); leather seat covers; extra windows and their accessories; upgrades to the interior (upgrade to leather seats); and an engine cover. The sale or use of such items, whether installed on a vehicle to be used for transport of physically handicapped persons or not, are generally subject to tax.

(c) SALES OF MODIFIED VEHICLES. Tax does not apply to the gross receipts attributable to the portion of a vehicle that has been modified to enable the vehicle to be used to transport a physically handicapped person or persons when the modified vehicle is sold to a physically handicapped person, as defined.

(d) REPAIRS TO MODIFIED VEHICLES. Tax does not apply to the sale or use of items and materials used to repair the modified portion (the portion that contains equipment previously used to modify the vehicle) of a vehicle used to transport a physically handicapped person or persons. Once installed, such ''repair parts'' qualify as items and materials used to modify a vehicle in order for the vehicle to be used to transport a physically handicapped person or persons.

History: Promulgated November 18, 1999, effective March 10, 2000.

Regulation 1591.4. MEDICAL OXYGEN DELIVERY SYSTEMS.

Reference: Sections 6006, 6369, and 6369.5, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) PHYSICIAN. ''Physicians'' are persons authorized by a currently valid and unrevoked license to practice their respective professions in this state. ''Physician'' means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Osteopathic Medical Board of California and includes an unlicensed person lawfully practicing medicine pursuant to section 2065 of the Business & Professions Code, when acting within the scope of that section.

(2) PRESCRIPTION. ''Prescription'' means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist, or podiatrist licensed in this state *and* given individually for the person or persons for whom ordered. The order must include all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

Regulation 1591.4. (Contd.)

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the conditions for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order.

(3) HEALTH FACILITY. "Health Facility" means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer.

(4) MEDICAL OXYGEN DELIVERY SYSTEM. A system used to administer oxygen directly into the lungs of the patient for the relief of conditions in which the human body experiences an abnormal deficiency or inadequate supply of oxygen. Devices that only assist the patient in breathing, but do not deliver air or oxygen directly into the lungs of the patient, do not qualify as medical oxygen delivery systems.

(b) TAX APPLICATION.

(1) MEDICAL OXYGEN DELIVERY SYSTEMS. Tax does not apply to the sale or use of medical oxygen delivery systems when sold, leased or rented to an individual for the personal use of that individual as directed by a licensed physician. Medical oxygen delivery systems include, but are not limited to, liquid oxygen containers, high-pressure cylinders, regulators, oxygen concentrators, tubes, masks and related items necessary for the delivery of oxygen to the patient. The term also includes repair and replacement parts for use in such a system.

(2) VENTILATORS AND OTHER RESPIRATORY EQUIPMENT. For the purposes of this regulation, ventilators that produce a form of controlled respiration in which compressed air is delivered under positive pressure into the patient's airways qualify for the exemption provided under section 6369.5 for medical oxygen delivery systems. Pressure ventilators and volume ventilators provide assisted respiration and intensive positive pressure in which compressed air, a component of which is oxygen, is administered into the breathing systems of patients to help them breathe. The sale or use of ventilators, as described, is exempt from tax when sold or leased to an individual for the personal use of that individual as directed by a physician.

Respiratory equipment that induces air into the lungs of a patient, through the application of pressure to the chest area, also qualifies for the exemption provided for medical oxygen delivery systems, regardless of whether the pressure applied is negative pressure or positive pressure. The sale or use of respiratory equipment, as described, is exempt from tax when sold or leased to an individual for the personal

use of that individual as directed by a physician. Included within the scope of the exemption are exsufflation belts, iron lungs, chest shells, pulmo wraps, and the pumps and regulators necessary for the operation of the listed equipment.

(c) SALES TO HEALTH FACILITIES AND HEALTH CARE PROVIDERS. Sales of medical oxygen delivery systems are exempt when sold to an individual for his or her own use under the direction of a licensed physician. Sales of medical oxygen delivery systems to hospitals, immediate care facilities, physicians, or other health care providers for use on their premises are subject to tax in the same manner as other sales of tangible personal property.

A rental or lease of a medical oxygen delivery system to a health facility qualifies for an exemption from tax when the facility intends to lease or rent the system to an individual for the personal use of that individual as directed by a licensed physician and the system is then leased or rented as intended. However, the transaction between the health facility and the individual must constitute an actual lease or rental. When the patient's use of the medical delivery system is limited to the health facility's premises, the direction and control of the equipment does not transfer to the patient. Therefore, an actual lease or rental of the system to the patient does not occur even when a separate billing is made to the patient for the use of the system. As such, the lease or rental of the system to the health facility does not qualify for the exemption provided under section 6369.5.

(d) SALES OF MEDICAL OXYGEN. Medical oxygen and other gases sold to a licensed physician and surgeon, podiatrist, dentist, or health facility for treatment of human beings are considered medicines. Therefore, their sale or use is not subject to tax when (1) furnished by a licensed physician and surgeon, podiatrist, or dentist to his or her own patient or (2) furnished by the health facility pursuant to the order of a licensed physician and surgeon, dentist, or podiatrist.

Medical oxygen sold by distributors of compressed gases to an individual for use as part of the individual's treatment, pursuant to a physician's prescription, is regarded as a medicine furnished by a licensed physician to his or her own patient for treatment of the patient as provided by Regulation 1591(b)(2). Sales of medical oxygen to individuals under the "Casey Bill" (i.e., the retailer bills the service acting as a fiscal agent for the State of California) are regarded as sales of medicines to this State for use in the treatment of human beings as provided by Regulation 1591(b)(5). Therefore, sales of medical oxygen by distributors, under these conditions, are not subject to tax whether or not the distributor is a medical supply house.

(e) SALES TO INSURED PERSONS. The exemption for qualifying retail sales of oxygen delivery systems and replacement parts is not affected by the fact that charges to the individual for whom such items are sold, leased, or rented may be paid, in whole or in part, by an insurer. This is so even though a joint billing may be made by the retailer in the name of both the person and the insurer.

History: Promulgated November 18, 1999, effective March 10, 2000.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1592. EYEGLASSES AND OTHER OPHTHALMIC MATERIALS.

Reference: Sections 6006 and 6018, Revenue and Taxation Code.

(a) PHYSICIANS AND SURGEONS AND OPTOMETRISTS.

(1) IN GENERAL. A physician and surgeon or optometrist is the consumer of ophthalmic materials including eyeglasses, frames, and lenses used or furnished in the performance of his/her professional services in the diagnosis, treatment or correction of conditions of the human eye. Tax applies with respect to the sale of such materials to physicians and surgeons and optometrists.

(2) FILLING PRESCRIPTION OF ANOTHER PHYSICIAN AND SURGEON OR OPTOMETRIST. When an optometrist fills a prescription prepared by another optometrist or by a physician and surgeon, the optometrist who fills the prescription is the consumer of the glasses, frames, and other materials and tax applies with respect to the sale of such materials to him/her.

(3) REPLACEMENT LENSES AND FRAMES. A physician and surgeon or optometrist is also the consumer of lenses and frames furnished to patients as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed for the patient pursuant to an eye examination, and tax applies to the sale thereof to him/her.

(4) PLANO LENSES OR SUNGLASSES (WITHOUT CORRECTION). When plano lenses and frames or plano sunglasses are furnished by a physician and surgeon or optometrist pursuant to a prescription for a particular class of plano or for the treatment or correction of conditions of the human eye following, and as a result of, a diagnosis made by him/her in an examination and refraction he/she is the consumer of the plano lenses and frames or sunglasses and tax applies with respect to the sale thereof to him/her. In all other instances the physician and surgeon or optometrist is the retailer of such lenses and frames or sunglasses and tax applies to the gross receipts from such a retail sale.

(b) DISPENSING OPTICIANS.

(1) IN GENERAL. A registered dispensing optician is the consumer of ophthalmic materials including eyeglasses, frames, and lenses dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist. Tax applies with respect to the sale of such materials to the dispensing optician.

(2) REPLACEMENT LENSES AND FRAMES. A dispensing optician is also the consumer of lenses and frames furnished as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed by a physician and surgeon or optometrist.

(3) PLANO LENSES OR SUNGLASSES (WITHOUT CORRECTION). When plano lenses and frames or plano sunglasses are dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist for a particular class of plano, the dispensing optician is the consumer of the lenses and frames or sunglasses, and tax applies to the sale thereof to him/her. In all other instances the

Regulation 1592. (Contd.)

dispensing optician is the retailer of such lenses and frames or sunglasses and tax applies to his gross receipt from such a retail sale.

(c) PHARMACISTS.

(1) IN GENERAL. Operative January 1, 1998, a licensed pharmacist is the consumer of replacement contact lenses dispensed pursuant to a prescription prepared by a physician or optometrist. Tax applies with respect to the sale of such contact lenses to the pharmacist.

(2) REPLACEMENT CONTACT LENSES. For purposes of this subdivision, ‘‘replacement contact lenses’’ means soft contact lenses that require no fitting or adjustment, and that are dispensed as packaged and sealed by the manufacturer.

(d) DEFINITION OF PRESCRIPTION. For the purposes of this regulation a ‘‘prescription’’ means a written formula for ophthalmic lenses or contact lenses prepared by a physician and surgeon or optometrist.

With respect to plano lenses and frames or sunglasses without correction, prescription means a written order for a distinctive type or class of plano identified by numbers or symbols descriptive of a specific tint, color or characteristic.

The prescription shall bear the name and address of the prescriber, the name and address of the patient, and the date of issue.

Pursuant to section 4124 of the Business and Professions Code, with respect to replacement contact lenses dispensed under subdivision (c) above, in addition to the above requirements, operative January 1, 1998, a prescription must:

(1) include the state license number of the prescribing practitioner,

(2) explicitly state an expiration date of not more than one year from the date of the last prescribing examination, and

(3) explicitly state that the prescription is for contact lenses and include the lens brand name, type, and tint, including all specifications necessary for the ordering of lenses.

History: Section (a)(1) effective September 19, 1947.
Section (b) effective August 1, 1933.
Adopted as of January 1, 1945 as a restatement of previous rulings.
Amended and renumbered March 24, 1970, effective April 29, 1970.
Amended May 4, 1971, effective July 1, 1971.
Amended March 25, 1998, effective April 24, 1998. Added new subdivision (c) and amended renumbered subdivision (d) to incorporate the provisions of Chapter 184, Statutes of 1997.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1593. AIRCRAFT AND AIRCRAFT PARTS.

References: Sections 6091, 6366, 6366.1, and 6421, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) "AIRCRAFT." As used herein, the term "aircraft" means any contrivance designed for powered navigation in the air except a rocket or missile.

(2) "COMMON CARRIER." As used herein, the term "common carrier" means any person who engages in the business of transporting persons or property for hire or compensation and who offers his or her services indiscriminately to the public or to some portion of the public.

(3) "COMPONENT PART." As used in subdivision (b)(2), the term "component part" means an item incorporated by securing to the aircraft in compliance with Federal Aviation Administration (FAA) requirements, or United States military equivalent, related to the maintenance, repair, overhaul, or improvement of the aircraft which part is essentially associated with the functional aspects of the aircraft, including those related to safety and air worthiness.

(A) Examples of property which are component parts are engines, passenger seats, and landing gear; items replaced, repaired, or overhauled according to manufacturer service bulletins; items required by air worthiness directives issued by the FAA; life limited parts; and cargo and baggage containers which are designed to be secured, and which are secured, to the aircraft during flight.

(B) Examples of property which are not component parts are general expense items or comfort-related items such as attendant carts, blankets, pillows, or serving utensils.

(b) APPLICATION OF TAX.

(1) AIRCRAFT. Tax does not apply to the sale of and the storage, use, or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing, to:

(A) a person who operates the aircraft as a common carrier of persons or property, provided:

1. the person operates the aircraft under authority of the laws of this state, of the United States, or of any foreign government, and

2. the person's use of the aircraft as a common carrier is authorized or permitted by the person's governmental authority to operate the aircraft;

(B) foreign government for use of the aircraft by that government outside of California; or,

(C) a nonresident of California who will not use the aircraft in this state other than to remove the aircraft from California.

(2) AIRCRAFT PARTS.

(A) When tangible personal property becomes a component part of an aircraft described in subdivision (b)(1) as a result of the maintenance, repair, overhaul, or improvement of that aircraft in compliance with FAA requirements, or United States

military equivalent, the charges for such tangible personal property, as well as for labor and services rendered with respect to that maintenance, repair, overhaul, or improvement are exempt from tax provided the aircraft will continue to be used in a manner described in subdivision (b)(1).

(B) The exemption described in subdivision (b)(2)(A) applies with respect to tangible personal property purchased and placed in inventory with the intent to thereafter remove the property from inventory and incorporate it as a component part of an aircraft under the conditions specified in subdivision (b)(2)(A), provided the property is so incorporated into a qualifying aircraft. If instead the property is removed from inventory for use in some other manner, the purchaser owes the applicable sales or use tax at that time.

(C) The exemption described in subdivision (b)(2)(A) shall apply only under the following circumstances:

1. the tangible personal property which becomes a component part of the aircraft is purchased on or after October 1, 1996; or,

2. the tangible personal property which becomes a component part of the aircraft was purchased prior to October 1, 1996, but the property first enters California on or after October 1, 1996.

(c) USE OF AIRCRAFT.

(1) COMMON CARRIERS. In determining whether a purchaser or lessee of an aircraft is using that aircraft as a common carrier of persons or property, only that use of the aircraft by the carrier during the first 12 consecutive months commencing with the first operational use of the aircraft will be considered. This test period does not include, and is extended by, the amount of time, prior to the first use of the aircraft as a common carrier, during which the aircraft is in the physical possession of a repair station certified by the FAA or a manufacturer's maintenance facility undergoing modification, repair, or replacement. The period of this extension/exclusion shall not exceed 12 months. If the purchaser does not own the aircraft for 12 consecutive months commencing with the first operational use, as may be extended as provided herein, then only the period of time commencing with the first operational use that the purchaser owns the aircraft will be considered.

(A) "Operational use" means the actual time during which the aircraft is operated in powered navigation in the air. Operational use includes positioning or repositioning aircraft by flying the aircraft from one point to another ("ferry flights") except when such flights are solely for purposes of having the aircraft repaired. Ferry flights solely for the purpose of transporting the aircraft to a repair location, or solely to return from a repair location, are not operational use, nor are test flights as described in subdivision (d)(2) or personnel training as described in subdivision (d)(4).

(B) If the aircraft is used as a common carrier for more than one-half of the operational use during the test period the carrier's principal use of the aircraft will be deemed to be that of a common carrier except as provided in subdivisions (c)(1)(D) and (c)(1)(E). Each flight of the aircraft is examined separately for purposes of

Regulation 1593. (Contd.)

determining common carrier use. For these purposes, a flight is the powered navigation of the aircraft from one location on the ground or water to the first point on the ground or water at which the aircraft lands.

(C) A flight qualifies as a common carrier use of the aircraft for purposes of the exemption only if the flight is authorized or permitted by the governmental authority under which the aircraft is operated and involves the transportation of persons or property. Where the aircraft does not itself transport the person or property to a location on the ground (or water), the flight does not qualify as a common carrier flight for purposes of the exemption.

1. Following are examples of flights that do not qualify as common carrier use:

a. Student instruction or training flights.

b. Flights to position or reposition aircraft by flying the aircraft from one point to another (''ferry flights'').

c. Aerial work such as crop dusting, seeding, spraying, bird chasing, towing of banners and gliders, and fire fighting by dropping water or flame retardant.

d. Aerial photography or surveying, and powerline and pipeline patrol, without regard to whether the flight carries persons or property while the pilot or other crew member engages in the photography, surveying, or patrol.

e. Helicopter operations to perform construction or repair work, or in the lumber industry to reposition fallen lumber within the same general location.

f. Flights carrying persons or property for the purpose of parachute jumps or air drops.

g. Flights for the purpose of search and rescue, without regard to whether the flight carries persons or property while the search and rescue operation is conducted.

2. Following are examples of flights that do qualify as common carrier use when such services are offered indiscriminately to the public or to some portion of the public, provided the flights are authorized or permitted by the governmental authority under which the aircraft is operated:

a. Flights whose purpose is to transport persons or property from the location on the ground or water at which the aircraft takes off to another point on the ground or water at which the aircraft lands, including flights to transport fire fighting personnel, search and rescue personnel, construction workers, and equipment during fire fighting, search and rescue, and construction operations.

b. Sightseeing flights, even if they begin and end at the same airport, area of land, or water that was used for takeoff.

c. Helicopter flights to move large equipment from one location to another where the transportation is the purpose for the flight. For example, a flight with the purpose of moving a large air conditioning unit from a storage facility to the work site could qualify as common carrier use, but a flight with the purpose of positioning the air conditioning unit while it is being attached to the real property

would not qualify as a common carrier use even if the positioning occurred as part of the flight moving the unit from the storage facility to the work site.

d. Flights to transport injured persons to medical facilities.

(D) With respect to aircraft sold during the period from January 1, 1987 through December 31, 1996, it shall be presumed that a person is not using the aircraft as a common carrier of persons or property if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed ten percent (10%) of the purchase cost of the aircraft to him or her, or twenty-five thousand dollars ($25,000), whichever is less. With respect to aircraft sold on or after January 1, 1997, it shall be presumed that a person is not using the aircraft as a common carrier of persons or property if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 20 percent of the purchase cost of the aircraft to him or her, or fifty thousand dollars ($50,000), whichever is less. These presumptions may be rebutted by contrary evidence satisfactory to the board showing that the person is using the aircraft as a common carrier of persons or property for hire.

(E) With respect to aircraft leased, or sold for the purpose of leasing, during the period from January 1, 1987 through December 31, 1996, it shall be presumed that the aircraft is not used as a common carrier of persons or property if the lessor's yearly gross receipts from the lease of that aircraft to persons for use as common carriers of persons or property do not exceed ten percent (10%) of the cost of the aircraft to the lessor, or twenty-five thousand dollars ($25,000), whichever is less. With respect to aircraft leased, or sold for the purpose of leasing, on or after January 1, 1997, it shall be presumed that the aircraft is not regularly used as a common carrier of persons or property if the lessor's yearly gross receipts from the lease of that aircraft to persons for use as common carriers of persons or property do not exceed 20 percent of the cost of the aircraft to the lessor, or fifty thousand dollars ($50,000), whichever is less. These presumptions 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.

(F) For purposes of subdivisions (c)(1)(D) and (c)(1(E), ''gross receipts'' do not include compensation paid by the owner or lessor of the aircraft or by related parties for use of the aircraft as a common carrier. ''Related parties'' include the owner's or lessor's immediate family, entities in which the owner or lessor, or the immediate family of the owner or lessor, hold one-half or more interest, and employees of the owner or lessor while on company business.

(G) For purposes of subdivisions (c)(1)(D) and (c)(1)(E), ''contrary evidence'' includes sworn oral or written testimony that is offered to prove that a person is engaged in the business as a common carrier. Such testimony would include evidence that a person was engaged in the business as a common carrier but was unable to meet the minimum yearly gross receipts requirements because the aircraft was unfit to fly.

Regulation 1593. (Contd.)

(2) FOREIGN GOVERNMENTS. A foreign government will be deemed to have acquired an aircraft for use outside of California if the aircraft is promptly removed from the state and the foreign government as owner or lessee does not return the aircraft to this state within 12 months after its removal from this state.

(3) NONRESIDENTS. A nonresident will be considered as not using the aircraft other than to remove the aircraft from California if the aircraft is promptly removed from the state and is not returned to California within 12 months after its removal from this state.

(d) ACTIVITIES NOT AFFECTING EXEMPTION.

(1) REPAIR OR WARRANTY SERVICE. The exemption described by subdivision (b) will not be affected if the aircraft is returned to California within the 12-month period solely for repair or service covered by warranty.

(2) TEST FLIGHTS. Test flights made for the purpose of determining whether an aircraft will fly in accordance with specifications, or whether the aircraft is in proper operating condition in all its parts, do not constitute use or consumption of the aircraft or its component parts which would disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b) of this regulation whether such flights occur before or after the sale and delivery of the aircraft. This conclusion is unaffected by the circumstance that personnel of the vendor or vendee, government officials, or other observers may be on board the aircraft during test flights.

(3) MODIFICATION, REPAIR, OR REPLACEMENT. The work modification, repair, or replacement performed on an aircraft following its delivery and preparatory to its intended use, which is performed prior to the aircraft's being placed in regular operation by a common carrier, or in the case of a foreign government or nonresident prior to the aircraft's removal from the State of California, will not disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b). For purposes of this subdivision, flights for the sole purpose of positioning the aircraft at the modification, repair, or replacement facility will be considered a nonoperational use of the aircraft.

(4) PERSONNEL TRAINING. The operation of an aircraft in this state for the purpose of training pilots or other personnel of the aircraft's operator in the proper operation and maintenance of that particular aircraft will not disqualify the sale and use of that aircraft or its component parts from the exemptions described in subdivision (b) whether such operation occurs before or after the sale and delivery of the aircraft, provided the training period is no longer than is reasonably required for that purpose. For purposes of this subdivision, personnel training includes only such training as is necessary to familiarize the personnel with the operation of the subject aircraft. Examples of the type of activities that are not personnel training for purposes of this subdivision, and instead which are operational use, include training for a higher crew member certificate, proficiency or recurrency flights, and flight testing to observe the crew member's ability to satisfactorily perform procedures and maneuvers during the test flight.

Regulation 1593. (Contd.)

(5) NONREVENUE OPERATIONS.

(A) The operation of an aircraft for a short period for the transportation of nonrevenue passengers or property by a common carrier for the purpose of advancing the purchaser's interests incidental to its business as a common carrier prior to placing the aircraft in regular operation will not disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b).

(B) The use of an aircraft following its delivery to a foreign government or nonresident to transport the personnel or property of such foreign government or nonresident during the aircraft's prompt removal from this state will not disqualify the sale and use of the aircraft or its component parts from the exemptions described in subdivision (b).

(e) AIRCRAFT AND AIRCRAFT PARTS EXEMPTION CERTIFICATE. The law provides that for the purposes of the proper administration of the sales and use tax and to prevent the evasion of tax, it shall be presumed that all sales are subject to the tax until the contrary is established. This presumption may be rebutted by the seller as to any sale of aircraft or aircraft parts as defined in subdivision (a) by establishing to the satisfaction of the Board that the gross receipts or sales price from the sale are not subject to the tax or by taking an aircraft or aircraft parts exemption certificate substantially in the form set forth below. The certificate shall relieve the seller from liability for the sales tax or for use tax collection only if it is taken timely and in good faith.

For special provisions affecting aircraft, see Regulation 1610 (18 CCR 1610), "Vehicles, Vessels and Aircraft".

AIRCRAFT OR AIRCRAFT PARTS EXEMPTION CERTIFICATE

I HEREBY CERTIFY: That the aircraft identified below will be used

[ ] Principally as a common carrier* of persons or property under authority of the laws of California, of the United States, or of any foreign government; or
[ ] Outside California by a foreign government; or
[ ] Outside California by a nonresident of California which aircraft was not used in this state other than the removal from California.

That the purchase of all tangible personal property which I shall purchase from

---

is exempt from tax under section 6366 or 6366.1 of the Revenue and Taxation Code and Regulation 1593. The identification numbers of all aircraft purchased under this certificate are listed below. Until this certificate is revoked in writing, all other property purchased from the seller consists of tangible personal property to become a component part of aircraft in the course of repair, maintenance, overhaul, or improvement of same in compliance with Federal Aviation Administration requirements, or United States military equivalent, which aircraft will be used by the purchaser or the purchaser's lessee in a

Regulation 1593. (Contd.)

manner qualifying for exemption under section 6366 or 6366.1 and under Regulation 1593. (The purchaser issuing this certificate can revoke it as to a particular purchase by clearly indicating on a purchase order that the purchase is not exempt under either section 6366 or 6366.1 or under Regulation 1593.)

I UNDERSTAND that in the event any such property is used in any manner other than as specified above, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax.

* NOTE: Revenue and Taxation Code section 6366 creates a rebuttable presumption that an aircraft is not principally used as a common carrier if the owner's or lessor's annual gross receipts from such operations do not exceed 20 percent of the purchase price of the aircraft or fifty thousand dollars ($50,000), whichever is less. Amounts received for use of the aircraft as a common carrier from the owner or lessor of the aircraft or related parties or employees of the owner or lessor, are excluded from gross receipts for purposes of this presumption.

Identification Numbers of Aircraft Purchased under this Certificate:

_____

_____

_____

Date Certificate Given_____

Purchaser_____
(Company Name)

Address_____

Signature_____
(Signature of Authorized Persons)

_____
(Print or Type Name)

Title_____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any)_____

History: Adopted September 14, 1955.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended September 28, 1978, effective November 18, 1978. Adds (b)(1) through (5), renumbers (b) through (g) to (c) through (h).
Amended May 3, 1988, effective July 1, 1988. In subdivision (b)(1)(C) and (b)(1)(D), added provisions that aircraft is not regularly used in common carriage if yearly gross receipts, as described, do not exceed $25,000 or 10% of the cost of the aircraft to the owner or lessor. In subdivision (b)(1)(E), added a provision that defines the term ''contrary evidence''. The subdivision defines ''contrary evidence'' to include ''sworn oral or written testimony that is offered to provide that a person is engaged in the business as a common carrier. Such testimony would include evidence that a person was engaged in the business as

Regulation 1593. (Contd.)

a common carrier but was unable to meet the minimum yearly gross receipts requirements because the aircraft was unfit to fly.'' In subdivision (a), defined the term ''common carrier'' to mean ''any person who engages in the business of transporting persons or property for hire or compensation and who offers his services indiscriminately to the public or to some portion of the public.''

Amended May 1, 1998, effective October 17, 1998. Subdivision (a) is divided into two new subdivisions, (a)(1) and (a)(2), which are amended for clarity and to delete gender-specific language. Subdivision (a)(3) is added. The last unnumbered paragraph of former subdivision (a) is transferred to a new subdivision (b) and incorporated into a new subdivision (b)(1) to which is added language defining who may make an exempt purchase of an aircraft under the regulation. New subdivision (b)(2) added. Former subdivision (b) is re-designated as (c). Redesignated subdivisions (c)(1), (c)(1)(A), and (c)(1)(B) are amended for clarity, and new subdivision (c)(1)(C) added. Former subdivision (b)(1)(C) redesignated (c)(1)(D) and revised to conform the regulation to the provisions of Chapter 954, Statutes of 1996. Former subdivision (b)(1)(D) redesignated (c)(1)(E) and revised to conform the regulation to the provisions of Chapter 954, Statutes of 1996. New subdivision (c)(1)(F) added. Former subdivision (b)(1)(E) re-designated (c)(1)(G) and amended. Subdivision (c)(3) rewritten for clarity. New subdivision (d) added. Former subdivisions (b)(3–5), (c), (d), (e), and (f) are redesignated as subdivisions (d)(1–5), respectively, and revised for clarity. Former subdivisions (g) and (h) deleted. New subdivision (e) added. An example of an exemption certificate also added.

Regulation 1594. WATERCRAFT.

References: Sections 6368, 6368.1, 6421, Revenue and Taxation Code.
Special provisions affecting watercraft, see Regulation 1610.

(a) GENERAL EXEMPTIONS. Tax does not apply to the sale of nor to the storage, use, or other consumption of watercraft which are used, leased to a lessee for use, or sold to persons for leasing to lessees for use either in interstate or foreign commerce, in commercial deep sea fishing, or in transporting persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state.

(1) INTERSTATE OR FOREIGN COMMERCE. Tax does not apply if the watercraft for which the exemption is claimed is used either exclusively in interstate or foreign commerce involving the transportation of persons or property for hire or both in interstate or foreign commerce and in intrastate commerce provided the principal use of the watercraft is transportation for hire in interstate or foreign commerce. The exemption may apply to watercraft which operates between termini within the state, such as ferry boats or barges operating entirely within the state if they are principally used to transport interstate passengers or cargo and 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.

Regulation 1594. (Contd.)

(A) The tax applies with respect to watercraft making voyages both in interstate or foreign commerce and voyages that are exclusively in intrastate commerce where the principal use of the watercraft is in intrastate commerce.

(B) With respect to watercraft sold on or after January 1, 1987, it shall be 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 do not exceed ten percent (10%) of the cost of the watercraft to the person using it, or twenty-five thousand dollars ($25,000), whichever is less.

(C) With respect to watercraft leased on or after January 1, 1987, it shall be presumed that the watercraft is not regularly used in the transportation for hire of property or persons, if the annual gross receipts of the lessor from the lease of the watercraft to persons using it in this manner do not exceed ten percent (10%) of the cost of the watercraft to the lessor, or twenty-five thousand dollars ($25,000), whichever is less.

(D) The presumptions explained in subdivisions (B) and (C) above may be rebutted by contrary evidence satisfactory to the board showing that the watercraft is regularly used in the transportation for hire of property or persons.

(E) When determining whether watercraft is regularly used by the owner or lessee in the transportation for hire of property or persons, the first 12-month period after the first functional use of the watercraft shall be used. Gross receipts from the transportation for hire of property or persons, whether in interstate or foreign commerce or in intrastate commerce, may be used to meet the minimum gross receipts requirements stipulated in subdivisions (B) and (C) above.

(2) COMMERCIAL DEEP SEA FISHING. Tax does not apply if the watercraft for which the exemption is claimed is used in commercial deep sea fishing operations outside the territorial waters of this state by persons who are regularly engaged in commercial deep sea fishing if the principal use of the watercraft occurs outside the territorial waters of this state. It shall be rebuttably presumed that ‘‘persons who are regularly engaged in commercial deep sea fishing’’ do not include persons who have gross receipts from commercial deep sea fishing operations that total less than $20,000 a year with respect to watercraft sold on or after July 29, 1991, and $5,000 a year with respect to watercraft sold during the period January 1, 1980 through July 28, 1991. When determining whether a person has less than the minimum amount of $5,000 or $20,000 (as applicable) in gross receipts from commercial deep sea fishing operations, the first 12-month period after the first functional use of the watercraft shall be used if the person purchasing the watercraft was not engaged in commercial deep sea fishing at the time of purchase. If the person purchasing the watercraft is already engaged in commercial deep sea fishing operations, the person will not be considered to be regularly engaged in the business of commercial deep sea fishing unless receipts from commercial deep sea fishing operations aggregate at least the minimum amount during any consecutive 12-month period which includes the first operational use of the watercraft as to which exemption is claimed. Fish receipts from either commercial deep sea fishing within the territorial waters of this state or from commercial deep sea fishing outside the waters of California may be used to meet the minimum fish receipts requirements.

Regulation 1594. (Contd.)

The tax applies with respect to watercraft used in commercial deep sea fishing operations if the principal use occurs within the territorial waters of this state.

(3) TRANSPORTING PERSONS OR PROPERTY TO VESSELS OR OFFSHORE DRILLING PLATFORMS. Tax does not apply if the watercraft is used in transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state provided that the watercraft is functionally used 80 percent or more of the time in such transportation activities.

(b) USE OF WATERCRAFT.

(1) INTERSTATE OR FOREIGN COMMERCE. In addition to the requirement that the watercraft be regularly used in the transportation for hire of property and persons, the watercraft for which the exemption is claimed must actually be used principally in interstate or foreign commerce. In determining whether a purchaser or a lessee of a watercraft is using that watercraft in interstate or foreign commerce, only that use of the watercraft by the purchaser or lessee during the first 12 consecutive 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.

(2) COMMERCIAL DEEP SEA FISHING. In addition to the requirement that the watercraft be used by persons who are regularly engaged in commercial deep sea fishing, the watercraft as to which exemption is claimed must itself actually be used principally in commercial deep sea fishing operations outside the territorial waters of this state. In determining whether a buyer or a lessee of a watercraft is using that watercraft in commercial deep sea fishing operations outside the territorial waters of this state, only that use of the watercraft by the purchaser or lessee during the first 12 consecutive 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.

(3) TRANSPORTING PERSONS OR PROPERTY TO VESSELS OR OFFSHORE DRILLING PLATFORMS. In determining whether a purchaser or a lessee of a watercraft is using that watercraft in transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state, only that functional use of the watercraft by the purchaser or lessee during the first 12 consecutive 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.

Regulation 1594. (Contd.)

(4) For purposes of this regulation:

(A) ''Principal use'' means more than one-half of the operational use during the test period.

(B) ''Operational use'' or ''functional use'' means the actual time during which the watercraft is operated and shall not include storage, modification, repair, or replacement.

(c) COMPONENT PARTS OF WATERCRAFT. The tax does not apply with respect to tangible personal property becoming a component part of watercraft, exempt under subdivision (a) of this regulation, in the course of constructing, repairing, cleaning, altering or improving that watercraft.

(1) ITEMS INCLUDED. To be considered a ''component part'' of a watercraft for purposes of the exemption the property must be an integral part of the watercraft, affixed or attached thereto in a substantial manner when in use. The following examples are illustrative only, and do not constitute a complete list:

The hull and all affixed property constituting an integral part thereof.

All property affixed or attached to the structure of the watercraft used while thus affixed or attached for navigation or operation, such as; radio transmitters, receivers and other radio equipment, radar equipment, intercommunication systems, winches, anchors, lifeboats, engines, generators, switchgear, compasses, indicators, levers, control and signal systems, lamps, chains and cables.

All property affixed or attached to the structure of the watercraft used while thus affixed or attached for the comfort or convenience of the passengers and crew, such as; built-in bunks, furniture attached by bolts, screws or otherwise, including counters, shelves, stools, railing, stairs, partitions, doors, windows, window shades and curtains, awnings, hardware, stoves, sinks and other plumbing fixtures, and paint.

(2) ITEMS EXCLUDED. Property is not considered a component part of a watercraft for purposes of the exemption if it is a kind commonly treated as expense items and is not affixed or attached to the watercraft in a substantial manner when in use. The following examples are illustrative only, and do not constitute a complete list:

Portable equipment, furniture, devices and other property, such as; chairs, deck chairs, table or floor radios, table or floor lamps, dishes and other utensils, tables, bedding, linen, mattresses, cots, athletic or recreational equipment (not affixed or attached), pictures, fire extinguishers (portable), tools, brooms, mops, rags, towels, oil, grease, soap, cleaning materials and other consumable supplies.

(d) WATERCRAFT EXEMPTION CERTIFICATE. The law provides that for the purposes of the proper administration of the sales and use tax and to prevent the evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. This presumption may be rebutted by the seller as to any sale of watercraft or component parts of watercraft by establishing to the satisfaction of the Board that the gross receipts from the sale are not subject to the

Regulation 1594. (Contd.)

tax or by timely taking a watercraft exemption certificate substantially in the form set forth below. The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.

For special provisions affecting watercraft, see Regulation 1610 (18 CCR 1610), ''Vehicles, Vessels and Aircraft''.

History: Adopted October 6, 1949.
Amended September 2, 1965.
Amended and renumbered August 5, 1969, effective September 6, 1969.
Amended September 28, 1978, effective November 18, 1978. Amends (a); renumbers (a)(3)(A), (B), (C) to (a)(1), (2), (3); adds (b)(1), (2), (3), (4); renumbers (b) to (c); adds (d).
Amended February 6, 1980, effective March 29, 1980. In (a)(3), first sentence, added ''by persons who are regularly engaged in commercial deep sea fishing,'' and added everything except the last sentence. In (b)(2) added a new first sentence. Added lines for more information on signature portion of exemption certificate.
Amended June 26, 1985, effective September 22, 1985. Adds new subdivision (b)(3) entitled ''Transporting Persons or Property to Vessels or Offshore Drilling Platforms.'' This new subdivision explains the criteria to be used in determining whether a purchaser or lessee of a watercraft qualifies as using that watercraft in transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state. Renumbers the section entitled ''For Purposes of This Regulation'' from subdivision (b)(3) to subdivision (b)(4). In (B) of renumbered subdivision (b)(4), provides that the terms ''functional use'' and ''operational use'' are synonymous. Deletes subdivision (b)(4)(B)(4) since the provisions referring to the operative date of the test period are outdated and no longer necessary. In subdivision (c), deletes the explanation regarding the type of watercraft exempt from tax and instead provides a reference to subdivision (a) of the regulation. Renumbers the section entitled ''Watercraft Exemption Certificate'' from subdivision (d) to subdivision (e) and adds new subdivision (d) entitled ''Diesel Fuel Used in Operating Watercraft.'' New subdivision (d) provides that effective October 1, 1984, tax does not apply to the storage, use, or other consumption of diesel fuel used in operating watercraft in commercial deep sea fishing operations outside the territorial waters of the state. Sets forth the criteria for determining whether the operator is ''regularly engaged in business'', and whether the watercraft is ''regularly operated outside the territorial waters of this state.'' Adds to the appendix an example of a diesel fuel exemption.
Amended October 7, 1987, effective December 25, 1987. In subdivision (a)(1), clarifies the fact that watercraft which operate entirely within California are exempt only when they are used principally as one part of a journey in interstate or foreign commerce. Added subdivision (a)(1)(A) to clarify that watercraft used principally in intrastate commerce are subject to tax. Added subdivisions (a)(1)(B), (a)(1)(C) and (a)(1)(D) which establish a rebuttable presumption that watercraft is not regularly used in interstate commerce if certain prescribed conditions are not met. Added subdivision (a)(1)(E) to explain what gross receipts shall be used to determine if watercraft is regularly used in the transportation for hire of property or persons. In subdivision (b)(1), clarifies the fact that the principal use test and minimum gross receipts test

Regulation 1594. (Contd.)

must be considered together when determining whether watercraft is principally used in interstate or foreign commerce. In subdivision (d) deleted the ''Diesel Fuel Used In Operating Watercraft'' and the Diesel Fuel Exemption Certificate provisions.

Amended June 2, 1988, effective August 26, 1988. In subdivision (d), added provisions that explain that diesel fuel used in operating watercraft in commercial deep sea fishing operations by certain persons is exempt from tax.

Amended August 27, 1992, effective January 20, 1993.

Paragraph (a)(2) increased the minimum amount of gross receipts from commercial fishing operations necessary to be considered regularly engaged in the business of commercial deep-sea fishing from $5,000 a year to $20,000 a year. Eliminated the Diesel Fuel Exemption Certificate and added two rebuttable presumptions to the Watercraft Exemption Certificate.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1594. (Contd.)

WATERCRAFT EXEMPTION CERTIFICATE

I HEREBY CERTIFY: That the watercraft identified below is used

( ) In the transportation by water of persons or property for hire in interstate or foreign commerce;*

( ) In commercial deep sea fishing operations outside the territorial waters of this state;*

( ) In transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state;

That all tangible personal property which I shall purchase from_____

_____

described on purchase orders, or invoices, as tax exempt under Section 6368 of the Sales and Use Tax Law and Regulation 1594 consists of watercraft or tangible personal property becoming a component part of watercraft in the course of constructing, repairing, cleaning, altering, or improving the same, which watercraft will be used principally in the operation checked above.

*NOTE: Revenue and Taxation Code section 6368(b) creates a rebuttable presumption that you are not regularly engaged in commercial deep sea fishing if your gross receipts from such operations are less than twenty thousand dollars ($20,000) a year. Revenue and Taxation Code section 6368(c) creates a rebuttable presumption that the watercraft is not regularly used in interstate or foreign commerce if your yearly gross receipts from such operations do not exceed 10 percent of the cost of the watercraft or twenty-five thousand dollars ($25,000), whichever is less.

Date Certificate Given_____

Purchaser_____
(Company Name)

Address_____

Signed By _____
(Signature of Authorized Person)

_____
(Print or Type Name)

Title_____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any)_____
and/or

Fish and Game License No._____

Names of Watercraft for which certifying purchaser will be making purchases:

_____

_____

_____

_____

_____

Regulation 1595. OCCASIONAL SALES—SALE OF A BUSINESS—BUSINESS REORGANIZATION.

Reference: Sections 6006, 6006.5, 6014, 6015, 6019, 6066, 6075, 6281, 6282, 6283, 6292, 6358(b), and 6367, Revenue and Taxation Code.

(a) ACTIVITIES REQUIRING SELLER'S PERMIT.

(1) GENERAL. Tax applies to all retail sales of tangible personal property including capital assets whether sold in one transaction or in a series of sales, held or used by the seller in the course of an activity or activities for which a seller's permit or permits is required or would be required if the activity or activities were conducted in this state. See subdivision (e) below for special rules regarding sales of property by producers of hay.

Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller's permit regardless of whether the sales are at retail or are for resale. Each sale of the person during the 12 month period is included in determining whether that person is required to hold a permit, or would be required to hold a permit if the activities were conducted entirely inside this state. Thus, a sale occurring outside California, whether at retail or for resale, is included, even though it would not be subject to California sales tax. A person who makes a substantial number of sales for relatively small amounts is also required to hold a seller's permit.

Tax does not apply to a sale of property held or used in the course of an activity not requiring the holding of a seller's permit unless the sale is one of a series of sales sufficient in number, scope and character to constitute an activity for which the seller is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state. If tangible personal property is leased under a lease which is a ''sale'' as defined in Revenue and Taxation Code Section 6006 or a ''purchase'' as defined in Revenue and Taxation Code Section 6010, tax applies to the lease as provided in Regulation 1660 (18 CCR 1660), and the lessor must hold a seller's permit as provided in Regulation 1699 (18 CCR 1699). The lessor is not making an occasional sale since the lessor is making a ''continuing sale'' and is thereby holding the leased property in an activity requiring the holding of a seller's permit. As such, the lessor's sale of the leased property at the end of the lease term is likewise not an occasional sale.

(2) PROPERTY HELD OR USED IN AN ACTIVITY, OR ACTIVITIES REQUIRING THE HOLDING OF A SELLER'S PERMIT. A seller's permit is required of a person engaged in the business of selling tangible personal property. An activity requiring the holding of that permit includes, but is not limited to, the acquisition and sale of tangible personal property, whether the person's sales are all at retail, all for resale, or include both sales at retail and sales for resale.

Acquisition includes the obtaining of the property in any manner whatsoever. For example, raw materials may be purchased or may be obtained by extraction from the earth, air or waters of the earth. These may be sold in raw form or processed or manufactured into other raw materials, component parts or finished items which are

Regulation 1595. (Contd.)

sold. Each of these activities is an activity which is so related to the sale of tangible personal property, that it is part of the activity requiring the holding of a seller's permit.

(3) SEPARATE BUSINESSES. A person engaged in an activity or activities requiring the holding of a seller's permit or permits may also be engaged in entirely separate endeavors which do not require the holding of a seller's permit or permits. Tax applies to the sale of tangible personal property held or used in the course of an activity requiring the holding of a seller's permit. Tax does not apply to the sale of property held or used by the seller in the non-selling endeavors which do not require the holding of a permit unless that sale is itself one of a series of sales requiring the holding of a seller's permit. For example, a person may own a hardware store at one location and a real estate brokerage business at another location, with no relationship between the two activities except that of common ownership. Under these circumstances, a sale of furniture used in the brokerage business would not be a sale of property held or used in an activity requiring the holding of a seller's permit unless it was one of a series of sales of the property of the brokerage business. A sale of tangible personal property held or used in the hardware business would be a sale of property held or used in an activity requiring the holding of a seller's permit.

(4) SERIES OF SALES REQUIRING THE HOLDING OF A SELLER'S PERMIT. A person not otherwise engaged in an activity requiring the holding of a seller's permit may make a series of sales sufficient in number, scope and character to require the holding of a seller's permit. The sale in that series of sales, and subsequent sales, during any 12-month period which resulted in the requirement to hold a permit are subject to tax, unless otherwise exempt.

(A) Number.

1. Generally the minimum number of sales to require the holding of a seller's permit by a person not otherwise engaged in a selling activity is three within any 12 month period.

2. When calculating the minimum number of sales which requires a person to hold a seller's permit, the following types of sales are excluded:

a. Sales made by an auctioneer on behalf of the person. In such transactions, the auctioneer is the retailer liable for tax.

b. Sales through claiming races of horses owned by the person. In such transactions, the racing association is the retailer liable for tax.

c. Sales of vehicles, mobilehomes, commercial coaches, vessels, or aircraft which are exempted from sales tax by Revenue and Taxation Code Sections 6282 and 6283.

d. A trade-in made by the person which is incidental to a nonselling activity of the person.

(B) Scope. The extent of the sales measured by their frequency or dollar volume.

(C) Character. This relates to the similarity in type and value giving effect to the taxpayer's operations. For example, a processor of food products for human consumption is not required to hold a seller's permit for the processing and sale of

Regulation 1595. (Contd.)

food products. Sales of used lug boxes, obsolete or used machinery, food handling and similar items are of a character that three or more sales of sufficient scope will require the processor to hold a seller's permit for this selling activity.

(5) EXAMPLES APPLYING THE ABOVE PRINCIPLES.

(A) Service enterprises which make some incidental sales.

1. Operators of service enterprises such as hospitals, hotels, theaters, schools, laundromats, car washes, transportation companies, and trucking companies may make some sales incidental to their primary service business. A hospital may operate a pharmacy and cafeteria as an adjunct to the hospital. A hotel may operate a restaurant and a bar. A theater may sell popcorn to patrons. A school may operate a cafeteria and bookstore. A laundromat may sell soap to its customers.

If any of these businesses were sold, tax would apply only to the gross receipts from the tangible personal property held or used in the selling activity.

2. If, in any 12 month period, the operator of the service enterprise makes more than two sales in substantial amounts of tangible personal property used in the service enterprise, the first two sales are exempt occasional sales, but the operator is required to hold a permit for the third and subsequent sales during any12-month period. The gross receipts from the third and subsequent sales during any such 12-month period are subject to tax, unless otherwise exempt. For example, the only sales that a service enterprise made were the following sales (each of which was "substantial" for purposes of this regulation) of tangible personal property used in the service enterprise:

a.	February 23, 1996	Occasional sale
b.	August 16, 1996	Occasional sale
c.	January 8, 1997	Not occasional sale
d.	February 8, 1997	Not occasional sale
e.	January 27, 1998	Occasional sale
f.	February 3, 1998	Not occasional sale
g.	August 11, 1999	Occasional sale
h.	December 12, 1999	Occasional sale
i.	September 8, 2000	Occasional sale
j.	December 9, 2000	Not occasional sale

Sales a. and b. are occasional sales since they were the first two sales made by the service enterprise.

Sales c. and d. are not occasional sales since they were the third and fourth sales in the series of sales commencing on February 23, 1996, which was less than 12 months prior to these sales.

Sale e. is an occasional sale since it was only the second sale in the series of sales commencing within the prior 12 months, on February 8, 1997. The January 8, 1997 sale is not relevant since it occurred more than 12 months prior to sale e.

Sale f. is not an occasional sale since it was the third sale in the series of sales commencing on February 8, 1997, which was less than 12 months prior to this sale.

Regulation 1595. (Contd.)

Sale g. is an occasional sale since the service enterprise made no other sales in the prior 12 months.

Sale h. is an occasional sale since it was only the second sale in the series of sales commencing within the prior 12 months, on August 11, 1999.

Sale i. is an occasional sale since it was only the second sale in the series of sales commencing within the prior 12 months, on December 12, 1999.

Sale j. is not an occasional sale since it was the third sale in the series of sales commencing within the prior 12 months, on December 12, 1999.

(B) Other businesses.

1. Tax applies to the sales of assets of a business which is not essentially a service enterprise. Examples of this are sales of grocery stores and liquor stores making both exempt sales of food products for human consumption and taxable sales of other tangible personal property, service stations which sell gasoline, oil and similar items and which also perform automotive repairs and lubrication services, and computer stores which also provide training in the use of computers and repairs for computer products.

2. Where a service enterprise and a sales business are operated together so as to constitute one business, tax will apply to the sale of the assets of the business. For example, if a car wash and gasoline station are operated at the same premises and the car wash is available only to persons who buy gasoline or if the price of the car wash is reduced if gasoline is purchased, tax applies to the sale of the car wash.

3. A person purchases a hardware store with the intent of selling tangible personal property. The person must hold a seller's permit regardless of the number of sales of tangible personal property actually made. For example, if the person makes only two sales, a sale of a hammer and a sale of the business, neither sale is an occasional sale.

4. A person intends to create and sell custom furniture. The person must hold a seller's permit for all his or her sales of furniture. This is true even if, because of the time necessary to create each piece of furniture and the profit resulting from each sale, the person averages one sale of furniture per year.

(6) TRANSFER OF SHARES IN A CORPORATION. The sale of stock of a corporation is not a sale of tangible personal property and is not subject to sales tax. A stock purchase is not a purchase of tangible personal property and is not subject to sales or use tax notwithstanding the fact that the stock purchase may be treated as an asset acquisition for federal income tax purposes pursuant to Internal Revenue Code Section 338.

(b) SALE OR REORGANIZATION OF ALL OR PART OF A BUSINESS.

(1) GENERAL. In general, when a person sells a business which is required to hold a seller's permit, tax applies to the gross receipts from the retail sale of tangible personal property held or used by that business in the course of its activities requiring the holding of the seller's permit. The gross receipts from the sale of the business include all consideration received by the transferor, including cash, notes,

Regulation 1595. (Contd.)

and any other property as well as any indebtedness assumed by the transferee. It is irrelevant that the indebtedness assumed may have arisen solely in connection with the transferor's acquisition of the tangible personal property transferred, the other property transferred, or some combination thereof. That is, the transferor is selling a business, and all consideration received is for that business. The measure of tax is the price agreed to by the parties. In the absence of an agreement as to the price of the tangible personal property, the gross receipts from that sale is allocated among the taxable portion and the nontaxable portion by dividing the selling price of the tangible personal property acquired by the purchaser for use rather than resale by the selling price of the entire business sold, and then multiplying that amount by the total gross receipts (i.e., all consideration) received for the business. Book value will be regarded as establishing the price of properties sold. (See Regulation 1610 for special rules applicable to sales of vehicles, vessels, and aircraft.)

(2) TRANSFERS OF SUBSTANTIALLY ALL PROPERTY WITHOUT SUBSTANTIAL CHANGE IN OWNERSHIP. Tax does not apply to a transfer of all or substantially all the property held or used by a person in the course of activities for which the person is required to hold a seller's permit or permits or would be required to hold a seller's permit or permits if the activities were conducted in this state, provided that after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before such transfer. ''Substantially all the property'' means 80 percent or more of all the tangible personal property held or used by the person in the course of activities requiring the holding of a seller's permit, including tangible personal property located outside of this state. If a person engages in two or more separate selling activities, for each of which the person is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state, a transfer of 80 percent or more of the tangible personal property held or used in the combined activities must be made in order to qualify for the exemption described in this paragraph. If a person simultaneously transfers all or substantially all of its assets to more than one entity, the transfer will qualify for the exemption if the ownership remains substantially similar. Stockholders, bondholders, partners, or other persons holding an ownership interest rather than a security interest in the corporation or other entity are regarded as having the real or ultimate ownership of the property of the corporation or other entity.

The real or ultimate ownership is ''substantially similar'' to that which existed before a transfer if 80 percent or more of that ownership of the tangible personal property is unchanged after the transfer. In the following example, the ownership is ''substantially similar'' to that which existed before the transfer:

Regulation 1595. (Contd.)

Stock-holders	*Interests in Transferor Corporation*	*Interests in Transferee Corporation*	*Interests Common Before and After Transfer*
A	40%	33⅓%	33⅓%
B	40%	33⅓%	33⅓%
C	20%	33⅓%	20%
	100%	100%	86⅔%

(3) STATUTORY MERGER. A transfer pursuant to a statutory merger is not a sale but is instead a transfer by operation of law. Thus, tax does not apply to a transfer of property of a constituent corporation to a surviving corporation or new corporation pursuant to a statutory merger under Sections 6010–6022, 1100–1305, or 15678.1–15678.9 of the California Corporations Code or similar laws of this state or other states. The surviving corporation stands in the place of each constituent corporation (including the disappearing corporation(s)). As a result, if property acquired by the surviving corporation in the merger had been purchased and held by the constituent corporation for resale, then the surviving corporation must report and pay use tax on the constituent corporation's purchase price if it makes any use of such resale property, just as the constituent corporation would have owed such tax if it had used the property. Similarly, if the constituent corporation had avoided paying tax measured by the purchase price of mobile transportation equipment by making a timely election to report tax on the fair rental value, the surviving corporation must continue to report tax measured by the fair rental value on its leases of the mobile transportation equipment; if the surviving corporation makes any use of that mobile transportation equipment other than leasing it to another person, the surviving corporation must report tax on the purchase price paid by the constituent corporation.

(4) CONTRIBUTION TO COMMENCING CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR JOINT VENTURE. The transfer of tangible personal property to a commencing corporation, commencing limited liability company, commencing partnership, or commencing joint venture in exchange solely for first issue stock of the commencing corporation or an interest in the commencing limited liability company, partnership, or joint venture is not a sale since the interest received by the transferor is not regarded as having measurable value at the time of the transfer. The transferor is the consumer of such property. However, such a transfer is a sale if the transferor receives any consideration, such as cash, notes, or an assumption of indebtedness (whether or not the transferor retains any joint liability with respect to the indebtedness assumed by the transferee), and tax applies to that sale unless it otherwise qualifies for exemption. For purposes of determining the measure of tax from the sale, it is irrelevant that any of the transferor's indebtedness assumed by the transferee may have arisen solely in connection with the transferor's acquisition of the tangible personal property transferred, the other property transferred, or some combination thereof. The gross receipts from that sale is allocated among the taxable portion and the nontaxable portion by dividing the selling price of the tangible personal property transferred to

the purchaser for use rather than for resale by the selling price of all property transferred and then multiplying that amount by the total gross receipts (i.e., all consideration) received by the transferor.

When the transferor is a consumer under the previous paragraph, no tax applies with respect to the transfer provided the transferor's use of the property in California would not otherwise be subject to tax. For example, in the case of property purchased by the transferor for resale without payment of the tax, the transferor is the consumer of such property which the transferee will not sell. Since the transferor's use of such resale inventory is subject to tax, the transferor owes tax measured by its purchase price. However, no tax applies with respect to the transfer of such resale inventory provided the transferee will sell such property without any use other than retention, demonstration, and display while holding the property for sale. If the transferee thereafter makes any other use of such property, it must report use tax measured by the transferor's purchase price.

(5) DISSOLUTION OF CORPORATION. A distribution of assets, including tangible personal property, by a corporation upon its dissolution to its stockholders in accordance with their ownership interests is a liquidating dividend and is not a sale when no consideration is received by the corporation other than the stockholders' return of stock certificates for purposes of cancellation. The corporation is the consumer of such property and no tax applies with respect to the transfer provided the corporation's use of the property in California would not otherwise be subject to tax. If consideration is given or received for the transfer, such as an assumption of liabilities by the stockholders, tax applies measured by that consideration.

(6) DISSOLUTION OF LIMITED LIABILITY COMPANY. A distribution of assets, including tangible personal property, by a limited liability company upon its dissolution to its members (i.e., persons holding membership interests and persons holding economic interests) in accordance with their ownership interests is a liquidating dividend and is not a sale when no consideration is received by the limited liability company other than cancellation of the members' interests. The limited liability company is the consumer of such property and no tax applies with respect to the transfer provided the limited liability company's use of the property in California would not otherwise be subject to tax. If consideration is given or received for the transfer, such as an assumption of liabilities by the members, tax applies measured by that consideration.

(7) DISSOLUTION OF PARTNERSHIP. A partnership is a person for sales and use tax purposes. (Revenue and Taxation Code Section 6005.) However, a partnership is defined for general law purposes as an association of two or more persons to carry on as co-owners a business for profit. (Corporations Code Section 15006.) Dissolution of a partnership is caused by withdrawal of a partner or admission of a new partner, unless otherwise provided in an agreement in writing signed by all the partners, including any such withdrawing partner or any such newly admitted partner before such withdrawal or admission. (Corporations Code Section 15031(7).)

Under Corporations Code Section 15026, a partner's interest in the partnership is the partner's share of the profits and surplus, and is personal property. Under

Regulation 1595. (Contd.)

Corporations Code Section 15027(1), a conveyance by a partner of that partner's interest in the partnership does not in itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with the partnership contract the profits to which the assigning partner would otherwise be entitled. The assignment of a partnership interest in this technical sense is not a sale of tangible personal property and is not subject to tax.

In common usage, however, the term ''partnership interest'' refers to all of the rights of a partner including (1) the person's rights in specific partnership property, (2) the person's interest (in the technical sense) in the partnership, and (3) the person's right to participate in the management. In a typical commercial transaction when a partner ''sells the person's interest in a partnership'' to another, it is intended that the person ''selling the interest'' will withdraw from the partnership and the person ''purchasing the interest'' will be admitted to the partnership. The legal effect of this transaction is to dissolve the first partnership and to create a new partnership, in the absence of a provision in the agreement providing for continued life of the partnership. The effect for sales and use tax purposes is that there is a dissolution of the partnership, a distribution of the assets on a pro rata basis, and a sale by the withdrawing partner of the person's ownership interest in the tangible personal property distributed to that person. Except as provided in subdivision (c), this sale of tangible personal property will qualify as an occasional sale under Revenue and Taxation Code Section 6006.5 and will be nontaxable under Section 6367, unless the withdrawing partner holds a seller's permit or the sale of tangible personal property is one of a series of sales sufficient in number, scope, and character to require the holding of a seller's permit.

A distribution of assets, including tangible personal property, by a partnership upon its dissolution to the partners in accordance with their ownership interests in the partnership is a liquidating dividend and is not a sale when no consideration is received by the partnership other than cancellation of the partners' interests. The partnership is the consumer of such property and no tax applies with respect to the transfer provided the partnership's use of the property in California would not otherwise be subject to tax. If consideration is given or received for the transfer, such as an assumption of liabilities by the partners, tax applies measured by that consideration.

Where a partnership distributes some of its assets in the form of a partial liquidation of the business, the transfer will be regarded as a liquidating dividend, subject to the rules set forth in the previous paragraph, if an entire segment of the business of the partnership is being liquidated. For example, a partnership operates a lumberyard and an automobile repair and parts business. If the partnership ceases operation of the lumberyard and distributes its assets to the partners in accordance with their interest in the partnership and the partnership receives no consideration from the partners such as an assumption of liabilities, the transfer is a liquidating dividend subject to the rules set forth in the previous paragraph. If, however, the partnership

ceases operating the repair portion of the automobile repair and parts business and distributes the assets of that portion of the business, it is not liquidating an entire segment of its business and the transfer does not qualify as a nontaxable liquidating dividend.

(8) DISSOLUTION OF JOINT VENTURE. For purposes of this paragraph, a joint venture is an undertaking by two or more persons jointly to carry out a single enterprise for profit. The rules applicable to a partnership's liquidating dividends apply to a joint venture's liquidating dividends. The distribution of assets by a joint venture will be regarded as a liquidating dividend, subject to the rules set forth for partnerships, provided at least 80 percent of the purpose of the joint venture has been completed at the time of the distribution. The distribution of the assets of a joint venture prior to 80 percent completion of the purpose of the joint venture cannot qualify as a liquidating dividend and is a sale transaction subject to tax.

(9) SALE FOLLOWING LIQUIDATION. Except as provided in subdivision (c), the transferee's sale of assets acquired in a transfer qualifying as a liquidating dividend, as discussed in this regulation, would be an exempt occasional sale if the property is not sold as part of an activity requiring the holding of a seller's permit and is not one of a series of sales requiring the holding of a seller's permit.

(c) VEHICLES, MOBILEHOMES, COMMERCIAL COACHES, VESSELS, AND AIRCRAFT. There is no occasional sale exemption for the sale or use of vehicles required to be registered with the Department of Motor Vehicles, or off-highway vehicles subject to identification under Division 16.5 of the Vehicle Code, mobilehomes and commercial coaches required to be registered with the Department of Housing and Community Development, vessels, or aircraft, as defined by the law and in Regulation 1610 (18 CCR 1610) or in Regulation 1610.2 (18 CCR 1610.2), except when such property is included in a transfer of all or substantially all the property held or used in the course of business activities of the person selling the property and the real or ultimate ownership of the property is substantially similar to that which existed before such transfer. The rules set forth in subdivision (b)(2) of this regulation are applicable in determining under this paragraph whether a transfer is of substantially all the property and whether the ownership is substantially similar.

(d) MANUFACTURERS AND WHOLESALERS. A manufacturer, wholesaler, or other person in the business of making sales for resale of tangible personal property of a kind the retail sale of which is taxable whether or not the property is ever sold at retail or is suitable for sale at retail, is liable for tax measured by receipts from any of the person's retail sales of tangible personal property.

(e) PRODUCERS OF HAY. A producer of hay is required to hold a seller's permit by reason of the producer's sales of hay, regardless of whether the hay is sold for resale or at retail, and regardless of whether the hay sold at retail constitutes feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, unless, operative April 1, 1996, the producer is a grower who produces hay for sale only to beef cattle feedlots or dairies or is a grower who sells exclusively through a farmer-owned cooperative.

Regulation 1595. (Contd.)

However, an occasional sale includes a sale of property by a producer of hay, other than hay, provided that the sale is not one of a series of sales sufficient in number, scope, or character to constitute an activity for which the producer would be required to hold a seller's permit if the producer were not also selling hay.

The producer's sale of tangible personal property held or used in the course of an activity of producing the hay (such as farm equipment and machinery) is an occasional sale, provided all of the following conditions apply:

(1) The sale is not one of three or more sales of tangible personal property (other than hay) for substantial amounts in any period of 12 months.

(2) The sale is not one of a substantial number of sales of tangible personal property (other than hay) for relatively small amounts in any period of 12 months.

(3) The tangible personal property was not also held or used in the course of an activity (other than the production of hay) for which a seller's permit is required, or would be required if the activity were conducted in this state.

History: Effective June 19, 1947.
Amended July 23, 1949.
Amended August 2, 1965, applicable on and after August 1, 1965.
Amended September 12, 1968.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended May 10, 1972, effective June 18, 1972.
Amended April 22, 1975, effective May 29, 1975. Unitary business concept added to determine if an otherwise exempt business activity is part of a business requiring a seller's permit and added explanation that separate selling activities by the same person must be considered together when applying the 80 percent rule for tax free transfers of retail businesses.
Amended May 23, 1979, effective July 13, 1979. In (3) (K) excluded nominal sales; defined nominal. In (b) (3) deleted "or consolidation" and changed Corporations Code section number.
Amended February 3, 1983, effective July 7, 1983. In subdivision (c), added "MOBILEHOMES, COMMERCIAL COACHES," to the title and added references to mobilehomes and commercial coaches in the text.
Amended February 22, 1985, effective March 24, 1985. Revised subdivision (a); deleted former subdivision (a)(3); added new (a)(2); renumbered former (a)(2) to (a)(3); added new (a)(4) and (5); deleted "he" in (b)(2) and substituted "the person"; added reference to Regulation 1610.2 to (c); deleted former (d); revised and relettered former (e) to (d).
Amended June 11, 1986, effective August 20, 1986. In subdivision (a), added a reference to subdivision (e) which explains the special rules applicable to sales of tangible personal property by producers of hay. In subdivision (b)(1), added a reference to Regulation 1610 for special rules regarding sales of vehicles. Added subdivision (e), which interprets and explains the occasional sales rules applicable to producers of hay.
Amended November 20, 1996, effective March 6, 1997. Amended subdivision (a)(1) & (2) to designate the types of sales to be counted and to include leases. Added phrase "unless . . . permit" to the third and fifth sentences. Designated the one sentence of subdivision (a)(4)(A) as new Subdivision (a)(4)(A)1. and added "by a person . . . activity." Added new subdivision (a)(4)(A)2. Added phrase "none . . . sale" to the second sentence of subdivision (a)(5)(A)2;

Regulation 1595. (Contd.)

made second sentence part of the first and added and deleted language to clarify that tax applied unless otherwise exempt; added sentence ''For . . . taxable.''; added language to, and deleted language from, fourth sentence to clarify that sales or use tax applied to qualifying sales; and deleted fifth sentence. Added to second sentence of subdivision (a)(5)(B)1. phrases ''making both exempt sales of food products for human consumption and taxable sales of other tangible personal property'' and ''and computer stores . . . computer products'' and deleted phrases ''selling . . . items,'' and ''pharmacies . . . sundries.'' Added subdivision (a)(6). Amended subdivision (b)(1) by deleting most of old section and adding new language. Added to subdivision (b)(2) phrases ''by the person'' and ''requiring the holding of a seller's permit'' and ''If a . . . similar.'' Added new language ''A transfer . . . Thus,'' cross references to the Corporations Code Section 6010–6022 and 15678.1–15678.9, and ''The surviving . . . constituent corporation.'' to subdivision (b)(3). Rewrote former sole paragraph of subdivision (b)(4) as first paragraph and added second paragraph. Added new subdivisions (b)(5)-(9). Added cross references to Regulation 1610 and 1610.2 and new sentence ''The rule . . . similar.'' to subdivision (c). Added new last phrase to subdivision (e) (First Paragraph) regarding permits for hay growers.

Amended November 1, 2000, effective February 4, 2001. Subdivision (a)(4)—amended by re-writing the first sentence for clarity and adding a new sentence. Subdivision (a)(5)(A)2.—phrase ''none of the sales qualify as an occasional sale'' and ''the first two sale . . . period'' added in the first sentence; phrase ''the third and subsequent sales during any such 12-month period'' added in second sentence; deleted ''For example . . . used in this state.'' Remainder of subdivision added. Subdivisions (a)(5)(B)3. and (a)(5)(B)4. added.

Regulation 1596. BUILDINGS AND OTHER PROPERTY AFFIXED TO REALTY.

References: Sections 6006, 6010, 6012.2, 6012.8, 6012.9, 6016, 6016.3, 6276, 6276.1, 6379, Revenue and Taxation Code.

Leased property affixed to realty as tangible personal property when lessor has right to remove, see Regulation 1660.

(a) BUILDINGS AND MINERALS. The transfer of buildings or minerals or the like affixed to land is taxable as a sale of personal property if, pursuant to the contract or agreement of sale, the buildings or minerals or the like are to be severed by the seller thereof. If, pursuant to the contract or agreement of sale, such buildings or minerals or the like are to be severed by the purchaser thereof, such a transfer is not taxable as a sale of personal property.

The gross receipts from the sale of or the storage, use, or other consumption in this state of any used mobilehome the initial retail sale of which qualified for the 60 percent exclusion provided for by Revenue and Taxation Code Section 6012.8 for the period January 1, 1980 to June 30, 1980, inclusive, is exempt from the sales and use tax.

Regulation 1596. (Contd.)

Operative July 1, 1980, the gross receipts from the sale of, and the storage, use, or other consumption in this state of any used mobilehome subject to local property taxation is exempt from the sales and use tax.

The exemptions for sales of used mobilehomes does not extend to accessories or other items as defined in Regulation 1610(b)(3)(B)1 that are not an integral part of the mobilehome at the time of sale.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1596. (Contd.)

(b) TIMBER. The transfer of timber to be severed is taxable as a sale of personal property, regardless of whether the timber is to be severed by the seller or by the purchaser thereof.

(c) FIXTURES, MACHINERY AND EQUIPMENT, AND DRAPERIES AFFIXED TO REAL PROPERTY. The transfer "in place" of affixed fixtures, machinery and equipment, or draperies is taxable as a sale of personal property when removal of the fixtures, machinery or equipment, or draperies by the seller or purchaser is contemplated by the contract of sale. The transfer "in place" of affixed fixtures, machinery and equipment, or draperies owned by a lessee of land or buildings to which those items are affixed, is also taxable as a sale of personal property when the lessee-seller has the present right to remove the items either as trade fixtures under Section 1019 of the Civil Code or under the express terms of the lease.

The measure of tax with respect to the sale of fixtures, machinery and equipment, or draperies does not include any value attributable to their attachment to real property, even though such value might be included in the agreed price. In the absence of evidence requiring a different method of computation, when the agreed price includes the value attributable to the attachment of the items, the measure of tax will be determined by applying to the agreed price that percentage which the original cost of the property bears to the total of that cost and the cost of attachment, i.e.,

$$\frac{\text{cost of items}}{\text{cost of items} + \text{cost of attachment}} \times \text{agreed price} = \text{measure of tax.}$$

History: Adopted February 17, 1970, effective March 22, 1970.
Amended May 21, 1975, effective June 29, 1975. Added formula for determining taxable percentage of sale of an in-place fixture.
Amended July 27, 1978, effective September 7, 1978. In (c) added "draperies".
Amended August 1, 1980, effective August 22, 1980, operative July 1, 1980. In (a) added last three paragraphs.
Amended November 19, 1980, effective January 16, 1981. In (a), fourth paragraph, added reference to Regulation 1610(b)(3)(B)1.

Regulation 1597. PROPERTY TRANSFERRED OR SOLD BY CERTAIN NONPROFIT ORGANIZATIONS.

References: Sections 6359.3, 6360, 6361, 6361.1, and 6370, Revenue and Taxation Code.
Scholastic Book Clubs, Inc. v. *State Board of Equalization* (1989) 207 Cal.App.3d 734.

(a) IN GENERAL. Sections 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

Regulation 1597. (Contd.)

(b) FLAGS SOLD BY NONPROFIT VETERANS' ORGANIZATIONS. Any nonprofit veterans' organization is a consumer of and shall not be considered a retailer of flags of the United States which it sells where the profits are used solely and exclusively in furtherance of the purpose of the organization.

(c) PRISONERS OF WAR BRACELETS TRANSFERRED BY CHARITABLE ORGANIZATIONS. Any charitable organization qualifying for the welfare exemption from property taxation under Section 214 of the Revenue and Taxation Code is the consumer of bracelets designed to commemorate American prisoners of war, which it distributes, whether or not a contribution is made to such organization, where the profits are used solely and exclusively in furtherance of the purposes of such organization.

(d) HANDCRAFTED OR ARTISTIC TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN QUALIFIED ORGANIZATIONS. Any organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A.); which, as its primary purpose, provides services to individuals with developmental disabilities or, effective August 3, 1995, to children with severe emotional disturbances, and which does not discriminate on the basis of race, sex, nationality, or religion is the consumer and not the retailer of any tangible personal property sold by them if all of the following conditions are met:

(1) The tangible personal property is of a handcrafted or artistic nature and is designed, created, or made by individuals with developmental disabilities or, effective August 3, 1995, by children with severe emotional disturbances, who are members of, or receive services from, the qualified organization.

(2) The price of each item of tangible personal property sold does not exceed twenty dollars ($20) or ten dollars ($10) if sold prior to August 3, 1995.

(3) The qualified organization's sales are made on an irregular or intermittent basis.

(4) The qualified organization's profits from the sales are used exclusively in furtherance of the purposes of the organization.

(e) FOOD PRODUCTS, NONALCOHOLIC BEVERAGES AND OTHER TANGIBLE PERSONAL PROPERTY SOLD BY NONPROFIT YOUTH ORGANIZATIONS.

(1) A qualified youth organization is the consumer and not the retailer of food products, nonalcoholic beverages, and tangible personal property created by members of the organization, which are sold on an irregular or intermittent basis provided the profits from such sales are used solely and exclusively in the furtherance of the purpose of the organization.

(A) "Qualified youth organization" means and includes:

1. any nonprofit organization which qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.); which provides a

Regulation 1597. (Contd.)

supervised program of competitive sports for youth or promotes good citizenship in youth as its primary purpose; and which does not discriminate on the basis of race, sex, nationality, or religion, or

2. any youth group or club sponsored by or affiliated with a qualified educational institution, including but not limited to any student activity group, e.g., debating team, swimming team, band, or choir.

(B) ''Qualified educational institution'' means and includes:

1. any public elementary, secondary, or vocation-technical school which provides education for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof, or

2. any nonprofit private school which provides education programs for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof. Nonprofit private school educational programs must meet the requirements of the State Department of Education and must satisfy the requirements of state and local laws governing private educational institutions in effect on January 1, 1990. The term does not include a nonprofit private school which otherwise qualifies but which discriminates on the basis of race, sex, nationality, or religion. For example, a youth group sponsored by a private school which has enrollment open only to females is not a ''qualified youth organization''.

(C) ''Irregular or intermittent'' is defined to mean sales made at particular events, such as fairs, galas, parades, scout-a-ramas, games, and similar activities, which are not conducted on a regularly scheduled basis. Sales made at refreshment stands or booths at scheduled events of organized youth sports leagues are considered made on an ''irregular or intermittent'' basis; however, sales made in storefront or mobile retail outlets which ordinarily require local business licenses do not qualify.

(2) The following organizations are ''qualified youth organizations'' and are consumers, not retailers, of tangible personal property under the circumstances described in paragraph (e)(1):

Little League, Bobby Sox, Boy Scouts, Cub Scouts, Girl Scouts, Campfire, Inc., formerly Campfire Girls, Young Men's Christian Association, Young Women's Christian Association, Future Farmers of America, Future Homemakers of America, 4-H Clubs, Distributive Education Clubs of America, Future Business Leaders of America, Vocational Industrial Clubs of America, Collegiate Young Farmers, Boys' Clubs, Girls' Clubs, Special Olympics, Inc., American Youth Soccer Organization, California Youth Soccer Association, North, California Youth Soccer Association, South, and Pop Warner Football.

(f) TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN NON PROFIT ORGANIZATIONS. The following organizations are consumers and not retailers of any tangible personal property sold by them if the profits from such sales are used exclusively in the furtherance of the purposes of the organization:

Regulation 1597. (Contd.)

(1) Nonprofit parent-teacher associations chartered by the California Congress of Parents, Teachers, and Students, Incorporated, and equivalent organizations performing the same type of service for public or private schools and authorized to operate within the school by the governing authority of the school.

(2) Nonprofit associations commonly called Friends of the Library, and equivalent organizations performing auxiliary services to any library district, municipal library, or county library in the state, which are authorized to operate within the library by the governing authority of the library.

(3) Nonprofit parent cooperative nursery schools.

(g) RESALE CERTIFICATES: OBLIGATIONS OF PERSONS WHO SELL TO CONSUMERS. An organization classed as a consumer under this regulation may not give a resale certificate with respect to the property it transfers.

All persons, other than organizations classed as consumers, who make sales of tangible personal property not otherwise exempt, should report tax on their sales unless the purchasers furnish resale certificates which can be accepted in good faith.

It will be presumed that all sales of tangible personal property not otherwise exempt, by organizations not classed as consumers, for delivery in this state to purchasers who do not furnish resale certificates which the seller accepts in good faith are subject to sales tax or that the seller is obligated to collect use tax from the purchasers.

(h) TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY BY OR THROUGH NONPROFIT ORGANIZATIONS. A nonprofit organization is treated as a consumer of tangible personal property it may sell under circumstances described in subdivisions (d), (e) and (f) of this regulation. In other cases, a nonprofit organization is regarded as a retailer of property it sells to consumers, or it is regarded as an agent of the companies which furnish the property to it for delivery to consumers.

When a nonprofit organization solicits orders, collects payments, and distributes tangible personal property for a supplier, it is considered to be the agent of that supplier. Accordingly, the supplier, not the organization, is the retailer of the merchandise sold. This is true unless documentation establishes that the nonprofit organization is buying and selling for its own account. The nonprofit organization is presumed to be buying and selling on its own account if all of the following factors are present: 1) the organization solicits the orders from the public in its own name; 2) the organization collects the sale price from the customer in its own name; 3) the organization is responsible for and pays the supplier for the merchandise; and 4) the contract between the organization and the supplier clearly identifies the fact the organization will purchase and resell the products to its customers. If it is selling for its own account, the nonprofit organization will be required to obtain a permit and will be considered the retailer, unless the supplier has been classified by the Board as a retailer under Revenue and Taxation Code Section 6015, or the nonprofit organization is classified under subdivisions (d), (e) and (f) of this regulation.

Regulation 1597. (Contd.)

If the supplier is a 6015 retailer, the supplier must pay the tax and the organization does not need a seller's permit. The measure of tax is the amount charged to the consumer. When this price is unknown by the supplier, tax will apply to the suggested retail selling price. If the nonprofit organization is classified as a consumer under subdivisions (d), (e) and (f) of this regulation, the supplier will calculate tax measured by the selling price to the nonprofit organization.

History: Adopted October 6, 1970, effective October 9, 1970.
Amended December 15, 1971, applicable on and after December 15, 1971.
Amended February 16, 1972, effective March 25, 1972.
Amended February 7, 1973, effective March 16, 1973.
Amended December 18, 1974, effective January 26, 1975. Added (d) and reference to Section 6361 of the Revenue and Taxation Code and clarified (e).
Amended May 21, 1975, effective June 29, 1975. Excluded state and its political subdivisions from (d).
Amended September 28, 1978, effective November 18, 1978. Adds (e); renumbers (e) to (f), and amends (f) to refer to sales of tangible personal property rather than a detailed list of specific types of property.
Amended February 6, 1980, effective March 29, 1980. Added subsection (f); relettered former (f) to (g) and substituted "this regulation" for subsection letters.
Amended May 6, 1986, effective July 6, 1986. In subdivision (d), amended regulation to limit organizations covered by regulation and made the organizations consumers of certain items of tangible personal property.
Amended June 17, 1987, effective September 19, 1987. In subdivision (d), added to the list of nonprofit youth organizations identified by Legislature as consumers, not retailers, of certain property sold under specified conditions.
Amended August 24, 1988, effective November 17, 1988. In subdivision (e)(3) added nonprofit parent cooperative nursery schools to list of organizations which qualify as consumers of tangible personal property.
Amended April 5, 1989, effective June 17, 1989. The regulation title was shortened to eliminate unnecessary verbiage. Subdivision (a) was amended to add section 6361.1 added to the Revenue and Taxation Code by Chapter 711 (1988). Subdivisions (b), (d) and (e) were amended to replace the word "transferred" with the word "sold" to eliminate confusion. Subdivision (d)(1) was amended to explain that a nonprofit youth organization is a consumer and not a retailer of certain items sold in a specified manner for a defined purpose; (d)(1)(A) defines "qualified youth organization"; (d)(1)(B) relocates the definition of "irregular or intermittent". Subdivision (d)(2)(C) adds specified qualified organizations and (d)(3) adds the board's authority to approve certain youth organizations not listed in the statute (Chapters 709, 710, 711 (1988)).
Amended January 8, 1991, effective March 16, 1991. Subsection (a) deleted reference to Section 6368.1 which was repealed. Subsection (d) redefined "qualified youth organization" and added the definition of "qualified educational institution". Subsection (d)(3) was deleted. Subsection (e)(1) added the word "Incorporated".
Amended November 30, 1993, effective March 5, 1994. Amended subdivision (g) to add the factors to establish the presumption that a nonprofit organization is buying and selling tangible personal property on its own account and added clarifying language regarding an organization's permit status and calculation of tax when classified as a consumer under subdivisions (d) and (e).

Regulation 1597. (Contd.)

Amended December 7, 1994, effective July 15, 1995. Added new subparagraph (d) to provide guidance to nonprofit organizations selling handcrafted tangible personal property as to when they are regarded as the consumers of such property, as required by Statutes 1993, Chapter 653.

Amended April 23, 1996, effective May 23, 1996. Subdivision (d) amended to add the provisions of Chapter 290 of Statutes of 1995 regarding the sale of handcrafted or artistic tangible personal property by children with severe emotional disturbances. Subdivision (f)(3) was amended to remove an obsolete effective date.

Regulation 1598. MOTOR VEHICLE AND AIRCRAFT FUELS.

Reference: Sections 6011, 6012, 6245.5, 6357, 6357.5, 6385, 6423, Revenue and Taxation Code.

(a) IN GENERAL. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) EXCEPTIONS.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel.(See subdivision (g) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) MEASURE OF TAX.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E).

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

Regulation 1598. (Contd.)

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.
4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.
5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.
4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (h) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (h) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (i).

(d) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

> "The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

Regulation 1598. (Contd.)

Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes	$1.153
	Federal excise tax *	.184
	State excise tax*	.180
	Total	$1.517
	* Sales tax reimbursement computed at 7¼%* of $1.517	.110
	Total tax-included price per gallon	$1.627
(B)	Sales price per gallon of diesel fuel net of all taxes	$1.103
	Federal excise tax*	.244
	Total	$1.347
	* Sales tax reimbursement computed at 7¼%* of $1.347	.098
	State excise tax *	.180
	Total tax-included price per gallon	$1.625

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(e) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a ''sale'' or ''purchase'' (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called ''wet rentals''). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a ''sale'' or ''purchase'' (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the ''fair rental value'' of the mobile transportation equipment leased, the ''fair rental value'' does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(f) REFUNDS OF EXCISE TAX.

(1) FEDERAL EXCISE TAXES.

The refund of the federal excise tax on gasoline, diesel or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

Regulation 1598. (Contd.)

(2) SALES OR USE TAX REFUNDS. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(g) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (g)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from_____

_____,

will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser:_____
(Company Name)

Address:_____

Phone Number:_____

Signature:_____ Date:_____
(Signature of Authorized Agent)

Title:_____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any):_____

Regulation 1598. (Contd.)

Identification Numbers of Aircraft Owned or Operated

_____ _____
_____ _____
_____ _____
_____ _____

(h) CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (h)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from_____
_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser:_____
(Company Name)

Address:_____

Phone Number:_____

Signature:_____ Date:_____
(Signature of Authorized Agent)

Title:_____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any)_____

Regulation 1598. (Contd.)

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (h)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars ($500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(i) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (i)(1) may issue a certificate in substantially the form set forth in subdivision (i)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (i) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that

Regulation 1598. (Contd.)

federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser:_____
(Company Name)

Address:_____

Phone Number:_____

Signature:_____ Date:_____
(Signature of Authorized Agent)

Title:_____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any)_____

Regulation 1598. (Contd.)

History: Amended and adopted December 8, 1970, as a restatement of Ruling 1325 (Use Fuel Tax Law), effective January 15, 1971.
Amended June 9, 1972, effective July 15, 1972.
Amended July 31, 1972, effective August 2, 1972.
Amended September 14, 1972, effective September 15, 1972.
Amended January 18, 1973, effective January 26, 1973.
Amended May 9, 1973, effective June 17, 1973.
Amended November 19, 1975, effective January 1, 1976. Deleted (b)(2) due to expiration of Section 6357 of the Revenue and Taxation Code, amended (c)(2)(A) to reflect the annual flat rate fuel tax authorized by Section 8651.7 of the Revenue and Taxation Code, and amended (d) to reflect increased tax rate and prices.
Amended June 22, 1976, effective July 25, 1976. Added Santa Clara County Transit District transaction and use tax.
Amended December 7, 1978, effective January 28, 1979. Amends subsection (f)(1); deletes section (d)(2) and amends subsection (d) to establish the presumption that sales tax will be considered included in the price per gallon of gasoline or diesel fuel sold if proper notice is posted.
Amended April 2, 1981, effective August 19, 1981. In (b) added last sentence re "gasohol." Added (e) "Partial Exemption of Gasohol." Relettered remaining subsections. Added 6357.5 to references.
Amended July 28, 1982, effective December 8, 1982. Deleted (e) (1) (D), gasohol color requirement; added the last sentence of (e) (2) (C), referring to Los Angeles and San Mateo transit taxes; and made various technical changes.
Amended July 27, 1983, effective November 13, 1983. Amended subdivision (c) to reflect current tax rates; deleted listing of transit districts imposing the ½ of 1 percent transit tax.
Amended March 27, 1984, effective April 24, 1984. In subsection (c)(2)(B)1 changed number 12 to 3.
Amended May 1, 1985, effective May 31, 1985. Subdivision (b), has deleted from its reference to the partial gasohol exemption which existed and expired December 31, 1983. Subdivision (c) specifies how the sales tax applies to various state and federal taxes on fuel based on tax rates in effect as of October 1, 1984. Subdivision (e), has been deleted in its entirety. Subdivisions (f), (g), and (h), have been renumbered to (e), (f), and (g), respectively.
Amended April 30, 1990, effective July 7, 1990. Added paragraphs (b)(2) and (b)(3) to clarify the two exceptions to the application of the sales and use tax to the sale of aircraft fuel to air common carriers under certain circumstances and added reference to Regulation 1621. Added paragraph (c)(1)(A) to explain measure of tax includes federal excise taxes on diesel and jet fuel, except as provided in (c)(2)(C) which was added to identify the exclusion of federal importer's or producer's excise tax for which a certification is obtained that a credit or refund is due against income tax from the measure of the sales and use tax. Added paragraph (h) to assist in preparation of the certificate for claiming the exemption.
Amended August 1, 1991, effective August 29, 1991. Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, to provide for repeal of the exemption from sales tax for the sale of aircraft fuel to air common carriers for immediate shipment outside California consumed by the common carrier in the conduct of its business after reaching the first out-of-state destination. Chapter 85, Stats. 1991, repealed the exemption effective July 1, 1991; Chapter 88, Stats. 1991, changed the effective date to July 15, 1991.

Regulation 1598. (Contd.)

Amended June 23, 1993, effective October 13, 1993. Added paragraph (b)(2) to provide that sales tax does not apply to certain manufacturers' or importers' federal excise tax imposed under Section 4091 of the Internal Revenue Code. Amended paragraph (b)(2) to extend the exemption from the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose first destination is a foreign destination to similarly sold fuel for immediate consumption or shipment on a flight whose final destination is a point outside the United States. Amended paragraph (f) to explain refund procedures with regard to manufacturer's excise tax which has been refunded and added paragraph (b)(1)(B) to clarify the refund procedures for federal importer's or producer's excise tax which has been refunded or credited by the federal government.

Amended January 10, 1996, effective March 28, 1996. Added new subdivision (c)(2)(B) and renumbered the following sub-subdivisions of subdivision (c)(2); amended new subdivision (c)(2)(D); added new subdivision (c)(2)(E); and deleted subdivision (f)(1)(A) and denominated former subdivision (f)(1)(B) as subdivision (f)(1). Deleted gender-based language from subdivision (e) and corrected clerical errors in subdivisions (c)(1)(B), (d), (e), and (h).

Amended June 14, 1996, effective August 23, 1996. Corrected the California Code of Regulations as amended effective March 28, 1996 to add subdivision (c)(2)(E).

Amended August 1, 2001, effective December 1, 2001. Word "subparagraph" changed to "subdivision" throughout. Phrase "importer's or producer's" before word "excise" deleted throughout. Subdivision (c)(2): (E) word "and" changed to "or" ; (F) added. Subdivison (f): (1) phrase "which included that federal excise tax" deleted; words "OR USE" added to title of (2). Subdivision (g)(2)—last sentence added. Exemption Certificate—new first unnumbered paragraph added; second unnumbered paragraph—words "aircraft fuel (gasoline)" replaced with "motor vehicle fuel"; phrase "and . . . Law" deleted and phrase "and . . . refund" added; third unnumbered paragraph—words "Motor vehicle" added and "(gasoline)" deleted; fourth unnumbered paragraph—certificate format changed for ease of use. Subdivision (h)(1)—last sentence added. Exemption Certificate—new title and new first unnumbered paragraph; third unnumbered paragraph—last sentence added; format of certificate rewritten for clarity. New subdivision (i) added.

Regulation 1599. COINS AND BULLION.

References: Sections 6007, 6008, 6009, 6011, 6354, 6355, Revenue and Taxation Code.

(a) GENERAL.

(1) SALES OF COINS. The transfer of coins for use solely as a medium of exchange, i.e., as legal tender, is not subject to tax even though the transferee pays an amount exceeding the face amount. For example, tax does not apply to a transaction whereby a coin changer returns only 95 cents on a dollar. On the other hand, tax does apply to sales of coins as collector's items or as an investment, except as otherwise specified in this regulation.

Regulation 1599. (Contd.)

(2) SALES OF GOLD OR SILVER BULLION. Tax applies to sales of gold or silver bullion except as provided in subdivision (a)(3) below.

(3) SALES IN BULK OF MONETIZED BULLION, NONMONETIZED GOLD OR SILVER BULLION, AND NUMISMATIC COINS. Sales in bulk of ‘‘monetized bullion’’, nonmonetized gold or silver bullion, and numismatic coins which sales are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange, are exempt from both the sales tax and the use tax. The exemption for sales in bulk of nonmonetized gold or silver bullion and numismatic coins is effective with respect to sales occurring on and after January 1, 1986.

‘‘Monetized bullion’’ means coins or other forms of money manufactured of gold, silver, or other metal and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation. The medium of exchange must have had a legal status equivalent to legal tender.

Effective September 28, 1983, ‘‘monetized bullion’’ includes gold medallions struck under authority of the American Arts Gold Medallion Act (Title IV of Public Law 95-630).

Nonmonetized bullion means gold or silver which has been smelted or refined and has a value dependent primarily upon its gold or silver content and not upon its form.

Neither the sales tax nor the use tax applies to sales of ‘‘monetized bullion’’, nonmonetized gold or silver bullion, and numismatic coins provided the following conditions are met:

Regulation 1599. (Contd.)

(A) The sale is in bulk amount. A sale in bulk occurs if the total market value of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in a single transaction is $1,000 or more or is equal to or exceeds the adjusted amount as computed by Revenue and Taxation Code Section 6355. For purposes of this regulation, market value means sales price as defined in Section 6011 of the Sales and Use Tax Law.

(B) The sale is by or through a person registered pursuant to the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or not required to be registered under the Commodity Exchange Act.

(4) SALES OF COMMEMORATIVE ''CALIFORNIA GOLD'' MEDALLIONS. Effective September 27, 1985, tax does not apply to the sale of or the storage, use, or other consumption in this state of commemorative ''California Gold'' medallions produced and sold in accordance with Chapter 25 (commencing with Section 7551) of Division 7 of Title 1 of the Government Code.

(b) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.

(1) OPTIONS TO BUY. ''Options to buy'' are contracts in which the seller agrees to sell specified property, usually at a predetermined price, while the buyer obtains the right but not the duty to purchase the property. Accordingly, the ''buyer'' has the option to purchase the property but may decide not to purchase without breaching the contract. A sale happens if the buyer exercises his or her option to purchase the property and tax applies at the time the option is exercised unless the sale is otherwise exempt. On the other hand, if the option is not exercised, no sale happens and no tax applies.

(2) OPTIONS TO SELL. ''Options to sell'' are contracts in which the buyer agrees to buy specified property, usually at a predetermined price, while the seller obtains the right but not the duty to sell the property. A sale happens if the option is exercised and tax applies unless otherwise exempt.

(3) FUTURE SALES AND PURCHASES. A contract to sell and buy goods in the future obligates the seller to sell and the buyer to buy goods at a particular time in the future. The price of the goods is usually set at the time of contracting, but neither the title nor possession of the goods is then transferred. If the title (or the possession in lieu of title) is later transferred, the sale happens, and tax applies unless the sale is otherwise exempt. However, the seller and the buyer or their assignees may agree to cancel the contract before performance. If they do so, no sale happens and no tax applies. ''Future'' sales do not include present sales of tangible personal property for future delivery.

(4) PRESENT SALES FOR FUTURE DELIVERY. A present sale for future delivery is a contract in which the title is intended to pass from seller to buyer at the time the contract is entered but the seller is not obligated to deliver possession of the goods until some future date. The sale happens when title passes and tax applies unless the sale is otherwise exempt.

(5) CREDIT TRANSACTIONS. When a consumer makes a down payment and enters a contract for the purchase of coins, the parties may regard it as a credit transaction. But the sale may or may not happen at the time the ''credit'' is extended.

Regulation 1599. (Contd.)

In some instances, the buyer receives a loan of the balance of the purchase price, and the title to the coins is transferred to the buyer. But the creditor, who may be the buyer's broker or the seller, retains possession of the property owned by the buyer as collateral for the loan to him or her. The buyer's creditor has the power to sell the buyer's property and pay off the loan if the market price of the property falls and approaches the amount of the loan. Often the broker or seller has power to repledge the property to his or her creditor to secure a loan to him or her. In any event a sale of tangible personal property to the consumer happens and tax applies unless otherwise exempt. These transactions are usually referred to as ''margin'' or ''margined'' purchases.

In other instances, the contract conditions the passage of title to the goods to the buyer on his payment of the full purchase price (conditional sales contract). The seller does not deliver possession of the goods until the payment of the full purchase price. Under this arrangement neither title nor possession in lieu of title can pass until full payment, and so a sale cannot happen until then. The seller and the buyer can agree to cancel the contract before title passes to the buyer and so no sale may ever happen under the contract. But if the title does pass after full payment, the sale happens and tax applies unless otherwise exempt. Because the seller may hold goods for the buyer, and the market price of the goods may fluctuate, the seller may regard the contract as an extension of credit to the buyer or may refer to the transaction as a ''margin'' or ''margined'' purchase.

Other ''credit'' arrangements are possible. Each transaction must be examined to determine if or when a sale or purchase happened.

(6) FEES. ''Fees'' charged by a seller for services in connection with the sale of coins, silver and gold bullion, or other precious metals are a part of the sales price of the property with the exception of insurance, interest, finance and carrying charges as provided in Regulation 1641 (18 CCR 1641) with respect to credit sales.

(7) INTERSTATE SALES. The same rules with respect to interstate sales that are applicable to sales and purchases of other tangible personal property also apply to sales of coins, silver and gold bullion, and other precious metals.

(c) PURCHASE OF COINS AND BULLION AS INVESTMENT. Purchases of coins and bullion as investments are purchases at retail. It is immaterial that a gain, benefit, or advantage may not be realized until the resale of the coins and bullion. A resale certificate may not be issued for purchases for this purpose.

A person purporting to hold coins or bullion solely for resale in the regular course of business must be able to prove that they actively engage in business as a seller of coins and bullion. The following are some examples of relevant evidence:

(1) The number, scope, and character of the person's purchases and sales of coins or bullion.

(2) Evidence of the person's continuing efforts to advertise and sell coins or bullion.

(3) Evidence that the person held out to the public that they were engaged in business as a seller of coins or bullion at an identified place of business.

Regulation 1599. (Contd.)

(4) The manner in which income from transactions in coins or bullion was reported by that person for income tax purposes.

(5) Whether a local business license was issued to that person to engage in sales of coins or bullion.

Seller's permits may be held only by persons actively engaging in the business of selling tangible personal property.

History: Adopted April 23, 1975, effective May 29, 1975.

Amended July 27, 1978, effective September 7, 1978. In (a) (4) (A) deleted paragraphs referring to "monetized bullion"; criterion for value of U.S.A. coins is face amount, and for foreign coins is sales price; adds provision for single sale of combined types of coins. Amendment meets requirements of Alan Van Vliet Enterprises, Inc. v. State Board of Equalization, 65 Cal. App. 3d 164 (1977).

Amended February 7, 1980, effective March 3, 1980. In (a)(2) added "Until July 1, 1980" to first sentence of second paragraph and added a fourth paragraph; in (a)(3) added "Until July 1, 1980" to first sentence of the first paragraph and added a third paragraph; and rewrote (a)(4)(B) adding registered persons.

Amended April 1, 1981, effective August 19, 1981. In (a)(2) deleted "a bank." In (a)(4)(B) deleted provisions re registration pursuant to "California Commodity Law" and substituted provisions re "Commodity Exchange Act" with applicable dates.

Amended May 9, 1984, effective August 25, 1984. Deleted former subdivisions (a)(2) and (a)(3) and added new subdivision (a)(2). Renumbered former (a)(4) to (a)(3); deleted effective date and added third paragraph; completely revised (a)(3)(B).

Amended April 9, 1986, effective July 5, 1986. In subdivision (a)(3), amended regulation to add provisions concerning the sales in bulk of nonmonetized gold or silver bullion and numismatic coins. In subdivision (a)(3)(A), amended definition of sale in bulk. In subdivision (a)(4), added provision concerning "California Gold" medallions.

Amended March 30, 1988, effective June 8, 1988. Amended subdivision (a)(4) to delete the January 1, 1988 exemption expiration date pursuant to AB 257, Statutes of 1987, Chapter 1095.

Amended November 18, 1994, effective December 16, 1994. Amended subparagraph (a)(3)(A) to incorporate the new definition of "bulk sale" and the method of adjusting the bulk-sale threshold provided in Statutes 1993, Chapter 977; deleted gender-based language from subparagraphs (b)(1) and (5), (c), and (c)(3); and added a reference to the California Code of Regulations to subparagraph (b)(6).

Regulation 1602. FOOD PRODUCTS.

References: Sections 6353 and 6359, Revenue and Taxation Code.
California Constitution, Article XIII, Section 34.

(a) IN GENERAL. Tax does not apply to sales of food products for human consumption except as provided in Regulations 1503, 1574, and 1603. (Grocers, in particular, should note that tax applies to sales of "hot prepared food products" as provided in Regulation 1603(e).)

Regulation 1602. (Contd.)

(1) "Food products" include cereal and cereal products, including malt and malt extracts, milk and milk products, including ice cream, ice milk and ice cream and ice milk novelties, sherberts, imitation ice cream and imitation ice milk, dried milk products, sugar of milk, milk shakes, malted milks, and any other similar type beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, including dehydrated vegetables, fruit and fruit products, spices and salt, coffee and coffee substitutes, tea, cocoa and cocoa products, sugar and sugar products, baby foods, bakery products, marshmallows, baking powder, baking soda, cream of tartar, coconut, flavoring extracts, flour, gelatine, jelly powders, mustard, nuts, peanut butter, sauces, soups, syrups (for use as an ingredient of, or upon, food products as defined herein), yeast cakes, olive oil, bouillon cubes, meat extracts, popcorn, honey, jams, jellies, certo, mayonnaise, and flavored ice products, including popsicles and snow cones. "Food products" include candy, confectionery, chewing gum, and snack foods except as provided in subdivisions (a)(3) and (a)(4) below.

(2) "Food products" include all fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including all beverages composed in part of fruit or vegetable juice and concentrates, powders, or other bases for such beverages, and noncarbonated and nonefferverscent bottled water intended for human consumption regardless of the method of delivery. "Food products" does not include carbonated or effervescent bottled waters, spirituous, malt or vinous liquors, or carbonated beverages.

For the period July 15, 1991 through November 30, 1992, "food products" does not include noncarbonated and noneffervescent bottled water. Sales of purified drinking water through vending machines or outlets in retail stores where the water enters the machine or outlet through local supply lines and is dispensed into the customer's own containers are exempt under Revenue and Taxation Code section 6353.

Tax does not apply to sales of water in bulk quantities of 50 gallons or more to an individual for use in a residence when that residence is not serviced by lines, mains or pipes.

(3) For the period July 15, 1991 through November 30, 1992, "food products" do not include nonmedicated chewing gum and breath mints.

(4) "Food products" do not include medicines, cough drops, mineral oils, cigarettes, cigars, tobacco, coloring extract, ice, and dog, cat, bird and other animal foods, and for the period July 15, 1991 through November 30, 1992, candy, confectionery, and snack foods.

(A) Snack Foods. For purposes of this section, "snack foods" means cookies, crackers (excluding soda, graham and arrowroot crackers), potato, corn, rice or tortilla chips, snack cakes or pies, pretzels, granola snacks, popped popcorn, fabricated chips and snacks.

1. "Snack foods" does not include doughnuts, breads, pastry and other bakery products (other than cookies, crackers, snack cakes and pies).

Regulation 1602. (Contd.)

2. "Snack foods" does not include nuts or nut meats, seeds, or dried fruit snacks.

3. "Snack foods" does not include beef jerky and similar dried meat products, natural pork skins, hot dogs, franks, weiners, sausages, canned meat products, or sandwich meats whether sliced or unsliced.

4. "Soda crackers" are a thin, crisp saltine wafer or biscuit made with flour, yeast, water, shortening, salt, and soda. The term does not include such bakery items which are chemically leavened or contain one or more flavoring agents, for example, honey, sugar, or molasses. The term also does not include panned butter, malt, milk, fat sprayed, cheese, and pilot bread crackers.

(B) "Snack foods" means items which are sold in a condition suitable for immediate consumption without further processing such as cooking, heating, or thawing.

1. "Fabricated snacks" means snacks made from components, including food components, which are processed and formed. "Fabricated snacks" includes, but is not limited to, such items as grain cakes, shoestring potato snacks, food bars or squares, and extruded snacks. The term does not include "meal replacement bars" which supply, per serving (as defined by the manufacturer), at least 250 calories and 25% of the U.S. RDA of vitamins and minerals (as established by regulations of the United States Food and Drug Administration).

2. "Extruded snacks" includes, but is not limited to, curls, puffs, twists, balls, filled snacks, and pellet-based snacks.

(C) "Snack cakes or pies" means cakes or pies which are baked or fried in individual serving sizes or cut and pre-wrapped or pre-packaged for subsequent sale in individual serving sizes, whether sold individually or packaged together. A package of single-serving items is subject to tax. The term does not include whole cakes or pies nor does it include a slice of pie or cake which is not pre-wrapped or pre-packaged at the time of sale.

(D) "Granola snacks" means granola bars and squares but does not include granola sold in bulk, cereals, and trail mixes.

(E) Candy and Confectionery. For the period July 15, 1991 through November 30, 1992, tax applies to sales of candy and confectionery, which includes chocolate-coated nuts, candied fruits, crystallized fruits and glace fruits.

(5) 'Food products" do not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, and to any such product (B) which is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally one or more of the following areas of human nutrition:

1. Vitamins
2. Proteins
3. Minerals
4. Caloric intake

Regulation 1602. (Contd.)

In determining whether a product falls within category (B), it is important whether the manufacturer has specially mixed or compounded ingredients for the purpose of providing a high nutritional source. For example, protein supplements and vitamin pills are taxable as food supplements.

Other items, such as cod liver oil, halibut liver oil, and wheat germ oil, are considered dietary supplements and thus subject to tax even though not specially compounded. However, unusual foods such as brewer's yeast, wheat germ and seaweed are not subject to tax except when their label states they are a food supplement or the equivalent. Finally, the compounding of nutritional elements in items traditionally accepted as food does not make them taxable, e.g., vitamin-enriched milk and high protein flour.

Tax, however, does not apply to any such products which either are exempted by Revenue and Taxation Code Section 6369, respecting prescription medicines, or are complete dietary foods providing the user in the recommended daily dosage with substantial amounts of vitamins, proteins, minerals and foods providing adequate caloric intake. An example of the latter is a food daily providing the user with the following:

1. 70 grams of high quality protein
2. 900 calories
3. Minimum daily requirements as established by the regulations of the Federal Food and Drug Administration of the following vitamins: A, B1, C, D, Riboflavin, and Niacin or Niacinamide; and following minerals: Calcium, Phosphorus, Iron and Iodine.

(b) SALES OF COMBINATION PACKAGES. When a package contains both food products (e.g., dried fruit)and nonfood products (e.g., wine, or toys), the application of tax depends upon the essential character of the complete package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood merchandise, a segregation must be made and the tax measured by the retail selling price of such nonfood merchandise.

(c) SALES OF NON-EDIBLE DECORATIONS. When the sale of a cake or other bakery good for a single price includes non-edible decorations, the application of tax depends upon the value of the non-edible merchandise versus the value of the cake or bakery good. If more than 50 percent of the total retail value of the cake or bakery good represents the value of non-edible decorations, a segregation must be made and the tax measured by the retail selling price of such non-edible decorations. If the price of the non-edible decoration is separately stated, then tax applies to such charge.

(d) FOOD PRODUCTS PROCESSED BY THE CONSUMER. A commodity included in the term "food products" under Revenue and Taxation Code Section 6359 may be sold to a consumer to be processed and incorporated into a product which is for human consumption but which is excluded from the term "food products." For example, grapes may be sold to be used in making wine for consumption and not for resale. If the commodity sold to the consumer is included

Regulation 1602. (Contd.)

in the term "food products" and if the product into which it is incorporated is for human consumption, the sale of the commodity is within the exemption provided by this section.

History: Effective, except as above indicated, July 1, 1935.
Amended August 19, 1953.
Amended September 18, 1963.
Amended September 2, 1965, applicable as amended September 17, 1965.
Amended November 3, 1969, applicable on and after January 1, 1970.
Amended February 18, 1970, applicable on and after January 1, 1970.
Amended and renumbered November 3, 1971, effective December 3, 1971.
Amended December 15, 1971, applicable on and after December 15, 1971.
Amended February 16, 1972, effective March 25, 1972.
Amended May 10, 1973, effective June 23, 1973.
Amended September 18, 1973, effective October 27, 1973.
Amended June 25, 1981, effective November 1, 1981. Added Section 6359.6 to references; deleted amended effective dates in (a)(1) and (2) and (3). In (a)(2) added exemption for bottled water operative 1/1/81.
Amended March 6, 1985, effective May 31, 1985. Subdivision (a)(2) has been changed to provide that the exemption from tax for the sale of noncarbonated and noneffervescent bottled water shall be expanded to apply to water sold in individual containers of one-half gallon or more in size.
Amended August 1, 1991, effective August 30, 1991.
Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, to exclude from the definition of "food products" snack foods, as defined, candy, confectionery and nonmedicated gum and to repeal the exemption from tax for sales of noncarbonated and noneffervescent bottled water under certain conditions. Chapter 85, Stats. 1991, repealed the exemption effective July 1, 1991; Chapter 88, Stats. 1991, changed the effective date to July 15, 1991.
Amended September 29, 1994, effective October 29, 1994. Amended to provide that sales of snack foods are not subject to tax effective December 1, 1992; "food products" does not include carbonated or effervescent bottled water but does include noncarbonated and noneffervescent water intended for human consumption regardless of the method of delivery.
Amended March 17, 1999, effective June 12, 1999. New subdivision (c) added, old subdivision (c) renumbered to (d).

Regulation 1602.5. REPORTING METHODS FOR GROCERS.

References: Sections 6359 and 6373, Revenue and Taxation Code.

(a) FOOD PRODUCTS EXEMPTION—IN GENERAL. Tax does not apply to sales of food products for human consumption. Accurate and complete records of all purchases and sales of tangible personal property must be kept to verify all exemptions claimed as sales of exempt food products.

In preparing returns, grocers may use any method of determining the amount of their sales of exempt food products which does not result in an overstatement of the

exemption. Grocers must be prepared to demonstrate by records which can be verified by audit that the method used properly reflects their sales of exempt food products.

(b) REPORTING METHODS.

(1) PURCHASE-RATIO METHOD. One method which may be used is the purchase-ratio method sometimes referred to as the ''grocer's formula''. Under this method, grocers may claim as sales of exempt food products that proportion of their total gross receipts from the sale of ''grocery items'' that the amount of their purchases of exempt food products bears to their total purchases of grocery items.

If the grocer elects to use the purchase-ratio method of reporting, the following criteria should be followed:

(A) The purchase-ratio method may be used only by grocers and only with respect to sales of ''grocery items''.

(B) Grocers selling clothes, furniture, hardware, farm implements, distilled spirits, drug sundries, cosmetics, body deodorants, sporting goods, auto parts, cameras, electrical supplies, appliances, books, pottery, dishes, film, flower and garden seeds, nursery stock, fertilizers, flowers, fuel and lubricants, glassware, stationery supplies, pet supplies (other than pet food), school supplies, silverware, sun glasses, toys and other similar property should not include the purchases and sales of such items in the purchase-ratio method. These items are referred to as ''nongrocery taxable'' items.

When the purchase-ratio method is used for reporting purchases and sales of nongrocery taxable items are computed by the retail extension or markup method, the computation of nongrocery taxable sales should include adjustments for beginning and ending inventories of these items and may include adjustments for shrinkage as specified in (d) below.

(C) Grocers selling gasoline, feed for farm animals, farm fertilizers or who operate a snack bar or restaurant, or sell hot prepared food should not include the purchases and sales of such items or operations in the purchase-ratio method.

(D) The purchases and sales of meat, fruit, produce, delicatessen (except hot prepared food or food sold for immediate consumption at facilities provided by the grocer), beverage (except distilled spirits in the liquor department) and bakery departments must be included in the purchase-ratio method if these departments are operated by the grocer.

(E) The records should be complete and adequate and all sales and purchases should be properly accounted for in the records. All purchases of exempt food products, grocery taxable items and nongrocery taxable items should be segregated into their respective classifications.

(F) The following definitions apply to the purchase-ratio method:

1. ''Exempt food products'' means those items generally described as food products in Section 6359 and Regulation 1602. If grocers are uncertain as to the classification of any product, they should contact the nearest board office.

Regulation 1602.5. (Contd.)

2. "Total gross receipts from the sale of grocery items" means the total amount of the sales price of all exempt food products and taxable grocery items, including sales tax reimbursement, amounts receivable from manufacturers, or others, for coupons (excluding any handling allowances) redeemed by customers, and the face value of federal food stamps. The term does not include receipts from sales of those items described in (b)(1)(B), above, which are commonly referred to as "nongrocery taxable items", or from those sales described in (b)(1)(C), above (gasoline, snack bar, etc.). It does not include amounts which represent "deposits", as defined in Regulation 1589, e.g., bottle deposits. When deposits are not segregated, it will be presumed, in the absence of evidence to the contrary, that the total deposits received are equal to the deposits refunded.

3. "Grocery items" means exempt food products and taxable items other than those generally classified under (b)(1)(B) and (b)(1)(C), above.

4. "Purchases" means the actual amount which a grocer is required to pay to the suppliers of merchandise, net of any cash discounts, volume rebates or quantity discounts and promotional allowances. The term does not include the cost of transportation, processing, manufacturing, warehousing, and other costs, if these operations are self-performed. It does not include the cost of operating supplies such as wrapping materials, paper bags, string, or similar items. It does not include amounts which represent "deposits", as defined in Regulation 1589, e.g., bottle deposits (see (b)(1)(F)2., above). If deposits are not segregated, it will be presumed, in the absence of evidence to the contrary, that the amount deposited with the supplier is equal to the credit received for bottles returned by the grocer.

A. As used herein, the term "cash discount" means a reduction from the invoice price which is allowed the grocer for prompt payment.

B. As used herein, the term "volume rebate or quantity discount" means an allowance or reduction of the price for volume purchases based on the number of units purchased or sold. Such rebates or discounts normally are obtained without any specific contractual obligation upon the part of the grocer to advertise or otherwise promote sales of the products purchased. The term does not include patronage dividends distributed to members by nonprofit cooperatives pursuant to Section 12805 of the Corporations Code, or rebates which constitute a distribution of profits to members or stockholders.

C. As used herein, the term "promotional allowance" means an allowance in the nature of a reduction of the price to the grocer, based on the number of units sold or purchased during a promotional period. The allowance is directly related to units sold or purchased although some additional promotional expense may be incurred by the grocer. Normally, grocers would feature the product in their advertising, although they may or may not be contractually obligated to do so. The retail price of the product may or may not be lowered during a promotional period.

The term does not include display or other merchandising plan allowances or payments which are based on agreements to provide shelf space for a price not related to volume of purchases, or cooperative advertising allowances which are based on a national line rate for advertising and are not directly related to volume of purchases and sales. Cooperative advertising allowances are intended to reimburse grocers for a portion of their advertising costs for a particular product or products.

Regulation 1602.5. (Contd.)

(G) Sales tax reimbursement collected in accordance with Regulation 1700 which is included in total sales is an allowable deduction. An example of the computation of the purchase-ratio method which provides for an adjustment for sales tax included follows:

1. Taxable grocery purchases.....$40,000
2. Add sales tax adjustment (6% * × Item 1)..... 2,400
3. Adjusted taxable grocery purchases (Item 1 + Item 2)..... 42,400
4. Exempt food products purchases 130,000
5. Total grocery purchases including sales tax
   (Item 3 + Item 4).....172,400
6. Exempt food products ratio (Item 4 divided by Item 5)..... 75.41%
7. Total sales including sales tax 254,088
8. Nongrocery taxable sales including sales tax
   (if such sales are not accurately segregated,
   mark up nongrocery taxable cost of goods sold
   to compute sales—add 6% * sales tax to total) ** 31,500
9. Grocery sales including sales tax (Item 7 – Item 8) 222,588
10. Exempt food products sales (Item 6 × Item 9) 167,854
11. Sales of taxable items including sales tax
    (Item 7 – Item 10)..... 86,234
12. Less taxable items purchased with food stamps (2% of total
    food stamps redeemed for period, e.g., 2% × $100,000 2,000
13. Taxable measure including sales tax (Item 11 – Item 12) 84,234
14. Sales tax included (6/106 × Item 13) 4,768
15. Measure of tax (Item 13 – Item 14)..... 79,466
16. Sales tax payable (6% * × Item 15)..... 4,768

(2) MODIFIED PURCHASE-RATIO METHOD. Any grocer who does not follow the procedure outlined in (b)(1), above, but reports on a purchase-ratio basis of some type is using a modified version of the purchase-ratio method. For example, grocers who include self-performed processing, manufacturing, warehousing or transportation costs in the purchase-ratio formula are using a modified version. Grocers using such a modified version must establish that their modified version does not result in an overstatement of their food products exemption. They may demonstrate the adequacy of their modified method by extending taxable purchases, adjusted for inventories, to retail for a representative period or computing taxable sales by marking up taxable purchases, adjusted for inventories, for a representative period. Grocers must retain adequate records which may be verified by audit, documenting the modified purchase-ratio method used. Grocers contemplating use of a modified purchase-ratio reporting method are urged to notify the board of such intentions and to submit such methods to the nearest board office for review prior to use of such methods. Grocers submitting proposed modified purchase-ratio reporting

* Use applicable tax rate—tax rate of 6% used for illustration purposes.
* Use applicable tax rate—tax rate of 6% used for illustration purposes.
** Adjust for shrinkage if applicable—see paragraph (d).

methods meeting board approval will be furnished written notice indicating the period within which such modified methods are authorized for use.

(3) RETAIL INVENTORY METHOD AND MARKUP METHOD. Grocers who engage in manufacturing, processing, warehousing or transporting their own products may prefer to use a retail or markup method of reporting. These methods are described below:

(A) Retail Inventory Method.

1. The opening inventory is extended to retail and segregated as to exempt food products and taxable merchandise.

2. As invoices for merchandise are received, they are extended to retail and segregated as to exempt food products and taxable merchandise.

3. The ending inventory at retail is segregated as to exempt food products and taxable merchandise.

4. The total of segregated amounts determined in 1 and 2 less 3 represent anticipated exempt and taxable sales.

5. The segregated amounts determined in 4 are adjusted for net markons, net markdowns, and shrinkage to determine realized exempt and taxable sales.

6. Physical inventories are taken periodically to adjust book inventories.

(B) Cost Plus Markup Method—Taxable Merchandise.

1. The cost of all taxable merchandise is marked up to anticipated selling prices at the time of purchase. Records are kept of net markons, net markdowns, and shrinkage for all taxable merchandise. Such records are used to adjust the anticipated selling price to the realized price. Inventory adjustments are required unless the inventory of taxable merchandise at the beginning and ending of reporting periods is substantially constant. Returns should reflect as taxable sales the realized selling price of all taxable merchandise during a reporting period (anticipated sales price on purchases adjusted for inventory changes and other adjustments of the types mentioned).

2. If the grocer elects to use the cost plus markup method of reporting, the following criteria should be followed:

A. Markup factor percentages [1] applicable to taxable merchandise should be determined by a shelf test sample of representative purchases, covering a minimum purchasing cycle of one month within a three-year period, segregated by commodity groupings, i.e., beer, wine, carbonated beverages, tobacco and related products, paper products, pet food, soap, detergents, etc. The markup factor percentages determined for commodity groupings should be applied to the cost of sales of the respective commodities for the reporting period to determine taxable sales.

[1] Markup factor percentage is the markup + 100%. When applied to cost, it computes the selling price. For example, an item costing $1.00 and selling at a 25% markup will have a markup factor of 125%. The markup factor (125%) when applied to $1.00 cost results in a $1.25 selling price.

Regulation 1602.5. (Contd.)

In order to insure that markup factor percentages typical of the total business are determined, grocers who conduct multistore operations should include purchases from several representative stores in the shelf test sample of markup factor percentages.

B. As an alternate procedure to A., above, the overall average markup factor percentage for all taxable commodity groupings may be used to determine taxable sales for the reporting period. This markup factor percentage is applied to the overall cost of taxable sales for the reporting period.

The overall average markup factor percentage should be determined as follows:

a. Determine markup factor percentages by commodity groupings based on shelf tests covering a minimum purchasing cycle of one month within a three-year period.

b. Determine cost of sales, segregated by commodity groupings, for a representative one-year period.

c. Apply markup factor percentages (Step a) to the cost of sales of the respective commodity groupings (Step b) to determine anticipated sales by commodity groupings and in total.

d. Divide total anticipated sales (Step c) by the respective total cost of sales to determine the overall average markup factor percentage.

C. In calculating markup factor percentages, appropriate consideration should be given to markon and markdown price adjustments, quantity price adjustments such as on cigarettes sold by the carton, liquor sold by the case and other selling price adjustments. Quantity and other price adjustments may be determined by a limited test of sales of a representative period or by sales experience of a representative store within the operating entity.

D. The computation of taxable sales for the reporting period should be based on cost of sales for the period. If for any particular reporting period or periods, cost of sales is not determinable because actual physical inventories are unknown and inventories remain substantially constant, the computation of taxable sales may be based on purchases for the period. However, if inventories are not substantially constant, adjustments for physical inventories should be taken into consideration in one of the reporting periods occurring within the accounting year.

E. Shrinkage should be adjusted as specified in (d) below.

F. Taxable markup factor percentages based on shelf test samples will generally be considered valid for reporting purposes for a period of three years, provided business operations remain substantially the same. A substantial change in business operations will be considered as having occurred when there is a significant change in pricing practices, commodities handled, commodity mix, locations operated, sources of supply, or other circumstances affecting the nature of the business.

G. Grocers contemplating use of the cost plus markup method of reporting are urged to notify the board of such intentions and to submit a general outline of proposed markup procedures to the nearest board office for review prior to

Regulation 1602.5. (Contd.)

use of such procedures. Grocers submitting proposed markup procedures meeting board approval will be furnished written notice indicating the period within which such procedures are authorized for use.

(4) ELECTRONIC SCANNING SYSTEMS. The use of a scanning system is another acceptable reporting method for grocers. Electronic scanning systems utilize electronic scanners and central computers to automatically compile and record taxable and nontaxable sales, sales tax, and related data from scanning of products imprinted with the Universal Product Code. It is the grocer's responsibility to establish the propriety of reported amounts. Grocers must ensure that proper controls are maintained for monitoring and verifying the accuracy of the scanning results and tax returns. Adequate documentation must be retained which may be verified by audit, including all scanning programs relating to product identity, price, sales tax code, program changes and corrections to the programs. Records which clearly show a segregation of taxable and nontaxable merchandise purchases would provide an additional source from which the scanning accuracy may be monitored or verified.

Grocers contemplating use of electronic scanning system results as a reporting method are *required* to notify the board of such intentions and to submit a general outline of the proposed procedures to the board for review and approval prior to adoption of such method for reporting purposes. Grocers submitting proposed scanning system procedures meeting board approval will be furnished written notice indicating the period within which such procedures are authorized for use.

(c) FOOD STAMPS. Tangible personal property eligible to be purchased with federal food stamps and so purchased is exempt from the tax. Grocers who receive gross receipts in the form of federal food stamp coupons in payment for such tangible personal property which normally is subject to the tax, e.g., nonalcoholic carbonated beverages, may deduct on each sales tax return an amount equal to two percent (2%) of the total amount of food stamps redeemed during the period for which the return is filed. Effective January 1, 1993, grocers may claim amounts in excess of two percent whenever the following computation results in a greater percentage: total purchases of taxable items eligible to be purchased with federal food stamps divided by an amount equal to the total of the exempt food product purchases as defined in subdivision (b)(1)(F)1 plus the purchase of taxable items eligible to be purchased with federal food stamps. For example, for a reporting period, if the total purchases of carbonated beverages equals $5,000 and the total purchases of exempt food products equals $130,000, a percentage of 3.7% ($5,000 ÷ $135,000) may be used in computing the allowable food stamp deduction for that period. This deduction may be taken in lieu of accounting separately for such sales.

(d) SHRINKAGE. As used herein, the term "shrinkage" means unaccounted for losses due to spoilage, breakage, pilferage, etc. Grocers who incur such losses, may, for reporting purposes, adjust for such losses as follows:

(1) An adjustment of up to 1 percent of the cost of taxable merchandise may be taken into consideration when the retail inventory or markup method is used for reporting purposes.

Regulation 1602.5. (Contd.)

(2) An adjustment of up to 3 percent of the cost of nongrocery taxable items may be taken into consideration when the purchase-ratio method is used for reporting purposes and sales of nongrocery taxable items are computed by the retail extension or markup method. The adjustment is limited to an overall 1 percent of taxable purchases when other than the purchase-ratio method is used for reporting purposes.

Losses in excess of the above are allowable when supported by records which show that a greater loss is sustained.

(e) LIST OF METHODS NOT EXHAUSTIVE. The methods by which grocers may determine their sales of exempt food products are not limited to the methods described above. Grocers may use any method which they can support as properly reflecting their exempt food sales. As is the case for all exemptions, it is the grocer's responsibility to establish the propriety of the amount of the claimed exemption.

(f) AUDITS. Taxpayers using one of the approved methods of reporting described in this regulation will normally be audited by application of the same approved procedure in the audit to verify the accuracy of claimed deductions. However, determinations may be imposed or refunds granted if the board, upon audit of the retailer's accounts and records, determines that the returns did not accurately disclose the amount of tax due.

History: Adopted May 10, 1973, effective June 23, 1973. Amended August 24, 1988, effective, November 17, 1988. In subdivision (c) amended to provide that certain items purchased with food stamps coupons are exempt from sales and use taxes.
Amended July 28, 1993, effective October 21, 1993.
Amended subdivision (c) to provide an alternative method which grocers may use to compute the allowance deduction for the total amount of food stamp coupons redeemed during the return period.
Amended February 8, 1995, effective July 19, 1995. Added subparagraph (b)(4) to recognize electronic scanning systems as an acceptable means of reporting and to specify documentation to be retained for audit verification; amended subparagraphs (a), (b)(1)(F)1. and 4.C., (b)(2), and (e) to delete gender-based language.

Regulation 1603. TAXABLE SALES OF FOOD PRODUCTS.

References: Sections 6006, 6012, 6359, 6359.1, 6359.45, 6361, 6363, 6363.5, 6363.6, 6370, 6373, 6374, 6376.5, Revenue and Taxation Code.
Food Products Generally, see Regulation 1602.
Alcoholic Beverages, tax reimbursement when served with, see Regulation 1700.
"Free" meals with purchased meals, see Regulation 1670.
Meals served to patients and inmates of an institution, see Regulation 1503.
Vending Machines, when considered selling meals, see Regulation 1574.
Meals at summer camp, see Regulation 1506(e).
Parent-teacher associations as consumers, see Regulation 1597.

Regulation 1603. (Contd.)

(a) RESTAURANTS, HOTELS, BOARDING HOUSES, SODA FOUNTAINS, AND SIMILAR ESTABLISHMENTS.

(1) DEFINITIONS.

(A) Boarding House. The term ''Boarding House'' as used in this regulation means any establishment regularly serving meals on the average to five or more paying guests. The term includes a ''guest home,'' ''residential care home,'' ''halfway house,'' and any other establishment providing room and board or board only, which is not an institution as defined in Regulation 1503 and Section 6363.6 of the Revenue and Taxation Code. The fact that guests may be recipients of welfare funds does not affect the application of tax. A person or establishment furnishing meals on the average to fewer than five paying guests during the calendar quarter is not considered to be engaged in the business of selling meals at retail.

(B) American Plan Hotel. The term ''American Plan Hotel'' as used in this regulation means a hotel which charges guests a fixed sum by the day, week, or other period for room and meals combined.

(C) Complimentary Food and Beverages. As used in this subdivision (a), the term ''complimentary food and beverages'' means food and beverages (including alcoholic and non-alcoholic beverages) which are provided to transient guests on a complimentary basis and:

1. There is no segregation between the charges for rooms and the charges for the food and beverages on the guests' bills, and

2. The guests are not given an option to refuse the food and beverages in return for a discounted room rental.

(D) Average Retail Value of Complimentary Food and Beverages. The term ''average retail value of complimentary food and beverages'' (ARV) as used in this regulation means the total amount of the costs of the complimentary food and beverages for the preceding calendar year marked-up one hundred percent (100%) and divided by the number of rooms rented for that year. Costs of complimentary food and beverages include charges for delivery to the lodging establishment but exclude discounts taken and sales tax reimbursement paid to vendors. The 100% markup factor includes the cost of food preparation labor by hotel employees, the fair rental value of hotel facilities used to prepare or serve the food and beverages, and profit.

(E) Average Daily Rate. The term ''average daily rate'' (ADR) as used in this regulation means the gross room revenue for the preceding calendar year divided by the number of rooms rented for that year. ''Gross room revenue'' means and includes the full charge to the hotel customers but excludes separately stated occupancy taxes, revenue from contract and group rentals which do not qualify for complimentary food and beverages, and revenue from special packages (e.g., New Year's Eve packages which include food and beverages as well as guest room accommodations), unless it can be documented that the retail value of the food and beverages provided as a part of the special package is 10% or less of the total package charge as provided in subdivision (a)(2)(B). ''Number of rooms rented for that year'' means the total number of times all rooms have been rented on a nightly

Regulation 1603. (Contd.)

basis provided the revenue for those rooms is included in the ''gross room revenue''. For example, if a room is rented out for three consecutive nights by one guest, that room will be counted as rented three times when computing the ADR.

(2) APPLICATION OF TAX.

(A) In General. Tax applies to sales of meals or hot prepared food products (see (e) below) furnished by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments whether served on or off the premises. In the case of American Plan hotels, special packages offered by hotels, e.g., a New Year's Eve package as described in subdivision (a)(1)(E), and boarding houses, a reasonable segregation must be made between the charges for rooms and the charges for the meals, hot prepared food products, and beverages. Charges by hotels or boarding houses for delivering meals or hot prepared food products to, or serving them in, the rooms of guests are includable in the measure of tax on the sales of the meals or hot prepared food products whether or not the charges are separately stated. (Caterers, see (h) below.) Sales of meals or hot prepared food products by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments to persons such as event planners, party coordinators, or fundraisers, which buy and sell on their own account, are sales for resale for which a resale certificate may be accepted (see subdivision (h)(3)(C)2.).

Soufflé cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals or hot prepared food products are sold with the meals or hot prepared food products. Sales of such items for such purpose to persons engaged in the business of selling meals or hot prepared food products are, accordingly, sales for resale.

(B) Complimentary Food and Beverages. Lodging establishments which furnish, prepare, or serve complimentary food and beverages to guests in connection with the rental of rooms are consumers and not retailers of such food and beverages when the retail value of the complimentary food and beverages is ''incidental'' to the room rental service regardless of where within the hotel premises the complimentary food and beverages are served. For complimentary food and beverages to qualify as ''incidental'' for the current calendar year, the average retail value of the complimentary food and beverages (ARV) furnished for the preceding calendar year must be equal to or less than 10% of the average daily rate (ADR) for that year.

If a hotel provides guests with coupons or similar documents which may be exchanged for complimentary food and beverages in an area of the hotel where food and beverages are sold on a regular basis to the general public (e.g., a restaurant), the hotel will be considered the consumer and not the retailer of such food and beverages if the coupons or similar documents are non-transferable and the guest is specifically identified by name. If the coupons or similar documents are transferable or the guest is not specifically identified, food and beverages provided will be considered sold to the guest at the fair retail value of similar food and beverages sold to the general public. In the case of coupons redeemed by guests at restaurants not operated by the lodging establishment, the hotel will be considered the consumer of food and beverages provided to the hotel's guests and tax will apply to the charge by the restaurant to the hotel.

Regulation 1603. (Contd.)

Lodging establishments are retailers of food and beverages which do not qualify as "incidental" and tax applies as provided in subdivision (a)(2)(A) above. Amounts paid by guests for food and beverages in excess of a complimentary allowance are gross receipts subject to the tax. Lodging establishments are retailers of otherwise complimentary food and beverages sold to non-guests.

In the case of hotels with concierge floor, club level or similar programs, the formula set forth above shall be applied separately with respect to the complimentary food and beverages furnished to guests who participate in the concierge, club or similar program. That is, the concierge, club or similar program will be deemed to be an independent hotel separate and apart from the hotel in which it is operated. The ADR and the retail value of complimentary food and beverages per occupied room will be computed separately with respect to the guest room accommodations entitled to the privileges and amenities involved in the concierge, club or similar program.

The following example illustrates the steps in determining whether the food and beverages are complimentary:

FORMULA: ARV ÷ ADR ≤ 10%

Average Daily Rate (ADR):

Room Revenue	$9,108,000
Rooms Rented	74,607
ADR ($9,108,000 ÷ 74,607)	$122.08

Average Retail Value of Complimentary Food and Beverages (ARV):

Complimentary Food Cost	$169,057
Complimentary Beverage Cost	52,513
Total	$221,570
Add 100% Markup	221,570
Average Retail Value	$443,140
ARV per occupied room ($443,140 ÷ 74,607)	$5.94

Application of Formula: $5.94 ÷ $122.08 = 4.87%

In the above example, the average retail value of the complimentary food and beverages per occupied room for the preceding calendar year is equal to or less than 10% of the average daily rate. Therefore, under the provisions of this subdivision (a)(2)(B), the complimentary food and beverages provided to guests for the current calendar year qualify as "incidental". The lodging establishment is the consumer and not the retailer of such food and beverages. This computation must be made annually.

Regulation 1603. (Contd.)

When a lodging establishment consists of more than one location, the operations of each location will be considered separately in determining if that location's complimentary food and beverages qualify as incidental.

(b) "DRIVE-INS." Tax applies to sales of food products ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the ''drive-in'' establishment, even though such products are sold on a ''take out'' or ''to go'' order and are actually packaged or wrapped and taken from the premises of the retailer. Food products when sold in bulk, i.e., in quantities or in a form not suitable for consumption on the retailer's premises, are not regarded as ordinarily sold for immediate consumption on or near the location at which parking facilities are provided by the retailer. Accordingly, with the exception of sales of hot prepared food products (see (e) below) and sales of cold food under the 80-80 rule (see (c) below), sales of ice cream, doughnuts, and other individual food items in quantities obviously not intended for consumption on the retailer's premises, without eating utensils, trays or dishes and not consumed on the retailer's premises, are exempt from tax. Any retailer claiming a deduction on account of food sales of this type must support the deduction by complete and detailed records.[1]

(c) COLD FOOD SOLD ON A "TAKE-OUT" ORDER.

(1) GENERAL.

(A) Seller Meeting Criteria of 80-80 Rule. When a seller meets both criteria of the 80-80 rule as explained in subdivision (c)(3) below, tax applies to sales of cold food products (including sales for a separate price of hot bakery goods and hot beverages such as coffee) in a form suitable for consumption on the seller's premises even though such food products are sold on a ''take-out'' or ''to go'' order. Sales of cold food products which are suitable for consumption on the seller's premises are subject to the tax no matter how great the quantity purchased, e.g., 40 one-half pint containers of milk. Except as provided elsewhere in this regulation, tax does not apply to sales of food products which are furnished in a form not suitable for consumption on the seller's premises.

Operative April 1, 1996, although a seller may meet both criteria of the 80–80 rule, he or she may elect to separately account for the sale of ''take-out'' or ''to go'' orders

[1] The records acceptable in support of such a deduction are:
(a) A sales ticket prepared for each transaction claimed as being tax exempt showing:
(1) Date of the sale,
(2) The kind of merchandise sold,
(3) The quantity of each kind of merchandise sold,
(4) The price of each kind of merchandise sold,
(5) The total price of merchandise sold,
(6) A statement to the effect that the merchandise purchased is not to be consumed on or near the location at which parking facilities are provided by the retailer, and
(b) A daily sales record kept in sufficient detail to permit verification by audit that all gross receipts from sales have been accounted for and that all sales claimed as being tax exempt are included therein.

Regulation 1603. (Contd.)

of cold food products which are in a form suitable for consumption on the seller's premises. The gross receipts from the sale of those food products shall be exempt from the tax provided the seller keeps a separate accounting of these transactions in his or her records. Tax will remain applicable to the sale of food products as provided in subdivisions (a), (b), (e), or (f) of this regulation. Failure to maintain the required separate accounting and documentation claimed as exempt under this subdivision will revoke the seller's election under this subdivision.

(B) Seller Not Meeting Criteria of 80-80 Rule. When a seller does not meet both criteria of the 80-80 rule as explained in subdivision (c)(3) below, tax does not apply to sales of cold food products (including sales for a separate price of hot bakery goods and hot beverages such as coffee) when sold on a ''take-out'' or ''to go'' order.

(2) DEFINITIONS.

(A) For purposes of this subdivision (c), the term ''suitable for consumption on the seller's premises'' means food products furnished:

1. In a form which requires no further processing by the purchaser, including but not limited to cooking, heating, thawing, or slicing, and

2. In a size which ordinarily may be immediately consumed by one person such as a large milk shake, a pint of ice cream, a pint of milk, or a slice of pie. Cold food products (excluding milk shakes and similar milk products) furnished in containers larger in size than a pint are considered to be in a form not suitable for immediate consumption.

Pieces of candy sold in bulk quantities of one pound or greater are deemed to be sold in a form not suitable for consumption on the seller's premises.

The term does not include cold food products which obviously would not be consumed on the premises of the seller, e.g., a cold party tray or a whole cold chicken.

(B) For purposes of this subdivision (c), the term ''seller's premises'' means the individual location at which a sale takes place rather than the aggregate of all locations of the seller. For example, if a seller operates several drive-in and fast food restaurants, the operations of each location stand alone and are considered separately in determining if the sales of food products at each location meet the criteria of the 80-80 rule.

When two or more food-selling activities are conducted by the same person at the same location, the operations of all food related activities will be considered in determining if the sales of food products meet the criteria of the 80–80 rule. For example, if a seller operates a grocery store and a restaurant with no physical separation other than separate cash registers, the grocery store operations will be included in determining if the sales of food products meet the criteria of the 80–80 rule. When there is a physical separation where customers of one operation may not pass freely into the other operation, e.g., separate rooms with separate entrances but a common kitchen, each operation will be considered separately for purposes of this subdivision (c).

Regulation 1603. (Contd.)

(3) 80-80 RULE. Tax applies under this subdivision (c) only if the seller meets *both* of the following criteria:

(A) more than 80 percent of the seller's gross receipts are from the sale of food products, and

(B) more than 80 percent of the seller's retail sales of food products are taxable as provided in subdivisions (a), (b), (e), and (f) of this regulation.

Sales of alcoholic beverages, carbonated beverages, or cold food to go not suitable for immediate consumption should not be included in this computation. Any seller meeting both of these criteria and claiming a deduction for the sale of cold food products in a form not suitable for consumption on the seller's premises must support the deduction by complete and detailed records of such sales made.

(d) PLACES WHERE ADMISSION IS CHARGED.

(1) GENERAL. Tax applies to sales of food products when sold within, and for consumption within, a place the entrance to which is subject to an admission charge, during the period when the sales are made, except for national and state parks and monuments, and marinas, campgrounds, and recreational vehicle parks.

(2) DEFINITIONS.

(A) ''Place'' means an area the exterior boundaries of which are defined by walls, fences or otherwise in such a manner that the area readily can be recognized and distinguished from adjoining or surrounding property. Examples include buildings, fenced enclosures and areas delimited by posted signs.

(B) ''Within a place'' means inside the door, gate, turnstile, or other point at which the customer must pay an admission charge or present evidence, such as a ticket, that an admission charge has been paid. Adjacent to, or in close proximity to, a place is not within a place.

(C) ''Admission charge'' means any consideration required to be paid in money or otherwise for admittance to a place.

''Admission charge'' does not include:

1. Membership dues in a club or other organization entitling the member to, among other things, entrance to a place maintained by the club or organization, such as a fenced area containing a club house, tennis courts, and a swimming pool. Where a guest is admitted to such a place only when accompanied by or vouched for by a member of the club or organization, any charge made to the guest for use of facilities in the place is not an admission charge.

2. A charge for a student body card entitling the student to, among other things, entrance to a place, such as entrance to a school auditorium at which a dance is held.

3. A charge for the use of facilities within a place to which no entrance charge is made to spectators. For example, green fees paid for the privilege of playing a golf course, a charge made to swimmers for the use of a pool within a place, or a charge made for the use of lanes in a public bowling place.

Regulation 1603. (Contd.)

(D) "National and state parks and monuments" means those which are part of the National Park System or the State Park System. The phrase does not include parks and monuments not within either of those systems, such as city, county, regional, district or private parks.

(3) PRESUMPTION THAT FOOD IS SOLD FOR CONSUMPTION WITHIN A PLACE. When food products are sold within a place the entrance to which is subject to an admission charge, it will be presumed, in the absence of evidence to the contrary, that the food products are sold for consumption within the place. Obtaining and retaining evidence in support of the claimed tax exemption is the responsibility of the retailer. Such evidence may consist, for example, of proof that the sales were of canned jams, cake mixes, spices, cooking chocolate, or other items in a form in which it is unlikely that such items would be consumed within the place where sold.

(4) FOOD SOLD TO STUDENTS. The exemption otherwise granted by Section 6363 does not apply to sales of food products to students when sold within, and for consumption within, a place the entrance to which is subject to an admission charge, and such sales are subject to tax except as provided in (p) of this regulation. For example, when food products are sold by a student organization to students or to both students and nonstudents within a place the entrance to which is subject to an admission charge, such as a place where school athletic events are held, the sales to both students and nonstudents are taxable.

(e) HOT PREPARED FOOD PRODUCTS

(1) GENERAL. Tax applies to all sales of hot prepared food products unless otherwise exempt. "Hot prepared food products" means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold. The mere heating of a food product constitutes preparation of a hot prepared food product, e.g., grilling a sandwich, dipping a sandwich bun in hot gravy, using infra-red lights, steam tables, etc. If the sale is intended to be of a hot food product, such sale is of a hot food product regardless of cooling which incidentally occurs. For example, the sale of a toasted sandwich intended to be in a heated condition when sold, such as a fried ham sandwich on toast, is a sale of a hot prepared food product even though it may have cooled due to delay. On the other hand, the sale of a toasted sandwich which is not intended to be in a heated condition when sold, such as a cold tuna sandwich on toast, is not a sale of a hot prepared food product. When a single price has been established for a combination of hot and cold food items, such as a meal or dinner which includes cold components or side items, tax applies to the entire established price regardless of itemization on the sales check. The inclusion of any hot food product in an otherwise cold combination of food products sold for a single established price, results in the tax applying to the entire established price, e.g., hot coffee served with a meal consisting of cold food products, when the coffee is included in the established price of the meal. If a single price for the combination of hot and cold food items is listed on a menu, wall sign or is otherwise advertised, a single price has been established. Except as otherwise provided in (b), (c), (d) or (f) of this regulation, or in regulation 1574, tax does not

apply to the sale for a separate price of bakery goods, beverages classed as food products, or cold or frozen food products. Hot bakery goods and hot beverages such as coffee are hot prepared food products but their sale for a separate price is exempt unless taxable as provided in (b), (c), (d) or (f) of this regulation, or in Regulation 1574. Tax does apply if a hot beverage and a bakery product or cold food product are sold as a combination for a single price. Hot soup, bouillon, or consommé is a hot prepared food product which is not a beverage.

(2) AIR CARRIERS ENGAGED IN INTERSTATE OR FOREIGN COMMERCE. Tax does not apply to the sale, storage, use, or other consumption of hot prepared food products sold by caterers or other vendors to air carriers engaged in interstate or foreign commerce for consumption by passengers on such air carriers, nor to the sale, storage, use, or other consumption of hot prepared food products sold or served to passengers by air carriers engaged in interstate or foreign commerce for consumption by passengers on such air carriers. ''Air carriers'' are persons or firms in the business of transporting persons or property for hire or compensation, and include both common and contract carriers. ''Passengers'' do not include crew members. Any caterer or other vendor claiming the exemption must support it with an exemption certificate from the air carrier substantially in the form prescribed in Appendix A of this regulation.

(f) FOOD FOR CONSUMPTION AT FACILITIES PROVIDED BY THE RETAILER. Tax applies to sales of sandwiches, ice cream, and other foods sold in a form for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

A passenger's seat aboard a train, or a spectator's seat at a game, show, or similar event is not a ''chair'' within the meaning of this regulation. Accordingly, except as otherwise provided in (c), (d), and (e) above, tax does not apply to the sale of cold sandwiches, ice cream, or other food products sold by vendors passing among the passengers or spectators where the food products are not ''for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer.''

(g) TIPS AND SERVICE CHARGES. No employer shall collect, take, or receive any gratuity or a part thereof, paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of such gratuity, or require an employee to credit the amount, or any part thereof, of such gratuity against and as a part of the wages due the employee from the employer. (Labor Code Section 351.) If this prohibition is violated, any amount of such gratuities received by the employer will be considered a part of the gross receipts of the employer and subject to the tax.

Amounts designated as service charges, added to the price of meals are a part of the selling price of the meals and, accordingly, must be included in the retailer's gross receipts subject to tax even though such service charges are made in lieu of tips and are paid over by the retailer to employees.

Regulation 1603. (Contd.)

(h) CATERERS.

(1) DEFINITION. The term "caterer" as used in this regulation means a person engaged in the business of serving meals, food, or drinks on the premises of the customer, or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer, but does not include employees hired by the customer by the hour or day.

(2) SALES TO CATERERS. A caterer generally is considered to be the consumer of tangible personal property normally used in the furnishing and serving of meals, food or drinks, except for separately stated charges by the caterer for the lease of tangible personal property or tangible personal property regarded as being sold with meals, food or drinks such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks.

(3) SALES BY CATERERS.

(A) Caterer as Retailer. Tax applies to the entire charges made by caterers for serving meals, food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals, whether performed by the caterer, the caterer's employees or subcontractors. Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers. Tax applies to charges made by caterers for hot prepared food products as in (e) above whether or not served by the caterers. A caterer who separately states or itemizes charges for the lease of tangible personal property regardless of the use of the property will be deemed to be the lessor of such property. Tax applies in accordance with Regulation 1660 Leases of Tangible Personal Property—In General. Tax does not apply to charges made by caterers for the rental of dishes, silverware, glasses, etc., purchased by the caterer with tax paid on the purchase price if no food is provided or served by the caterers in connection with such rental.

(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.

1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of food or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in accordance with Regulation 1660.

2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, linen, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.

Regulation 1603. (Contd.)

(C) Caterers Planning, Designing and Coordinating Events.

1. Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, e.g., coat-check clerks, parking attendants, security guards, etc.

2. When a caterer sells meals, food, or drinks, and the serving of them, to other persons such as event planners, party coordinators, or fundraisers, who buy and sell the same on their own account or for their own sake, it is a sale for resale for which the caterer may accept a resale certificate. However, a caterer may only claim the sale as a resale if the caterer obtains a resale certificate in compliance with Regulation 1668. A person is buying or selling for his or her own account, or own sake, when such person has his or her own contract with a customer to sell the meals, food, or drinks to the customer, and is not merely acting on behalf of the caterer.

3. When a caterer sells meals, food or drinks and the serving of them to other persons who charge a fee for their service unrelated to the taxable sale, the separately stated fee is not subject to tax.

(D) Sales of Meals by Caterers to Social Clubs, Fraternal Organizations. Sales of meals to social clubs and fraternal organizations, as those terms are defined in subdivision (i) below, by caterers are sales for resale if such social clubs and fraternal organizations are the retailers of the meals subject to tax under subdivision (i) and give valid resale certificates therefor.

(E) Tips, Gratuities, or Service Charges. An optional tip or gratuity is not subject to tax. A mandatory tip, gratuity, or service charge is included in taxable gross receipts. A tip, gratuity, or service charge negotiated in advance of an event between the caterer and the customer is mandatory even though the amount or percentage is negotiated. A tip, gratuity, or service charge itemized on an invoice or billing by a caterer is not optional even if the invoice or billing itemizes with a notation such as "optional gratuity." A gratuity is optional only if it is voluntarily added by the customer.

Examples of mandatory tips, gratuities, or service charges include:

"A 15% gratuity [or service charge] will be added to parties of 8 or more."

"Suggested gratuity 15%," itemized on the invoice or bill by the caterer. Tips, gratuities, and service charges are further discussed in subdivision (g).

(4) PREMISES.

General. Separately stated charges for the lease of premises on which meals, food, or drinks are served, are nontaxable leases of real property. Where a charge for leased premises is a guarantee against a minimum purchase of meals, food or drinks, the charge for the guarantee is gross receipts subject to tax. Where a person contracts to provide both premises and meals, food or drinks, the charge for the meals, food or drinks must be reasonable in order for the charge for the premises to be non taxable.

Regulation 1603. (Contd.)

(5) PRIVATE CHEFS. A private chef is generally not an employee of the customer, but an independent contractor who pays his or her own social security, federal and state income taxes. Such a private chef, who prepares and serves meals, food and drinks in the home of his or her customer is a caterer under this regulation.

(i) SOCIAL CLUBS AND FRATERNAL ORGANIZATIONS. ''Social Clubs and Fraternal Organizations'' as used herein include any corporation, partnership, association or group or combination acting as a unit, such as service clubs, lodges, and community, country, and athletic clubs.

The tax applies to receipts from the furnishing of meals, food, and drink by social clubs and fraternal organizations unless furnished: (1) exclusively to members; and also, (2) less frequently than once a week. Both these requirements must be met. If the club or organization furnishes meals, food or drink to nonmembers, all receipts from the furnishing of meals, food or drink are subject to tax whether furnished to members or nonmembers, including receipts on occasions when furnished exclusively to members. Meals, food or drink paid for by members are considered furnished to them even though consumed by guests who are not members.

(j) STUDENT MEALS.

(1) DEFINITIONS.

(A) "Food Products". As used herein, the term ''food products'' as defined in Regulation 1602 (18 CCR 1602) includes food furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare or serve food to others.

(B) "Meals". As used herein, the term ''meals'' includes both food and nonfood products, which are sold to students for an established single price at a time set aside for meals. If a single price for the combination of a nonfood product and a food product is listed on a menu or on a sign, a single price has been established. The term ''meals'' does not include nonfood products which are sold to students for a separate price and tax applies to the sales of such products. Examples of nonfood products are: carbonated beverages and beer. For the purpose of this regulation, products sold at a time designated as a ''nutrition break'', ''recess'', or similar break, will not be considered ''meals''.

(2) APPLICATION OF TAX.

(A) Sales By Schools, School Districts and Student Organizations. Sales of meals or food products for human consumption to students of a school by public or private schools, school districts, and student organizations, are exempt from tax, except as otherwise provided in (d)(4) above.

(B) Sales by Parent-Teacher Associations. Tax does not apply to the sale of, nor the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served to the students of a school by parent-teacher associations. Parent-teacher associations qualifying under Regulation 1597 as consumers are not retailers of tangible personal property, which they sell.

Regulation 1603. (Contd.)

Accordingly, tax does apply to the sale to such associations of nonfood items such as carbonated beverages, containers, straws and napkins.

(C) Sales by Blind Vendors. Tax does not apply to the sale of meals or food products for human consumption to students of a school by any blind person (as defined in Section 19153 of the Welfare and Institutions Code) operating a restaurant or vending stand in an educational institution under Article 5 of Chapter 6 of Part 2 of Division 10 of the Welfare and Institutions Code, except as otherwise provided in (d)(4) above.

(D) Sales by Caterers. The application of tax to sales by caterers in general is explained in subdivision (h) above. However, tax does not apply to the sale by caterers of meals or food products for human consumption to students of a school, if all the following criteria are met:

(1) The premises used by the caterer to serve the lunches to the students are used by the school for other purposes, such as sporting events and other school activities, during the remainder of the day;

(2) The fixtures and equipment used by the caterer are owned and maintained by the school; and

(3) The students purchasing the meals cannot distinguish the caterer from the employees of the school.

(k) EMPLOYEES' MEALS.

(1) IN GENERAL. Any employer or employee organization that is in the business of selling meals, e.g., a restaurant, hotel, club, or association, must include its receipts from the sales of meals to employees, along with its receipts from sales to other purchasers of meals, in the amount upon which it computes its sales tax liability. An employer or an employee organization selling meals only to employees becomes a retailer of meals and liable for sales tax upon its receipts from sales of meals if it sells meals to an average number of five or more employees during the calendar quarter.

(2) SPECIFIC CHARGE. The tax applies only if a specific charge is made to employees for the meals. Tax does not apply to cash paid an employee in lieu of meals. A specific charge is made for meals if:

(A) Employee pays cash for meals consumed.

(B) Value of meals is deducted from employee's wages.

(C) Employee receives meals in lieu of cash to bring compensation up to legal minimum wage.

(D) Employee has the option to receive cash for meals not consumed.

(3) NO SPECIFIC CHARGE. If an employer makes no specific charge for meals consumed by employees, the employer is the consumer of the food products and the non-food products, which are furnished to the employees as a part of the meals.

Regulation 1603. (Contd.)

In the absence of any of the conditions under (k)(2) a specific charge is not made if:

(A) A value is assigned to meals as a means of reporting the fair market value of employees' meals pursuant to state and federal laws or regulations or union contracts.

(B) Employees who do not consume available meals have no recourse on their employer for additional cash wages.

(C) Meals are generally available to employees, but the duties of certain employees exclude them from receiving the meals and are paid cash in lieu thereof.

(4) MEALS CREDITED TOWARD MINIMUM WAGE. If an employee receives meals in lieu of cash to bring his or her compensation up to the legal minimum wage, the amount by which the minimum wage exceeds the amount otherwise paid to the employee is includable in the employer's taxable gross receipts up to the value of the meals credited toward the minimum wage.

For example, if the minimum rate for an eight-hour day is $46.00, and the employee received $43.90 in cash, and a lunch is received which is credited toward the minimum wage in the maximum allowable amount of $2.10, the employer has received gross receipts in the amount of $2.10 for the lunch.

(5) TAX REIMBURSEMENT. If a separately stated amount for tax reimbursement is not added to the price of meals sold to employees for which a specific charge is made, the specific charge will be regarded as being a tax-included charge for the meals.

***(l)* RELIGIOUS ORGANIZATIONS.** Tax does not apply to sales of meals and food products for human consumption furnished or served by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in furnishing or serving the meals and food products is to obtain revenue for the functions and activities of the organization and the revenue obtained from furnishing or serving the meals and food products is actually used in carrying on such functions and activities. For the purposes of this regulation, "religious organization" means any organization the property of which is exempt from taxation pursuant to Subdivision (f) of Section 3 of Article XIII of the State Constitution.

(m) INSTITUTIONS. Tax does not apply to the sale of, nor the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by patients or residents of an "institution" as defined in Regulation 1503. Tax, however, does apply to the sale of meals and food products by an institution to persons other than patients or residents of that institution.

(n) MEAL PROGRAMS FOR LOW-INCOME ELDERLY PERSONS. Tax does not apply to the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served to low-income elderly persons at or below cost by a nonprofit organization or governmental agency under a program funded by this state or the United States for such purposes.

Regulation 1603. (Contd.)

(o) FOOD PRODUCTS, NONALCOHOLIC BEVERAGES AND OTHER TANGIBLE PERSONAL PROPERTY TRANSFERRED BY NONPROFIT YOUTH ORGANIZATIONS. See Regulation 1597 for application of tax on food products, nonalcoholic beverages and other tangible personal property transferred by nonprofit youth organizations.

(p) NONPROFIT PARENT-TEACHER ASSOCIATIONS. Nonprofit parent-teacher associations and equivalent organizations qualifying under Regulation 1597 are consumers and not retailers of tangible personal property, which they sell.

(q) MEALS AND FOOD PRODUCTS SERVED TO CONDOMINIUM RESIDENTS. Tax does not apply to the sale of and the storage, use, or other consumption in this state of meals and food products for human consumption furnished to and consumed by persons 62 years of age or older residing in a condominium and who own equal shares in a common kitchen facility; provided, that the meals and food products are served to such persons on a regular basis.

This exemption is applicable only to sales of meals and food products for human consumption prepared and served at the common kitchen facility of the condominium. Tax applies to sales to persons less than 62 years of age.

(r) "FREE" MEALS. When a restaurant agrees to furnish a "free" meal to a customer who purchases another meal and presents a coupon or card, which the customer previously had purchased directly from the restaurant or through a sales promotional agency having a contract with the restaurant to redeem the coupons or cards, the restaurant is regarded as selling two meals for the price of one, plus any additional compensation from the agency or from its own sales of coupons. Any such additional compensation is a part of its taxable gross receipts for the period in which the meals are served.

Tax applies only to the price of the paid meal plus any such additional compensation.

(s) FOOD STAMP COUPONS. Tax does not apply to tangible personal property, which is eligible to be purchased with federal food stamp coupons acquired pursuant to the Food Stamp Act of 1977 and so purchased. When payment is made in the form of both food stamps and cash, the amount of the food stamp coupons must be applied first to tangible personal property normally subject to the tax, e.g., nonalcoholic carbonated beverages. Retailers are prohibited from adding any amount designated as sales tax, use tax, or sales tax reimbursement to sales of tangible personal property purchased with food stamp coupons. (See paragraph (c) of Regulation 1602.5 for special reporting provisions by grocers.)

(t) HONOR SYSTEM SNACK SALES. An "honor system snack sale" means a system where customers take snacks from a box or tray and pay by depositing money in a container provided by the seller. Snacks sold through such a system may be subject to tax depending upon where the sale takes place. Sales of such snacks are taxable when sold at or near a lunchroom, break room, or other facility that provides

Regulation 1603. (Contd.)

tables and chairs, and it is contemplated that the food sold will normally be consumed at such facilities. Honor system snack sales do not include hotel room mini-bars or snack baskets.

History: Amended September 14, 1955.
Amended September 13, 1961.
Amended September 18, 1963.
Amended September 2, 1965, applicable as amended September 17, 1965.
Amended October 8, 1968, applicable on and after October 1, 1968.
Amended November 3, 1969, effective as amended January 1, 1970.
Amended December 10, 1969, applicable as amended January 1, 1970.
Amended and renumbered June 5, 1970, effective July 9, 1970.
Amended June 19, 1970, effective July 23, 1970.
Amended November 5, 1970, effective December 10, 1970.
Amended May 12, 1971, effective June 13, 1971, as a restatement.
Amended September 15, 1971, effective October 1, 1971.
Amended December 15, 1971, applicable on and after January 1, 1972.
Amended February 16, 1972, effective March 25, 1972.
Amended September 14, 1972, effective September 15, 1972.
Amended October 17, 1973, effective November 18, 1973.
Amended October 8, 1974, effective October 10, 1974. Noted effect of change of definition of ''institution''.
Amended December 19, 1974, effective January 26, 1975. Clarified tax exempt sales of hot food to interstate air carriers, reorganized (d) and (e), and added (n) on reference to section on tax exempt sales by nonprofit youth sports organizations.
Amended September 19, 1975, effective October 26, 1975. Corrected reference and clarified the taxable status of sales of hot bakery goods and hot beverages, of vending machine sales, and of credited tips against the minimum wage.
Amended December 17, 1975, effective January 1, 1976. Noted that employers can no longer credit tips against wages of employees and deleted references to such credit of tips as taxable receipts.
Amended September 28, 1978, effective November 18, 1978. Amends (i)(2)(A) and (c)(4); adds (i)(2)(B) and (o).
Amended April 9, 1980, effective July 6, 1980. In Subsection (k) deleted ''section 1½'' and added ''subdivision (f) of Section 3 of Article XIII of the State Constitution. Added to Appendix A all banks except ''Purchasing Air Carrier.''
Amended April 1, 1981, effective August 19, 1981. In (1) changed ''inmates'' to ''residents.'' Added (p).
Amended May 9, 1984, effective September 12, 1984. In (d)(1) added reference to Regulation 1574; in (i)(2)(A) and (i)(3) deleted reference to 33 percent of gross receipts from sale of cold food products sold for more than 15 cents; and in (i)(2)(A) deleted reference to Regulation 1574.
Amended April 9, 1985, effective June 27, 1985. A new subdivision (c) was added to interpret and explain the 1984 amendments to Section 6359. Subdivisions (d) through (p) were relettered to (e) through (q) consecutively. Subdivision (f), formerly designated (e) was changed by deleting obsolete language which was contrary to the provisions of Section 6359, as amended by Chapter 930, Statutes of 1984, and there were corrections of cross references.

Regulation 1603. (Contd.)

Amended May 6, 1986, effective July 24, 1986. In subdivision (d)(1), amended regulation to include marinas, campgrounds, and recreational vehicle parks. In subdivision (o), amended regulation to limit organizations covered by regulation, and made the organizations consumers of certain items of tangible personal property.

Amended August 24, 1988, effective November 19, 1988. In subdivision (s) amended to provide that certain items purchased with food stamp coupons are exempt from sales and use taxes. In subdivision (r) amended to provide guidance with reference to free meals provided by restaurants under a sales promotional plan.

Amended August 1, 1989, effective October 15, 1989. Subdivision (m), added the explanation that tax does apply to sales of meals and food productions to persons other than patients or residents.

Amended March 17, 1992, effective July 3, 1992.

Divided former paragraph (j)(1) into (A) Food Products, as defined in Regulation 1602, and (B) Meals, which includes tax application to food and non-food products; deleted ''or equivalent organizations'' in paragraph (j)(2)(B); corrected various references, printing errors and numbering; added footnote 1 to paragraph (b).

Amended October 26, 1993, effective February 20, 1994. Amended subdivision (j)(1)(B) to delete ''snack food'' as an example of a non-food product; amended subdivisions (b) and (c); added (c)(1)(B), (c)(2) and (c)(3) to clarify the application of the 80-80 rule.

Amended September 23, 1998, effective January 9, 1999. Subdivision (a) rewritten and expanded. New subdivision (a)(1) designated; former first unnamed paragraph renamed subdivision (a)(1)(A), new subdivisions (a)(1)(B–E) added; former unnumbered paragraph included in new subdivision (a)(2)(A) with references to special packages and beverages added; subdivision (2)(B) added. Subdivision (c)(1)(A) amended by substituting phrase ''meets both criteria of the 80-80 rule as explained in'' for ''qualifies under the provisions of'' and ''(80-80 rule)'' and adding new unnumbered paragraph; subdivision (c)(1)(B) amended by substituting phrase ''meets both criteria of the 80-80 rule as explained in'' for ''qualifies under the provisions of'' and ''(80-80 rule)''; subdivision (c)(2) amended by moving substance of subdivision (c)(2) to new subdivision (c)(2)(A) and redesignating former paragraphs (c)(2)(A) & (B) as new subdivisions (c)(2)(A)1. & 2. (with references to milkshakes added to new subdivision (c)(2)(A)2.); new subdivision (c)(2)(B) added; subdivision (c)(3)(B) revised for clarity and new first sentence added to unnumbered paragraph. Subdivision (k)(2) amended by adding ''to employees'' to first sentence. Subdivision (k)(3) amended by adding phrases ''by an employer'' and ''consumed by employees'' and ''and . . . meals'' and deleting ''purchased . . . employer.''; and subdivision (k)(4) amended by adding ''or her'' to first paragraph and substituting ''$46.00'' for ''$13.20'' and ''$43.90'' for ''$12.20'' and ''$2.10'' for ''$1.00.'' Subdivision letters deleted from cross-references to Regulation 1597 in subdivisions (o) and (p).

Amended February 6, 2002, effective June 13, 2002. Subdivision (a)(1)(C)—words ''there'' and ''the'' capitalized. Subdivision (a)(2)(A)—new sentence added to the end of the first paragraph; first unnumbered paragraph—spelling of ''Soufflé'' corrected. Subdivision (e)(1)—spelling of ''consommé'' corrected. Subdivision (h) is expanded with several new subdivisions. First paragraph of existing subdivision (h) moved to new

Regulation 1603. (Contd.)

subdivision (h)(1) and entitled ''DEFINITION''; word ''and'' replaced with ''or'' and phrase ''or . . . caterer,'' added. Phrase ''customer by the'' added. New subdivisions (h)(2) and (h)(3) added. Language of first unnumbered paragraph of existing subdivision (h) transferred to new subdivision (h)(3)(A) and re-written. Phrase ''A . . . General'' added. New subdivisions (h)(3)(B), (C) & (E), (h)(4), and (h)(5) added. Language of current second unnumbered paragraph promulgated as new subdivision (h)(3)(D). Subdivision (j)(2)—new subdivision (D) added. Subdivision (k)(3)—subdivision re-written from passive to active voice. Subdivision (t) added.

Regulation 1603. (Contd.)

Appendix A
CALIFORNIA SALES TAX EXEMPTION CERTIFICATE
SUPPORTING EXEMPTION UNDER SECTION 6359.1

The undersigned certifies that it is an air carrier engaged in interstate or foreign commerce and that the hot prepared food products purchased from_____ will be consumed by passengers on its flights.

The undersigned further certifies that it understands and agrees that if the property purchased under this certificate is used by the purchaser for any purpose other than that specified above, the purchaser shall be liable for sales tax as if it were a retailer making a retail sale of the property at the time of such use, and the sales price of the property to it shall be deemed the gross receipts from such sale.

Date Certificate Given_____

Purchasing Air Carrier_____
(company name)

Address_____

Signed By_____
(signature of authorized person)

_____
(print or type name)

Title_____
(owner, partner, purchasing agent, etc.)

Seller's Permit No. (if any)_____

Regulation 1610. VEHICLES, VESSELS, AND AIRCRAFT.

References: Sections 6006, 6010, 6202, 6271–6294, 6366.2, 6422.1, 6451, 6455, 6485.1, 6514.1, and 6591, Revenue and Taxation Code.

(a) DEFINITIONS. For purposes of this regulation the following definitions govern:

(1) "VEHICLE". "Vehicle" means:

(A) Any device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved by human power or used exclusively upon stationary rails or tracks and excepting a device that is not required to be registered under the Vehicle Code. "Vehicle" does not include a mobilehome or commercial coach required to be registered under the Health and Safety Code. "Vehicle" includes trailer coaches which are required to be registered with the Department of Motor Vehicles.

(B) Off-highway motor vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code. "Vehicle" does not include automatic bale wagon.

Regulation 1610. (Contd.)

(2) "VESSEL." "Vessel" means any boat, ship, barge, craft, or floating thing designed for navigation in the water, except:

(A) A seaplane.

(B) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical device attached to the watercraft itself.

(C) A watercraft of a type designed to be propelled solely by oars or paddles.

(D) A watercraft eight feet or less in length of a type designed to be propelled by sail. A motor or other component of a vessel shall be deemed to be a part of the vessel when sold therewith.

(3) "AIRCRAFT." "Aircraft" means any contrivance designed for powered navigation in the air, except a rocket or a missile. "Aircraft" includes an airframe or a fuselage even without an engine.

(b) APPLICATION OF TAX.

(1) Sales tax does not apply to:

(A) Sales of vehicles other than off-highway vehicles subject to identification under Division 16.5 of the Vehicle Code, when the retailer is not licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of Section 11615.5 of the Vehicle Code,[1] or

(B) Sales of off-highway vehicles subject to identification under Division 16.5 of the Vehicle Code when the retailer is not licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of Section 11615.5 of the Vehicle Code,[1] nor required to hold a seller's permit by reason of the number, scope and character of the person's sales of such off-highway vehicles, or

(C) Sales of vessels and aircraft by a person not required to hold a seller's permit by reason of the number, scope, and character of the person's sales of such vessels or aircraft, as the case may be.

Except as otherwise provided herein, the purchaser must pay use tax measured by the sales price of the property to the purchaser.

(2) Neither sales tax nor use tax applies to the sale or use of:

(A) Vehicles, vessels, and aircraft sold by the parent, grandparent, grandchild, child, or spouse of the purchaser, or by the brother or sister of the purchaser if both are under the age of 18 and are related by blood or adoption, where the seller is not engaged in the business of selling the type of property for which the exemption is claimed. Claimants of this exemption must submit satisfactory evidence of relationship.

---

[1] Section 11615.5 of the Vehicle Code requires a licensed lessor-retailer to pay sales tax with respect to the retail sale of a motor vehicle, except a sale to the lessee of the vehicle, if the lessor-retailer files a report of sale with the Department of Motor Vehicles.

Regulation 1610. (Contd.)

(B) Vehicles purchased out of state by a member of the armed services on active duty and delivered to the service member out of state if the purchase is made prior to the effective date of discharge from the service and the service member's intention to use the vehicle in California results from official transfer orders to California and not from the service member's own independent determination. The service member will be considered to have made an independent determination to use the vehicle in California if the contract is made to purchase the vehicle after the service member receives official transfer orders to California or if at the time the contract to purchase the vehicle is made the service member arranges to take receipt of the vehicle in California.

(C) Vehicles, vessels, and aircraft when included in any transfer of all or substantially all of the property held or used in the course of business activities of the transferor and when after the transfer the real and ultimate ownership remains substantially similar.

(D) Operative January 1, 1990, a new, noncommercial motor vehicle manufactured in the United States and sold to a resident of a foreign country who arranges for the purchase through an authorized vehicle dealer in the foreign country prior to arriving in the United States, if:

1. the purchaser is issued an in-transit permit by the California Department of Motor Vehicles pursuant to Section 6700.1 of the Vehicle Code, and

2. prior to or at the end of 30 consecutive days from the first date of operation under the in-transit permit, the motor vehicle is delivered or shipped to a point outside the United States by the retailer, by means of:

a. facilities operated by the retailer, or

b. a carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export. As used herein, the term ''carrier'' means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers.

Retailers must obtain and retain evidence of export to support deductions taken under this section. Examples of evidence of export of vehicles which are driven to a foreign country by employees of the retailer include but are not limited to, employees' expense claims, fuel purchase receipts, and motel receipts. Examples of evidence to support deductions for exports by other than the retailers' facilities include but are not limited to, bills of lading and import documents of a foreign country.

If a vehicle is not removed from this country as required above, the retailer will be subject to payment of the sales tax as well as fees and penalties as specified in Section 6700.1(a) of the Vehicle Code. Section 6700.1(i) of the Vehicle Code provides that if the conditions of the in-transit permit are not met, the manufacturer of the new motor vehicle sold to a foreign purchaser under the above conditions will reimburse the retailer for an amount equal to the sales tax and registration fees and penalties paid by the retailer. Such amounts received by the retailer from the manufacturer of the vehicle are not considered part of the gross receipts from the sale of the vehicle.

Regulation 1610. (Contd.)

(c) PAYMENT OF TAX BY PURCHASER.

(1) VEHICLES. Purchasers of vehicles, including off-highway vehicles subject to identification under Division 16.5 of the Vehicle Code, the sales of which are exempt from sales tax under (b)(1), above, shall pay tax to the Department of Motor Vehicles, acting for and on behalf of the Board, at the time of making application for registration or identification, except:

(A) When the applicant establishes that the tax is inapplicable under the general exemptions in (b)(2) above.

(B) When the applicant furnishes to the Department of Motor Vehicles a use tax exemption or tax clearance certificate issued by the board.

A purchaser may pay the use tax and penalty, if any, to the Department of Motor Vehicles so as to secure immediate action upon the purchaser's application for registration or identification and thereafter apply through the Department of Motor Vehicles to the board for a refund of the amount so paid. Except when a vehicle, required to be registered under the Vehicle Code is purchased outside this state from a manufacturer or a vehicle dealer, whenever the purchaser of such a vehicle is required to pay use tax to the Department of Motor Vehicles, the sales price shall be presumed to be an amount equal to the market value of the vehicle at the time of the purchase as that value is determined to measure vehicle license fees imposed under Part 5 of Division 2 of the Revenue and Taxation Code, multiplied by a factor of 1.2 for a noncommercial vehicle, including a passenger vehicle, as defined in Section 465 of the Vehicle Code; or by a factor of 1.8 for a commercial vehicle as defined in Section 260 of the Vehicle Code. Commercial motor vehicles under 6,001 pounds unladen weight and commercial trailers under 2,000 pounds unladen weight shall be treated as noncommercial vehicles for the purposes of this regulation. The presumption may be rebutted by evidence which establishes that the sales price was other than such amount.

The measure of tax on the purchase of an off-highway vehicle subject to identification under Division 16.5 of the Vehicle Code is the sales price.

The measure of tax on a purchase of a vehicle from a bona fide dealer outside this state is the sales price and is payable to the Department of Motor Vehicles.

If the purchaser of a vehicle makes an application to the Department of Motor Vehicles which is not timely, and is subject to penalty because of delinquency in effecting registration or identification or transfer of registration or identification of the vehicle, the purchaser then becomes liable also for penalty as specified in Section 6591 of the Revenue and Taxation Code, but no interest shall accrue.

If the purchaser of a vehicle does not make application to the Department of Motor Vehicles, or does not pay the amount of use tax due, or files a return with the Board under Section 6455 of the Revenue and Taxation Code which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451) of the Revenue and Taxation Code.

Any purchaser of a vehicle who registers it outside the state for the purpose of evading the payment of taxes due shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vehicle.

Regulation 1610. (Contd.)

(2) VESSELS AND AIRCRAFT.

(A) AIRCRAFT AND DOCUMENTED VESSELS. Except as provided in subdivision (c)(2)(C), purchasers of aircraft or documented vessels from any person other than a person required to hold a seller's permit by reason of the number, scope, and character of the person's sales of documented vessels or of aircraft, as the case may be and not otherwise specifically exempt shall report and pay tax to the board. A documented vessel means a vessel which is required to be documented by the United States Coast Guard and for which the United States Coast Guard has issued a valid marine certificate.

A purchaser who holds a seller's permit, or to whom a consumer's use tax account number has been assigned, must include the tax in the purchaser's return for the period in which the aircraft or documented vessel was purchased.

A purchaser who does not hold a seller's permit, or to whom a consumer's use tax number has not been assigned, shall make a return and pay use tax, measured by the sales price of the vessel or aircraft, on or before the last day of the calendar month next succeeding the month in which a return form is mailed to the purchaser, or the last day of the twelfth month following the month during which the vessel or aircraft was purchased, whichever period expires the earlier.

Any purchaser of a vessel or aircraft who registers it outside the state for the purpose of evading the payment of taxes due shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vessel or aircraft.

(B) UNDOCUMENTED VESSELS. Any vessel which is not required to have, and does not have a valid marine certificate issued by the United States Coast Guard is an undocumented vessel.

Purchasers of undocumented vessels, the sales of which are exempt from sales tax under (b)(1) above, shall pay the use tax to the Department of Motor Vehicles, acting for, and on behalf of, the Board pursuant to Section 9928 of the Vehicle Code, at the time of making application for registration except:

1. When the applicant establishes that the tax is inapplicable under the general exemptions in (b)(2)(A) and (b)(2)(C) above.

2. When the applicant furnishes to the Department of Motor Vehicles a certificate of use tax exemption or tax clearance certificate issued by the Board.

3. When, operative January 1, 1996, the applicant has proof of payment of sales or use tax to a broker under the provisions of subdivision (c)(2)(C).

If at the time of registration the purchaser does not have the necessary documentation to establish that tax does not apply but wants to secure immediate action upon his or her application for registration, the purchaser will be required to pay the tax to the Department of Motor Vehicles. If the purchaser can thereafter establish that no tax was applicable, he or she may file with the Board a claim for refund of the tax paid to the Department of Motor Vehicles.

If the purchaser makes an application to the Department of Motor Vehicles which is not timely, and is subject to penalty because of delinquency in effecting registration

Regulation 1610. (Contd.)

or transfer of registration of the undocumented vessel, he or she then becomes liable also for penalty as specified in Section 6591 of the Revenue and Taxation Code, but no interest shall accrue.

If the purchaser does not make application to either department, or does not pay the amount of use tax due, or files a return with the Board under Section 6455 of the Revenue and Taxation Code which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451) of the Revenue and Taxation Code.

Any purchaser of a vessel who registers it outside the state for the purpose of evading the taxes due shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vessel.

(C) VESSELS AND AIRCRAFT PURCHASED THROUGH BROKERS. Notwithstanding any other provision, when a person purchases a vessel or aircraft, on or after January 1, 1996, from another person through a broker, the purchaser is relieved from the liability for use tax on the transaction only to the extent that he or she:

1. has paid an amount as sales or use tax to the broker, and

2. has obtained and retained a receipt from the broker showing the payment of such tax.

The purchaser is relieved from liability only to the extent of the amount paid, and for which a receipt is provided, but remains liable for any amount of tax later determined to be due. An amount designated as sales or use tax collected by the broker from the purchaser constitutes a debt owed by the broker to the state and the broker shall be liable for that amount as if he or she were a retailer engaged in business in this state required to collect that amount as use tax from the purchaser.

(d) LEASED VEHICLES. (See Regulation 1661 (18 CCR 1661) for application of tax to leases of mobile transportation equipment.)

(1) LEASE OF VEHICLES. The general rules respecting the application of tax to leases apply to leases of vehicles, subject to the following special requirements in the case of vehicles:

If under a lease or rental arrangement a vehicle is to be registered in the name of the lessee only, the lessor may not elect to pay the tax measured by the rental receipts. Under these circumstances, use tax will be collected at the time of registration or transfer of registration to the lessee unless the transfer of registration to the lessee is by a certificated dealer, dismantler, manufacturer, or lessor-retailer, using a Report of Sale, in which case the sales tax will be applicable measured by the sales price to the lessor. If the certificated dealer, dismantler, manufacturer, or lessor-retailer is also the lessor, use tax will be applicable measured by the sales price to the lessor, and must be paid by the lessor to the board. The following examples illustrate applications of the foregoing provisions and are conditions under which tax may not be paid on rental receipts.

Regulation 1610. (Contd.)

(A) A certificated dealer sells a vehicle to a lessor who is not a certificated dealer, dismantler, manufacturer, or lessor-retailer. The sale is reported to the Department of Motor Vehicles by the dealer and the vehicle is registered in the name of a lessee only. Sales tax is applicable measured by the selling price to the lessor.

(B) A certificated dealer is also a lessor and registers a vehicle in the name of the lessee only. Use tax is applicable measured by the cost of the vehicle to the dealer-lessor.

(C) A lessor who is not a certificated dealer, dismantler, manufacturer, or lessor-retailer leases a vehicle and has it registered in the name of the lessee only.

1. Use tax is applicable if the vehicle was purchased from a bona fide dealer outside this state. The measure of tax is the sales price of the vehicle to the lessor and it is payable by the lessor to the Department of Motor Vehicles.

2. Use tax is applicable if the vehicle was purchased from a person who is not a certificated California dealer, manufacturer, dismantler, lessor-retailer, or a bona fide out-of-state dealer. The measure of tax is the sales price of the vehicle to the lessor and, in the absence of evidence to the contrary, the sales price will be presumed to be an amount determined as in paragraph 3 of (c)(1) above.

Lessors who own vehicles registered in the names of lessees only may have the registration changed to show either the lessor or the lessor and lessee relationship on the registration card. Where this is done they may continue to pay tax measured by the rental receipts. Insofar as the registration is not made pursuant to a retail sale, the change may be made without incurring use tax liability on the transfer of registration. Transfers, however, will be subject to transfer fees imposed by the Department of Motor Vehicles.

Lessors who change the registration should notify dealers from whom they purchase the vehicles and to whom they gave resale certificates that the registrations have been changed.

(2) TRANSFER OF A VEHICLE TO A LESSEE BY A LESSOR—PRESUMPTION. It will be presumed that a transfer of a vehicle to a lessee by a lessor, as defined in Section 372 of the Vehicle Code, was a sale for resale if the lessee transfers title and registration to a third party within 10 days from the date the lessee acquired title from the lessor at the expiration or termination of a lease. The presumption may be rebutted by evidence that the sale was not for resale prior to use. ‘‘Transfer of title and registration’’ occurs, for purposes of this regulation, when the lessee endorses the certificate of ownership.

(e) OUT-OF-STATE PURCHASES OF VEHICLES—90-DAY TEST.

(1) For the purpose of determining whether a vehicle which is purchased outside California is purchased for use in this state, it is presumed that the vehicle was purchased for use here if it enters California within 90 days after its purchase. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the purchaser did not intend to use the vehicle in this state.

(2) Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that

Regulation 1610. (Contd.)

the vehicle was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the vehicle was not purchased for use in California. Accordingly, when a vehicle is purchased in a foreign country or in another state and is later shipped to California, the period of use for purposes of the 90-day test will be measured by the interval from the time the purchaser takes possession at the out-of-state point to the time when the vehicle is delivered to a shipping agent or placed in storage for shipment to California.

History: Adopted June 23, 1966, applicable on and after July 1, 1966.
Amended November 7, 1967, applicable on and after November 8, 1967.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended August 5, 1970, effective October 1, 1970.
Amended December 15, 1971, applicable on and after December 15, 1971.
Amended May 10, 1972, effective June 18, 1972.
Amended September 14, 1972, effective September 15, 1972.
Amended December 18, 1974, effective January 26, 1975. Deleted boat trailers.
Amended December 14, 1976, effective January 20, 1977. Added presumption of use in state where serviceman arranges delivery in state at time of sale.
Amended December 15, 1976, effective January 1, 1977. Noted effect of new law requiring lessor-retailers to pay sales tax.
Amended February 1, 1977, effective March 19, 1977. Reworded (b)(1) for clarity.
Amended November 16, 1977, effective December 25, 1977. In (b) clarified taxable sales to service members, in (c) changed outside filing limit from 6 to 12 months, and in (d) added presumption of sale for resale in limited circumstances.
Amended December 7, 1977, effective January 19, 1978. In (a)(1) bale wagon excluded as a vehicle and in (c)(1)(B) interest and penalties added.
Amended January 9, 1980, effective February 29, 1980. Added subsections (a)(4) and (b)(3) regarding mobilehomes.
Amended August 1, 1980, effective August 22, 1980, operative July 1, 1980. In (a) deleted former (4) and substituted new (4). In (b), deleted from (3)(A), first sentence, ‘‘mobilehome installations’’ and added ‘‘mobilehomes sold between January 1, 1980 and June 30, 1980’’; on claim form, deleted ‘‘consumer’’ from ‘‘purchaser-consumer’’; and deleted final sentence. Added new subsection (3)(B), relettered former (3)(B) as (3)(C), and former (3)(C) as (3)(D).
Amended November 19, 1980, effective January 16, 1981. In (b)(3)(B)1, added provision that retailer-consumer is authorized to tender resale certificate to his vendor; changed ‘‘portable’’ awnings to ‘‘window’’ awnings; deleted carports. In (b)(3)(B)4, second paragraph, added provisions re vendor as manufacturer.
Amended September 13, 1984, effective February 9, 1985. In (a)(1)(A) added last two sentences. Deleted (a)(4). In (b)(1)(B) and (C) changed ‘‘his’’ to ‘‘the person’s’’ and ‘‘to him’’ to ‘‘of the property to the purchaser’’. In (b)(2)(B) deleted last two sentences. Deleted (b)(3). In (c)(1)(B) second paragraph changed ‘‘his’’ to ‘‘the purchaser’s’’; combined second and third paragraphs and deleted ‘‘(Amended effective January 1, 1972.)’’; in fifth paragraph changed ‘‘he’’ to ‘‘the purchaser’’. Replaced (c)(2) with new (c)(2)(A) and (B). In (d)(1)(B) changed ‘‘his’’ to ‘‘the’’. In (d)(1)(C)2, deleted ‘‘(Amended

Regulation 1610. (Contd.)

effective January 1, 1972.)''. In (d)(2) deleted outdated material showing date and substituted ''It will be presumed''. In (e)(2) deleted last sentence.

Amended May 9, 1985, effective October 5, 1985. Added provisions to subdivisions (c)(1)(B), (c)(2)(A), and (c)(2)(B) that any purchaser of a vehicle, vessel, or aircraft who registers it outside the State of California for purposes of evading the payment of taxes shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vehicle, vessel, or aircraft.

Amended February 7, 1990, effective April 18, 1990. Senate Bill 442, Chapter 762, Statutes of 1989, added Section 6366.2 to the Revenue and Taxation Code to provide that, effective January 1, 1990, certain deliveries of new, noncommercial American-made motor vehicles to foreign tourists are exempt from the sales and use taxes. To qualify for the exemption, the purchaser must be a resident of a foreign country, arrange for the purchase through an authorized vehicle dealer in the foreign country, and operate the vehicle in California not more than 30 days under an in-transit permit issued by the Department of Motor Vehicles pursuant to Section 6700.1 of the Vehicle Code. Further qualifications for the exemption include the provision that the retailer must ship or drive the vehicle out of this country before or at the end of 30 consecutive days from the first date of operation. The proposed amendment adds paragraph (b)(2)(D) to explain the exemption and what documentary evidence is needed to support exemptions claimed under this section. Effective dates which are no longer necessary are proposed to be deleted from paragraph (a)(1)(A) and footnote 1.

Amended May 3, 1994, effective July 8, 1994. Amended subdivision (a)(3) to clarify the meaning of ''aircraft.'' Added correct reference to subdivision (d).

Amended January 10, 1997, effective May 3, 1997. Amended subdivision (c)(2)(A) and added subdivision (c)(2)(C) to conform the regulation to the provisions of SB 718 (Stats. 1995, Ch. 555).

Regulation 1610.2. MOBILEHOMES AND COMMERCIAL COACHES.

Reference: Sections 6006, 6010, 6012.2, 6012.9, 6275–6293, 6379 and 6422.1, Revenue and Taxation Code.

(a) DEFINITIONS. For purposes of this regulation, the following definitions govern:

(1) ''MOBILEHOME'' means a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. A ''dwelling unit'' consists of one or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating, and sanitation. ''Mobilehome'' does not include a recreational vehicle, commercial coach, or factory built housing as defined in Section 19971 of the Health and Safety Code.

(2) ''COMMERCIAL COACH'' means a structure transportable in one or more sections, designed and equipped for human occupancy for industrial, professional, or commercial purposes, which is required to be moved under permit, and shall include

a trailer coach. ''Trailer coach'' means a vehicle, other than a motor vehicle, designed for human habitation, or human occupancy for industrial, professional, or commercial purposes, for carrying property on its own structure, and for being drawn by a motor vehicle.

(3) ''USED MOBILEHOME'' means a mobilehome that was previously sold and registered or titled with the Department of Housing and Community Development, or with an appropriate agency or authority, or any other state, District of Columbia, territory or possession of the United States or a foreign state, province, or country.

(4) ''CURRENT RECOGNIZED VALUE GUIDE'' means (1) the Kelley Blue Book Manufactured Housing and Mobilehome Guide or (2) the National Automobile Dealer Association's (NADA) Mobilehome Manufactured Housing Appraisal Guide, which is the current guide for the period in which the sale, storage, use or other consumption occurs.

(b) BASIC APPLICATION OF TAX.

(1) GENERAL EXEMPTIONS.

(A) Sales Tax. Sales tax does not apply to sales of mobilehomes or commercial coaches required to be annually registered under the Health and Safety Code when the retailer (as defined in Revenue and Taxation Code Section 6275) is not licensed pursuant to the Health and Safety Code as a manufacturer, manufacturer branch, dealer, dealer branch, distributor, distributor branch, representative, or representative branch. Generally, where sales tax does not apply to the sale, unless the transaction is also exempt from the use tax as provided in Subdivision (b)(1)(B) below, use tax applies to the purchase of the mobilehome or commercial coach. The purchaser is required to pay the use tax to the Department of Housing and Community Development at the time of making application for registration. (For explanation regarding payment of tax by purchaser, see Subdivision (c) below.)

(B) Sales and Use Tax. Neither sales tax nor use tax applies to the sale or use of:

1. Mobilehomes and commercial coaches sold by the parent, grandparent, child, grandchild, or spouse of the purchaser, or by the brother or sister of the purchaser if both are under the age of 18 and are related by blood or adoption, where the seller is not engaged in the business of selling the type of property for which the exemption is claimed. Claimants of this exemption must submit satisfactory evidence of relationship.

2. Mobilehomes and commercial coaches when included in any transfer of all or substantially all of the property held or used in the course of business activities of the transferor and when after the transfer the real and ultimate ownership remains substantially similar.

3. Used mobilehomes which are subject to property tax pursuant to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code at the time of sale.

Regulation 1610.2. (Contd.)

(2) FEES. The ''gross receipts'' from the retailer's sale of a mobilehome and the ''sales price'' of a mobilehome stored, used, or otherwise consumed in this State does not include separately stated escrow fees or registration fees charged in connection with the sale of any mobilehome.

(3) NEW MOBILEHOMES.

(A) In General. Generally, unless the transaction qualifies as a sale for occupancy as a residence, or is otherwise exempt, tax applies to the gross receipts from the sale of a new mobilehome to the same extent as sales of other tangible personal property. See Subdivision (b)(3)(B) below for special rules applicable to sales of new mobilehomes for occupancy as residences.

(B) Mobilehomes Sold for Occupancy as a Residence. A mobilehome dealer is the ''retailer-consumer'' of any new mobilehome sold to the customer for occupancy as a residence if the transaction would otherwise have been subject to the sales tax and the mobilehome is thereafter subject to local property taxation. For a description of the conditions under which a mobilehome dealer may tender a resale certificate to a supplier, see Regulation 1668(e).

1. Measure of Tax. The retailer-consumer is required to declare and pay tax at 75 percent of the retailer-consumer's purchase price for the period in which the qualifying sale is made to a customer. A qualifying sale is one in which the customer certifies to the retailer-consumer at the time of sale that the mobilehome is being acquired for occupancy as a residence. The retailer-consumer is not authorized to separately bill the customer for tax reimbursement.

The applicable percentage of the purchase price applies to all items which the retailer-consumer has purchased and affixed as an integral part of the mobilehome prior to sale, or pursuant to the contract of sale, such as carpeting, wall paneling, room partitions, and built-in appliances. Operative January 1, 1985, for purposes of this regulation, draperies and freestanding refrigerators and ranges shall be considered an integral part of a mobilehome. If these items are not included in the price of the mobilehome when acquired by the retailer-consumer, they must be included when computing the total amount subject to tax. The retailer-consumer's purchase price of these items also must include any labor charges for affixing the property when the labor is performed by other than the retailer-consumer.

A mobilehome dealer is the retailer of certain other items which are not an integral part of the mobilehome, such as furniture. The mobilehome dealer is also the retailer of mobilehome accessories, such as window awnings, skirting, and air conditioning units, provided these items are not affixed to a mobilehome situated on a permanent foundation or directly affixed to realty. Tax is due on the entire retail selling price to the customer.

2. Certification of Exemption. If a purchaser certifies in writing at the time of the sale that the mobilehome will be used in a manner or for a purpose entitling the retailer to report tax on the transaction based on 75 percent of the retailer's purchase price and subsequently uses the property in some other manner or for some other purpose not qualifying for the exemption, then the purchaser shall be

Regulation 1610.2. (Contd.)

liable for payment of tax measured by the entire sales price or gross receipts from the sale less an amount equal to 75 percent of the sales price or gross receipts from the sale of the mobilehome to the retailer.

The following is a form of certification approved by the Board:

CERTIFICATION OF EXEMPTION
MOBILEHOME RESIDENCE PURCHASE

I hereby certify that the mobilehome that I (name of purchaser) am purchasing from (name of retailer-consumer) is being purchased for occupancy as a residence and that it will only be used for this purpose. I further certify and agree that if the property purchased under authority of this certificate is used for any other purpose, I shall be liable for payment of tax measured by the entire sales price or gross receipts from the sale to me less an amount equal to 75 percent of the sales price or gross receipts from the sale of the mobilehome to the retailer.

Date Certificate Given:

Signed By: (name of purchaser)

Capacity:

Description of Property:

3. Determining the Date of Sale. Generally the tax applies upon the date of the sale of the property to the buyer. A sale takes place on the date of actual transfer of title to the property to the retailer-consumer's customer or at the time possession is transferred to the purchaser where title is retained by the retailer-consumer solely as security for the payment of the purchase price.

Transactions involving installations by dealers upon permanent foundation systems are subject to tax upon installation. For purpose of such a transaction, installation shall be considered to be complete upon the date of delivery of possession of the mobilehome to the buyer or upon the date of close of escrow for the sale, whichever event first occurs.

4. Equivalent Measure of Tax for Direct Sales by a Manufacturer. A manufacturer is the ''retailer-consumer'' of any new mobilehome which he sells directly to a customer for occupancy as a residence and is required to declare and pay tax measured by an amount equal to 75 percent of the sales price or gross receipts from the sale at which a similar mobilehome ready for installation would be sold by the manufacturer to a retailer-consumer in this state.

5. Purchase of a Mobilehome From a Retailer at an Out-of-State Location. If the out-of-state retailer is engaged in business in this state within the meaning of Revenue and Taxation Code Section 6203, the out-of-state retailer is a retailer-consumer with respect to its qualifying sales of new mobilehomes and must report and pay tax as provided in Subdivision (b)(3)(B)(1).

If the out-of-state retailer is not engaged in business in this state, then the purchaser must report and pay use tax measured by 75 percent of the out-of-state retailer's

Regulation 1610.2. (Contd.)

purchase price of any new mobilehome as set forth in Subdivision (b)(3)(B)(1) of this regulation. In the absence of satisfactory evidence of the out-of-state vendor's purchase price, it shall be presumed that the measure of use tax for the transaction is an amount equivalent to 60 percent of the sales price of the mobilehome to the purchaser, provided the vendor is not the manufacturer of the mobilehome. If the out-of-state vendor is the manufacturer, tax will apply as provided in Subdivision (b)(3)(B)(4) above.

(4) USED MOBILEHOMES.

(A) In General. Tax applies to the "gross receipts" from the sale of a used mobilehome and the "sales price" of a used mobilehome stored, used, or otherwise consumed in this state if, at the time of sale or use, the mobilehome is subject to annual license fees under the Health and Safety Code. Tax does not apply to the sale of a used mobilehome if, at the time of sale, the mobilehome is subject to property tax pursuant to Part 13 of Division 1 of the Revenue and Taxation Code (commencing with Section 5800); however, if, subsequent to the time of sale, the mobilehome is removed from the property tax rolls and reinstated under the annual license fee system, then tax applies in the same manner as if the mobilehome had been subject to the annual license fees at the time of sale.

Where a dealer, who is acting on its own account and not as a broker, sells a used mobilehome, the dealer is a retailer and tax applies to the retail sales price of the used mobilehome including separately stated charges for awnings, skirting, and other items of tangible personal property sold with the used mobilehome provided these items are not affixed to a mobilehome situated on a permanent foundation or directly affixed to realty.

However, if a used mobilehome is sold in-place by a dealer, any separately stated values of existing real property improvements such as cement and landscaping or separately stated in-place location value are not subject to tax.

(B) Special Application of Tax to Certain Transactions Involving Used Mobilehomes.

1. Application of Tax for the Period January 1, 1983 through December 31, 1984. From January 1, 1983, to December 31, 1984, inclusive, "gross receipts" from the retail sale of, and "sales price" of a used mobilehome, sold or stored, used, or otherwise consumed in this state, means the retail value of the used mobilehome as determined in accordance with a current recognized value guide, whenever the registered or legal owner sells a used mobilehome through a person licensed under the Health and Safety Code as a dealer and not on the dealer's own account or through a licensed real estate broker acting pursuant to Section 10131.6 of the Business and Professions Code.

2. Application of Tax for the Period January 1, 1985 through December 31, 1985. From January 1, 1985 through December 31, 1985, inclusive, "gross receipts" from the retail sale of, and "sales price" of a used mobilehome, sold or stored, used, or otherwise consumed in this state, means the retail value of the used mobilehome as determined in accordance with a current recognized value guide, whenever the sale is:

Regulation 1610.2. (Contd.)

a. Through a person licensed under the Health and Safety Code as a dealer and not on the dealer's own account; or

b. Through a licensed real estate broker acting pursuant to Section 10131.6 of the Business and Professions Code; or

c. Whenever a purchaser of a used mobilehome is required to pay the use tax to the Department of Housing and Community Development.

If the value guide does not specify the age, model, and manufacturer of a used mobilehome or if the actual sales price of a used mobilehome is less than the current value specified in the value guide, the ''sales price'' shall be based on the actual sales price of the mobilehome as evidenced by the purchase documents.

If the total contract price includes charges for accessories or other items which are not an integral part of the mobilehome, such as in-place location value, landscaping, or furnishings, and the actual sales price of the used mobilehome is not segregated in the purchase documents, the ''actual sales price'' of the used mobilehome for purposes of determining the ''sales price'' under the provisions of the preceding paragraph shall be either the total contract price or the value specified in the value guide, whichever is lower. However, if the value of the used mobilehome is not specified in the value guide, then the ''actual sales price'' of the mobilehome included within the total contract price shall be determined by the Board based on information available to it.

3. Application of Tax for Periods on and After January 1, 1986. Effective January 1, 1986, ''gross receipts'' from the retail sale of, and ''sales price'' of a used mobilehome, sold or stored, used, or otherwise consumed in this state, means the retail value of the used mobilehome as determined in accordance with a current recognized value guide, whenever the sale is:

a. Through a person licensed under the Health and Safety Code as a dealer and not on the dealer's own account; or

b. Through a licensed real estate broker acting pursuant to Section 10131.6 of the Business and Professions Code; or

c. Whenever a purchaser of a used mobilehome is required to pay the use tax to the Department of Housing and Community Development.

If the value guide does not specify the model or manufacturer of a used mobilehome, the value of the used mobilehome shall be established by reference to the highest value in the value guide according to age and size or the actual sales price, whichever is less. If the actual sales price of a used mobilehome is less than the current value specified in the value guide, the sales price shall be based on the actual sales price of the mobilehome as evidenced by the purchase documents. ''Actual sales price'' means the total contract price, including, but not limited to, the value of the mobilehome, in-place location, awning, skirting, carport, patio, landscaping, shrubs, unattached furnishings, or other items not part of the mobilehome, and documentation fees.

(c) PAYMENT OF TAX BY PURCHASER. Purchasers of mobilehomes and commercial coaches required to be registered annually under the Health and Safety Code, the sales of which are exempt from sales tax under Subdivision (b)(1)(A)

Regulation 1610.2. (Contd.)

above, shall pay tax to the Department of Housing and Community Development, acting for and on behalf of the Board, at the time of making application for registration except:

(1) When the applicant establishes that the tax is inapplicable under the general exemption in Subdivision (b)(1)(B) above; or

(2) When the applicant furnishes to the Department of Housing and Community Development a use tax exemption or tax clearance certificate issued by the Board.

A purchaser may pay the use tax and penalty, if any, to the Department of Housing and Community Development so as to secure immediate action upon the application for registration and thereafter apply to the Board for a refund of the amount so paid.

Whenever the purchaser of a commercial coach is required to pay use tax to the Department of Housing and Community Development, the sales price shall be presumed to be an amount equal to the market value of the property at the time of the purchase as that value is determined to measure the license fees imposed under Chapter 8 (commencing with Section 18075) of Part 2, Division 13, of the Health and Safety Code, multiplied by a factor of 1.8. The presumption may be rebutted by evidence which establishes that the sales price was other than such amount. This provision does not apply to commercial coaches required to be registered annually under the Health and Safety Code which are purchased outside this state from a manufacturer or dealer. The measure of tax of a purchase of a commercial coach from a bona-fide dealer outside this state is the sales price and the tax is payable to the Department of Housing and Community Development.

Whenever the purchaser of a mobilehome is required to pay use tax to the Department of Housing and Community Development, the measure of tax shall be determined in accordance with Subdivision (b)(3) or (b)(4) of this regulation, whichever is applicable.

If the purchaser of a mobilehome or commercial coach makes an application to the Department of Housing and Community Development which is not timely, and is subject to penalty because of delinquency in effecting registration or transfer of registration of the property, the purchaser then becomes liable also for penalty specified in Section 6591 of the Revenue and Taxation Code, but no interest shall accrue.

If the purchaser of a mobilehome or commercial coach does not make application to the Department of Housing and Community Development, or does not pay the amount of use tax due, or files a return with the Board under Section 6455 of the Revenue and Taxation Code which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451) of Part 1, Division 2, of the Revenue and Taxation Code.

(d) REAL PROPERTY IMPROVEMENTS ON OR TO MOBILEHOMES OR COMMERCIAL COACHES. A person who both furnishes and affixes accessories or other items as improvements or additions to land, or to a mobilehome,

or a commercial coach, which rests on a permanent foundation, is a construction contractor. The application of tax to construction contracts is explained in Regulation 1521, Construction Contractors.

History: Adopted January 5, 1983, effective July 10, 1983.

Amended July 30, 1986, effective December 20, 1986. Added subdivision (a) to define specified terms. Added subdivision (b) to explain basic application of tax to sale or use of mobilehomes and commercial coaches. In subdivision (b)(1), added explanation of general exemptions from specified tax. In subdivision (b)(2), added explanation concerning separately stated escrow fees or specified registration fees. In subdivision (b)(3), added explanation concerning application of tax to sale or use of new mobilehomes.

Regulation 1614. SALES TO THE UNITED STATES AND ITS INSTRUMENTALITIES.

References: Section 6381, 6381.5, Revenue and Taxation Code.
Construction contractors generally, see Regulation 1521.
Motion pictures produced for United States Government, see Regulation 1529.
For Banks Generally, see Regulation 1567.
Leases and rentals in general, see Regulation 1660.

(a) GENERALLY. Sales tax does not apply to sales to:

(1) The United States or its unincorporated agencies and instrumentalities.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States

(3) The American National Red Cross, its chapters and branches.

(4) Incorporated federal instrumentalities not wholly owned by the United States, unless federal law permits taxing the instrumentality. Examples of incorporated federal instrumentalities exempt from tax are federal reserve banks, federal credit unions, federal land banks, and federal home loan banks.

Application of the use tax to the storage, use, or other consumption of tangible personal property by agencies or instrumentalities of the United States is prohibited unless federal law permits taxing the agency or instrumentality.

Where payment for tangible personal property sold or consumed in this state is made partly by the United States or its instrumentalities and partly by nonexempt persons, the payment is exempt to the extent of the United States' or its instrumentality's share provided it is made directly to the vendor by the United States or its instrumentality. If the nonexempt party makes full payment and then seeks reimbursement from the United States or its instrumentality, the entire amount is taxable even though the United States or its instrumentality may reimburse him in full or in part.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1614. (Contd.)

(b) ARMY AND AIR FORCE EXCHANGE SERVICES, NAVY EXCHANGES, COAST GUARD EXCHANGES, OPEN MESSES, AND OFFICERS' MESSES. Army and air force exchange services, navy exchanges, coast guard exchanges, open messes, and officers' messes, established pursuant to regulations of the appropriate branch of the armed services are instrumentalities of the United States, and tax does not apply to sales to these organizations.

Tax applies to sales to persons in the armed services of the United States, notwithstanding the circumstance that the merchandise may be billed through any army or air force exchange service, navy exchange, coast guard exchange, or similar organization.

(c) COMPANY AND OTHER UNIT FUNDS. Tax does not apply to sales to the armed services of merchandise purchased with unit and similar funds (company, troop, hospital, recreation, welfare, etc.) where the expenditures are made in accordance with appropriate regulations of the armed services for the general benefit of armed services personnel.

(d) CIVILIAN WELFARE FUNDS. Civilian welfare funds are established and administered under armed services regulations under which post restaurants are also administered. Both are nonappropriated fund activities and are unincorporated governmental instrumentalities. Accordingly, sales tax does not apply to sales made to such organizations properly conducted and operated at military installations in this state in accordance with appropriate regulations.

Any seller to such organizations claiming a transaction as exempt from sales tax must obtain from the purchaser a certificate similar to the following:

This is to certify that the _____
(Name of Fund)
located at _____ is a nonappropriated
(Name of Installation)
fund activity located at a military installation of the United States in the State of California and is conducted and operated in accordance with armed services regulations established for such activities. As such, sales to this nonappropriated civilian welfare fund are exempt from California state and state-administered local sales taxes.

_____
Signature of Commanding Officer or Representative

_____
Print or Type Name

_____
Rank

_____
Date

(e) THE SELECTIVE SERVICE SYSTEM. Tax does not apply to receipts from sales, to State Procurement Officers for selective service authorized by selective service regulations.

Regulation 1614. (Contd.)

(f) MEDICARE PROGRAM. Tax does not apply to the sale of items to a person insured pursuant to Part A of the Medicare Act as such sales are considered exempt sales to the United States.

Tax applies to the sale of an item to a person insured pursuant to Part B of the Medicare Act even though the person assigns the claim for reimbursement to the retailer and the retailer files the claim with, and is paid by, a carrier administering medicare claims under contract with the United States.

(g) SUPPORTING DOCUMENTS. Any seller claiming a transaction as exempt from tax under Section 6381 must obtain from the purchaser, and retain, a government purchase order or a government remittance advice to support his claim.

History: Effective as follows: Use Tax July 1, 1935; Sales Tax August 1, 1933, except Subdivisions (2) and (3) of Division (a), and Division (b) which became effective May 22, 1943.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended August 2, 1965, applicable on and after August 1, 1965.

Amended and renumbered February 17, 1970, effective March 22, 1970.

Amended August 17, 1976, effective September 19, 1976. Added a reference, noted change in incidence of sales tax, that tax on banks is legal only where permitted by federal law, and that State law prohibits use tax on banks, and deleted leases as taxable items.

Amended December 7, 1978, effective January 28, 1979. Amends subsection (a), and added new subsection (b) to provide that sales tax does not apply to sales other than leases to the United States or its instrumentalities, and added new subsection (c) to impose sales tax on sales to various corporations. The old subsection (b) and (c) and (d) thru (f) renumbered (d) thru (h) and added new subsection (i).

Amended February 6, 1980, effective March 29, 1980. In (a)(3) deleted last sentence in first paragraph; in (b) added conditions for exemption; in (f) added lines for printed or typed name, and date; added (h), and relettered remaining subsections.

Amended May 9, 1984, effective August 29, 1984. Added new (a)(4); deleted former (b) and (c) and relettered succeeding subdivisions; deleted reference to leases from (b), (c), and (e) and deleted former (j).

Regulation 1616. FEDERAL AREAS.

References: Sections 6017, 6021, 6352, Revenue and Taxation Code.
Public Law No. 817-76th Congress (Buck Act).
Vending machines sales generally, see Regulation 1574.
Items dispensed for 15H or less, see Regulation 1574.

(a) IN GENERAL. Tax applies to the sale or use of tangible personal property upon Federal areas to the same extent that it applies with respect to sale or use elsewhere within this state.

Regulation 1616. (Contd.)

(b) ALCOHOLIC BEVERAGES. Manufacturers, wholesalers and rectifiers who deliver or cause to be delivered alcoholic beverages to persons on Federal reservations, shall pay the state retailer sales tax on the selling price of such alcoholic beverages so delivered, except when such deliveries are made to persons or organizations which are instrumentalities of the Federal Government or persons or organizations which purchase for resale.

Sales to officers' and non-commissioned officers' clubs and messes may be made without sales tax when the purchasing organizations have been authorized, under appropriate regulations and control instructions, duly prescribed and issued, to sell alcoholic beverages to authorized purchasers.[1]

(c) SALES THROUGH VENDING MACHINES. Sales through vending machines located on Army, Navy, or Air Force installations are taxable unless the sales are made by operators who lease the machines to exchanges of the Army, Air Force, Navy, or Marine Corps, or other instrumentalities of the United States, including Post Restaurants and Navy Civilian Cafeteria Associations, which acquire title to and sell the merchandise through the machines to authorized purchasers.

For the exemption to apply, the contracts between the operators and the United States instrumentalities and the conduct of the parties must make it clear that the instrumentalities acquire title to the merchandise and sell it through machines leased from the operators to authorized purchasers.

---

[1] The following is a summary of the pertinent regulations which have been issued:

(a) **GENERAL.** Air Force Regulation 34-57, issued under date of February 9, 1968, Army Regulation 210-65, issued under date of May 4, 1966, and Navy General Order No. 15, issued under date of May 5, 1965, authorize the sale and possession of alcoholic beverages at bases and installations subject to certain enumerated restrictions.

(b) **AIR FORCE.** Air Force Regulation 34-57, Paragraph 5, permits commissioned officers' and noncommissioned officers' open messes, subject to regulations established by commanders of major air commands to sell alcoholic beverages to authorized purchasers at bars and cocktail lounges, and provides that commanders will issue detailed control instructions. Paragraph 8 and 9 require commanders of major air commands to issue regulations relative to package liquor sales and to procurement of alcoholic beverages, respectively.

(c) **ARMY.** Army Regulation 210-65, Paragraph 9, provides that major commanders are authorized to permit at installations or activities within their respective commands the dispensing of alcoholic beverages by the drink or bottle. Paragraph 11 of AR 210-65 provides that when authorized by major commanders as prescribed in Paragraph 9, AR 210-65, officers' and noncommissioned officers' open messes may, subject to regulations prescribed by the commanding officer of the installation or activity concerned, dispense alcoholic beverages by the drink, and operate a package store.

(d) **NAVY.** Navy General Order No. 15 provides that commanding officers may permit, subject to detailed alcoholic beverage control instructions, the sale of packaged alcoholic beverages by officers' and noncommissioned officers' clubs and messes and the sale and consumption of alcoholic beverages by the drink in such clubs and messes.

Regulation 1616. (Contd.)

(d) INDIAN RESERVATIONS.

(1) IN GENERAL. Except as provided in this regulation, tax applies to the sale or use of tangible personal property upon Indian reservations to the same extent that it applies with respect to sale or use elsewhere within this state.

(2) DEFINITIONS. For purposes of this regulation ''Indian'' means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior. Indian organizations are entitled to the same exemption as are Indians. ''Indian organization'' includes Indian tribes and tribal organizations and also includes partnerships all of whose members are Indians. The term includes corporations organized under tribal authority and wholly owned by Indians. The term excludes other corporations, including other corporations wholly owned by Indians. ''Reservation'' includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

(3) SALES BY ON-RESERVATION RETAILERS.

(A) Sales by Indians.

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Indian retailers are required, however, to collect use tax from such purchasers and must register with the Board for that purpose.

(B) Sales by non-Indians.

1. Sales by non-Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by retailers when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on a reservation. The sale is exempt whether the retailer is a federally licensed Indian trader or is not so licensed. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by non-Indians to non-Indians and Indians who do not reside on a reservation. Either sales tax or use tax applies to sales of tangible personal property by non-Indian retailers to non-Indians and Indians who do not reside on a reservation.

(C) Resale Certificates. Persons making sales for resale of tangible personal property to retailers conducting business on an Indian reservation should

Regulation 1616. (Contd.)

obtain resale certificates from their purchasers. If the purchaser does not have a permit and all the purchaser's sales are exempt under paragraph (d)(3)(A) of this regulation, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number (see Regulation 1668, ''Resale Certificates'').

(4) SALES BY OFF-RESERVATION RETAILERS.

(A) Sales Tax—In General. Sales tax does not apply to sales of tangible personal property made to Indians negotiated at places of business located outside Indian reservations if the property is delivered to the purchaser and ownership to the property transfers to the purchaser on the reservation. Generally ownership to property transfers upon delivery if delivery is made by facilities of the retailer and ownership transfers upon shipment if delivery is made by mail or carrier. Except as otherwise expressly provided herein, the sales tax applies if the property is delivered off the reservation or if the ownership to the property transfers to the purchaser off the reservation.

(B) Sales Tax—Permanent Improvements—In General. Sales tax does not apply to a sale to an Indian of tangible personal property (including a trailer coach) to be permanently attached by the purchaser upon the reservation to realty as an improvement if the property is delivered to the Indian on the reservation. A trailer coach will be regarded as having been permanently attached if it is not registered with the Department of Motor Vehicles. Sellers of property to be permanently attached to realty as an improvement should secure exemption certificates from their purchasers (see Regulation 1667, ''Exemption Certificates'').

(C) Sales Tax—Permanent Improvements—Construction Contractors.

1. Indian contractors. Sales tax does not apply to sales of materials to Indian contractors if the property is delivered to the contractor on a reservation. Sales tax does not apply to sales of fixtures furnished and installed by Indian contractors on Indian reservations. The term ''materials'' and ''fixtures'' as used in this paragraph and the following paragraph are as defined in Regulation 1521 ''Construction Contractors.''

2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.

(D) Use Tax—In General. Except as provided in paragraphs (d)(4)(E) and (d)(4)(F) of this regulation, use tax applies to the use in this state by an Indian purchaser of tangible personal property purchased from an off-reservation retailer for use in this state.

(E) Use Tax—Exemption. Use tax does not apply to the use of tangible personal property (including vehicles, vessels, and aircraft) purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation unless, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

Regulation 1616. (Contd.)

(F) Leases. Neither sales nor use tax applies to leases otherwise taxable as continuing sales or continuing purchases as respects any period of time the leased property is situated on an Indian reservation when the lease is to an Indian who resides upon the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs on the reservation if the lessor delivers the property to the lessee on the reservation. Tax applies to the use of leased vehicles registered with the Department of Motor Vehicles to the extent that the vehicles are used off the reservation.

History: Effective July 1, 1941.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered August 5, 1969, effective September 6, 1969.
Amended June 29, 1978, effective August 6, 1978. Added new subsection (d), Indian Reservations.

Regulation 1617. FEDERAL TAXES.

Reference: Sections 6011, 6012, 6245.5 and 6423, Revenue and Taxation Code. 19 U.S.C. Section 1505(a), 19 CFR Section 141.1(b).

(a) FEDERAL EXCISE TAXES ON RETAIL SALES. Gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of any federal tax imposed upon or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether the amount of federal tax is stated to the consumer as a separate charge.

Retailers must retain records to show that the amounts deducted as federal tax have been returned to the United States or will be returned to the United States.

(b) OTHER FEDERAL EXCISE TAXES.

(1) Except as indicated in subdivisions (b)(2) and (b)(3), gross receipts subject to sales tax and the sales price subject to use tax include the amount of any federal excise tax included in the prices of the property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether or not the amount of such tax is stated as a separate charge.

(2) Prior to July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel or jet fuel for which the purchaser obtains either a direct refund or credit against his or her income tax.

(3) Beginning July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, or jet fuel for which the purchaser obtains either a direct refund or credit against his or her income tax.

Regulation 1617. (Contd.)

(c) IMPORT DUTIES. Import duties are imposed by federal statute (19 U.S.C. Section 1505(a)) on the importer of record. If the importer of record is a consignee and the consignee is the seller, import duties included in the price of the property sold are subject to sales and use tax. If the importer of record is a consignee and the consignee is the buyer, such duties are excludable from the sales price subject to use tax.

(d) REPEAL OR REDUCTION OF FEDERAL TAXES.

(1) IN GENERAL—INSTALLMENT PAYMENTS. When an article subject to a federal excise tax prior to the date such tax is repealed or reduced is sold under an agreement calling for payment of the sales price in installments, payments made on or after the repeal or reduction date will be considered as if they were made with respect to an article sold on or after the repeal or reduction date if the vendor establishes that the amount of payments due on or after such date were reduced by an amount equal to the tax reduction.

(2) RETAILERS' EXCISE TAXES COLLECTED AFTER REPEAL. Amounts collected by a retailer as federal retailers' excise tax after the tax has been repealed, but neither paid by the retailer to the Internal Revenue Service nor refunded to its customers, constitute gross receipts subject to sales tax.

(e) REFUNDS OF FEDERAL TAXES.

(1) REPAYMENT BY MANUFACTURER TO RETAILER. When a manufacturer receives a refund of federal excise tax and repays the amount of the tax to the retailer pursuant to requirements of federal law, the repayment to the retailer will be regarded for sales and use tax purposes as a reduction of the retailer's cost of goods sold.

(2) REPAYMENT TO CONSUMER. When a manufacturer receives a refund of federal manufacturers' excise tax and repays the amount of the tax to the consumer either directly or through the retailer pursuant to requirements of federal law, the repayment to the consumer will be regarded for sales and use tax purposes as a price adjustment. Taxable gross receipts of the retailer for the period in which the repayment is made to the consumer will be reduced accordingly, and sales tax previously paid by the retailer on the amount will be refunded to the retailer, provided the amount collected from the consumer as sales tax reimbursement is also refunded to him or her.

(3) REFUNDS ON GASOLINE, DIESEL OR JET FUEL. The refund of the federal excise tax imposed by Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel may file with the board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

Regulation 1617. (Contd.)

History: Effective July 1, 1943.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended June 22, 1964.
Amended September 12, 1968.
Amended and renumbered August 5, 1969, effective September 6, 1969.
Amended April 30, 1990, effective July 7, 1990. Added paragraph (b)(2) to provide that the sales tax does not apply to certain manufacturer's or importer's federal excise tax imposed under Section 4091, Internal Revenue Code. Renumbered paragraph (c) to (d) and (d) to (e). Added paragraph (c) to explain the application of the sales and use tax to federal import duties that are includable in the measure of tax if the seller is the consignee and not includable if the buyer is the consignee.
Amended June 23, 1993, effective November 13, 1993. Amended paragraphs (d)(2) and (e)(2) to delete gender-related language. Added new paragraph (e)(3) to explain the procedures for claiming a refund of sales or use tax paid on the federal importer's or producer's excise tax on diesel or jet fuel which federal tax has been refunded by the federal government either directly or as a credit against income tax.
Amended November 20, 1996, effective February 22, 1997. Added subdivision (b)(3). Added a cross-reference to new subdivision (b)(3) to subdivision (b)(1) and a termination date to subdivision (b)(2).
Amended August 1, 2001, effective December 1, 2001. Word "manufacturers" or "importers" changed to "federal" or "other federal" throughout to conform to changed usages. Subdivision (a)—in title, word "RETAILER'S" replaced with "FEDERAL" and words "ON RETAIL SALES" added. Subdivision (b)(1)—word "subdivisions" added prior to "(b)(2)" and comma and word "below" deleted after "(b)(3)". Subdivision (b)(2)—"and" replaced with "or" between "fuel" and "jet"; phrase "certifies . . . to" replaced with "obtains"; and phrase "for . . . paid" and last sentence deleted. Subdivision (b)(3)—word "and" between "4081" and "4091" and prior to "jet" replaced with "or"; phrase "certifies . . . to" replaced with "obtains"; and phrase "for . . . paid" and last sentence deleted.

Regulation 1618. UNITED STATES GOVERNMENT SUPPLY CONTRACTS

Reference: Sections 6007 and 6381, Revenue and Taxation Code.
Aerospace Corp. v. *St. Bd. of Equalization* (1990) 218 Cal.App.3d 1300.

(a) DEFINITIONS.

(1) "United States Government supply contract" means a contract with the United States to furnish, or to fabricate and furnish, tangible personal property including ships, aircraft, ordnance, or equipment, whereby title to tangible personal property purchased for use in fulfilling the contract passes to the United States pursuant to the title provisions contained in the contract before the contractor uses the property to perform the function or act for which the property was designed or manufactured. The term "U.S. Government supply contract" does not include contracts to construct improvements on or to real property or to the purchase of tangible personal property for use in fulfilling such contracts.

(2) "Direct consumable supplies" means supplies, tools, or equipment consumed in the performance of a contract which are specifically identified to the

Regulation 1618. (Contd.)

contract and the actual cost of which is charged as a direct item of cost to the specific contract. ''Tools'' as used in this definition does not include ''special tooling'' subject to the provisions of Federal Acquisition Regulation (FAR) 52.245–17 or any regulations(s) which succeeds FAR 52.245–17.

(3) ''Overhead materials'' means supplies consumed in the performance of a contract the cost of which is charged to an overhead expense account and then allocated to various contracts based on generally accepted accounting principles.

(b) APPLICATION OF TAX.

Sales to U.S. Government supply contractors of tools, equipment, direct consumable supplies and overhead materials are sales for resale if the United States takes title pursuant to a United States government supply contract prior to any use of the property by the contractor to perform the function or act for which the property was designed or manufactured. Accordingly, tax does not apply to such sales even though the property does not become a component part of the tangible personal property furnished, fabricated, or manufactured by the contractor. If the contractor makes any use of the property to perform the function or act for which the property was designed or manufactured prior to the passage of title to the United States, tax applies to the sales to or to the use by the contractor.

Whether title to direct consumable supplies and overhead materials passes to the United States under a United States government supply contract and the time at which title passes will be determined in accordance with the title provisions contained in the contract, if any. In a case where the cost of direct consumable supplies or overhead materials are charged to an expense account which is then allocated to various locations, cost centers or contracts, some of which are engaged in other than United States government cost reimbursement contracts and/or fixed-price contracts with a progress payments clause, it will be considered that title did not pass to the United States prior to use of the property, and tax will apply with respect to the purchase or use of the property charged to the expense account, unless the item is specifically accounted for as being charged to a specific United States government supply contract, pursuant to the terms of which title passes to the United States prior to the use of the item. Property will be considered charged to a specific United States government supply contract when it is allocated pursuant to:

(1) accounting standards promulgated by the Cost Accounting Standards Board (Office of Federal Procurement Policy, Office of Management and Budget), if applicable; otherwise,

(2) generally accepted accounting principles that are equitable, consistently-applied, and appropriate to the particular circumstances.

Direct consumable supplies and overhead materials which may be allocated in this manner include, but are not limited to, property used to repair items of capital equipment when a portion of the contractor's use is properly allocable to its government supply contracts, notwithstanding the fact that title to the property being repaired remains with the contractor.

Regulation 1618. (Contd.)

Special Tooling. Effective December 29, 1989, title will generally not pass prior to use by the contractor for special tooling which is subject to the Special Tooling Clauses of Federal Acquisition Regulation (48 CFR) 52.245–17. Title to such special tooling will pass prior to use by the contractor only if the agreement between the contractor and the United States government contains a custom clause providing for title passage prior to use by the contractor. Therefore, sales of special tooling will generally be subject to tax.

History: Effective, as amended, May 22, 1943.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered November 3, 1971, effective December 3, 1971.
Amended April 25, 1984, effective July 21, 1984. The title to the regulation was changed and the text entirely rewritten.
Amended August 1, 1995, effective November 10, 1995. Added "pursuant to the title provisions contained in the contract" to subdivision (a)(1); added language to subdivision (a)(2) to provide that the term "tools" as used therein did not include "special tooling" as defined. Amended subdivision (b) as follows: deleted subdivisions (1) and (2); added "overhead materials," "pursuant to a United States government supply contract," "to" and "the" to the first paragraph; deleted language from the second paragraph providing for a different tax treatment depending on whether the overhead materials account is allocated to cost centers or separate locations that are either exclusively or partially involved in United States government supply contracts; added language to the second paragraph providing that accelerated passage of title depends on the clauses contained in the contract and also stating when a charge will be considered allocated to a specific United States government supply contract; added third and fourth paragraphs.

Regulation 1619. FOREIGN CONSULS.

Reference: Sections 6272, 6352, and 7053, Revenue and Taxation Code; Vienna Convention on Diplomatic Relations of April 18, 1961. Article 34 (23 UST 3242) T.I.A.S. No. 7502.

(a) APPLICATION OF TAX.

(1) IN GENERAL. Neither sales tax nor use tax applies to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, to the extent that such persons have been identified by the U.S. Department of State as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Tax Exemption Card by the U.S. Department of State which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

Tax applies to sales of tangible personal property to foreign consular officers, employees, or members of their families, who do not hold a Tax Exemption Card

Regulation 1619. (Contd.)

issued by the U.S. Department of State except as provided in subparagraph (a)(2) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(2) VEHICLES. In addition to the exemption provided in subparagraph (a)(1), the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, ''vehicle'' is as defined in Section 6272 of the Revenue and Taxation Code.

(b) RECORDS OF RETAILERS. Invoices or other written evidence of sale must be retained by the retailer to support any deduction claimed on sales tax returns for sales to foreign consuls. The invoices should show the name of the purchaser, the name of the mission, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. In addition, to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the Office of Foreign Missions, U.S. Department of State, confirming the exempt status of the diplomat must be retained by the retailer.

Note: For special provisions affecting record retention, see Regulation 1698.

History: Adopted April 7, 1977, effective May 15, 1977.

Amended February 5, 1986, effective March 3, 1986. In subdivision (a), ''Application of Tax,'' amended language to provide that foreign consular officers, employees, or members of their families, to the extent such persons are immune from taxation pursuant to treaties or other diplomatic agreements with the United States, are exempt from sales or use tax to the extent that they have been identified by the U.S. State Department as immune from tax. Added an explanation regarding the Tax Exemption Cards to be issued by the U.S. State Department as proof of exemption. Added language which explains that tax applies to sales of tangible personal property to foreign consular officers, employees, or members of their families who do not hold a Tax Exemption Card issued by U.S. State Department. Also added language to provide that tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction does not exceed the

Regulation 1619. (Contd.)

minimum level of exemption specified on the Tax Exemption Card. Deleted provisions explaining procedures for obtaining Tax Exemption Cards from State Board of Equalization. Amended language describing the records a retailer is required to maintain to support claimed exempt sales when foreign consular official presents a Tax Exemption Card. Renumbers subdivision (c) to subdivision (b).

Amended February 3, 1988, effective May 12, 1988. In subdivision (a), added provisions to provide that sales to certain persons identified by U.S. Department of State are exempt from tax.

Amended June 27, 1996, effective October 6, 1996.

Regulation 1620. INTERSTATE AND FOREIGN COMMERCE.

Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6352, 6366.2, 6368.5, 6387, 6396, Revenue and Taxation Code.

(a) SALES TAX.

(1) IN GENERAL. When a sale occurs in this state, the sales tax, if otherwise applicable, is not rendered inapplicable solely because the sale follows a movement of the property into this state from a point beyond its borders, or precedes a movement of the property from within this state to a point outside its borders. Such movements prevent application of the tax only when conditions exist under which the taxing of the sale, or the gross receipts derived therefrom, is prohibited by the United States Constitution or there exists a statutory exemption. If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction. The retailer has the burden of proving facts establishing his right to exemption.

(2) SALES FOLLOWING MOVEMENT OF PROPERTY INTO STATE FROM POINT OUTSIDE STATE.

(A) From Other States—When Sales Tax Applies. Sales tax applies when the order for the property is sent by the purchaser to, or delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this state, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business and the sale occurs in this state. The term "other place of business" as used herein includes the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the retailer's functions in the state. It is immaterial that the contract of sale requires or contemplates that the goods will be shipped to the purchaser from a point outside the state. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the tax.

(B) From Other States—When Sales Tax Does Not Apply. Sales tax does not apply when the order is sent by the purchaser directly to the retailer at a point

Regulation 1620. (Contd.)

outside this state, or to an agent of the retailer in this state, and the property is shipped to the purchaser, pursuant to the contract of sale, from a point outside this state directly to the purchaser in this state, or to the retailer's agent in this state for delivery to the purchaser in this state, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent of the retailer having any connection with such branch, office, outlet, or place of business.

(C) Imports. Sales tax applies to sales of property imported into this state from another country when the sale occurs after the process of importation has ceased, regardless of whether the property is in its original package, if the transaction is otherwise subject to sales tax under subdivision (a)(2)(A) of this regulation.

(3) SALES PRECEDING MOVEMENT OF GOODS FROM WITHIN STATE TO POINTS OUTSIDE STATE.

(A) To Other States—When Sales Tax Applies. Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported. It is immaterial that the contract of sale may have called for the shipment by the retailer of the property to a point outside this state, or that the property was made to specifications for out-of-state jobs, that prices were quoted including transportation charges to out-of-state points, or that the goods are delivered to the purchaser in this state via a route a portion of which is outside this state. Regardless of the documentary evidence held by the retailer (see (3)(D) below) to show delivery of the property was made to a carrier for shipment to a point outside the state, tax will apply if the property is diverted in transit to the purchaser or his representative in this state, or for any other reason it is not delivered outside this state.

(B) Shipments Outside the State—When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer, or
2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term ''carrier'' means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term ''forwarding agent'' means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a ''carrier'' or ''forwarding agent'' within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state. (This subsection is effective on and after September 19, 1970, with respect to deliveries in California to carriers, etc., hired by the purchasers for shipment to points outside this state that are not in another state or foreign country, e.g., to points in the Pacific Ocean.)

Regulation 1620. (Contd.)

(C) Exports.

1. When Sales Tax Applies. Except for certain new motor vehicles delivered to a foreign country pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610), sales tax applies when the property is delivered in this state to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country.

Sales of property such as fuel oil and other items consumed during a voyage to a foreign country are not exempt even though they are transported out of, and are not returned to this country. It is immaterial that the ship to which the property is delivered is of foreign registry.

2. When Sales Tax Does Not Apply. Sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to the foreign country. To be exempt as an export the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property. Movement of the property into the process of exportation does not begin until the property has been shipped, or entered with a common carrier for transportation to another country, or has been started upon a continuous route or journey which constitutes the final and certain movement of the property to its foreign destination.

There has been an irrevocable commitment of the property to the exportation process when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer in a continuous route or journey to the foreign country by means of:

a. Facilities operated by the retailer,

b. A carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export, or

c. A ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property in a continuous journey to the foreign country, title to and control of the property passing to the purchaser upon delivery. Delivery by the retailer of property into a facility furnished by the purchaser constitutes an irrevocable commitment of the property into the exportation process only in those instances where the means of transportation and character of the property shipped provide certainty that the property is headed for its foreign destination and will not be diverted for domestic use. The following are examples of deliveries by the retailer into facilities furnished by the purchaser which demonstrate an irrevocable commitment of the property into the exportation process:

Example 1. Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Regulation 1620. (Contd.)

Example 3. Sale of equipment, designed specifically for use in the foreign destination, delivered to a foreign purchaser's aircraft. The foreign purchaser has filed a flight plan showing that the aircraft will be transporting the property on a continuous journey to its foreign destination.

The following are examples of sales which do not demonstrate sufficient indicia of an irrevocable commitment to the exportation process and do not qualify as exports:

Example 4. Sale of jewelry delivered to a foreign purchaser at the retailer's place of business or to the purchaser or his representative at the airport prior to boarding the plane. The tax applies even though the purchaser may hold tickets for the foreign destination.

Example 5. Sale of a television set delivered into the trunk of a passenger vehicle or into the storage area of a pickup truck.

Example 6. Sale of equipment delivered to a foreign purchaser's aircraft even though a flight plan had been filed showing that the aircraft was to be flown to a foreign destination. If the equipment sold had been altered or specifically designed for use in the foreign destination, then the combined factors of the character of the property and the means of transportation would provide certainty of export and the sale would qualify as an export as described in (3) above.

Export has not begun where property is transported from a point within this state to a warehouse or other collecting point in this state even though it is intended that the property then be transported, and in fact is transported, to another country. Nevertheless, sales of property are exempt if transported under the circumstances described in 2.(b) above to a warehouse or other collecting point of a carrier, forwarding agent, export packer, customs broker, or other person engaged in the business of preparing property for export, or arranging for its export. Property is regarded as transported under the circumstances described in 2.(b) above, when the property is sold to a purchaser for shipment abroad and is shipped or delivered to a point in this state to a person who is not the purchaser, whether or not that person is a legal entity related to the purchaser, who ships or delivers the property to a foreign destination as provided in paragraph (a)(3)(C)2.(b) of this regulation.

(D) Proof of Exemption. Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support deductions taken under (B) above. Bills of lading, import documents of a foreign country or other documentary evidence of export must be obtained and retained by retailers to support deductions taken under (C) above.

(E) Particular Applications.

1. Property Mailed to Persons in the Armed Forces. Tax does not apply to sales of property which is mailed by the retailer, pursuant to the contract of sale, to persons in the armed forces at points outside the United States, notwithstanding the property is addressed in care of the postmaster at a point in this state and forwarded by him to the addressee.

When mail is addressed to Army Post Offices (A.P.O.'s) or to Fleet Post Offices (F.P.O.'s) in care of the postmaster, it will be presumed that it is forwarded outside

Regulation 1620. (Contd.)

California. The retailer must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

2. Property for Defense Purposes Delivered to Offices of the United States. Tax does not apply to sales of property shipped to a point outside this state pursuant to the contract of sale when the property is marked for export and delivered by retailer to the "contracting officer," "officer in charge," "port quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

3. Airplanes Delivered to Agencies of the United States. Tax does not apply to sales of airplanes and parts and equipment for airplanes transported to a point outside this state pursuant to the contract of sale when such property is delivered to the United States Air Force or any other agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

4. Repairers. When repairers of property in California, in fulfillment of their repair contracts with their customers, ship the repaired property to points outside this state by one of the methods set forth under (a)(3)(B) and (C) above, tax does not apply to the sale by the repairer of the repair parts and materials affixed to and becoming a component part of the repaired property so shipped.

(b) USE TAX.

(1) IN GENERAL. Use tax applies to the use of any property purchased for storage, use, or other consumption and stored, used, or consumed in this state, the sale of which is exempt from sales tax under this regulation.

(2) EXCEPTIONS.

(A) Use tax does not apply to the use of property held or stored in this state for sale in the regular course of business nor to the use of property held for the purposes designated in subparagraph (b)(6) below.

(B) Interstate and Foreign Commerce.

1. In General. 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 without California and not exclusively in California.

2. Intermodal Cargo Containers. Intermodal cargo containers are containers that are used to transport freight during a continuous movement of that freight from the origin shipper to the destination receiver by the use of two or more of the following modes of transportation: railroad, vehicle, or vessel. The use of an intermodal cargo container in California is exempt from tax if the use meets the requirements of subdivision (b)(2)(B)1 of this regulation. An intermodal cargo container is regarded as first used in interstate or foreign commerce prior to its entry into California if the container is loaded with freight outside California and then first enters California during a continuous movement of that freight from the origin

Regulation 1620. (Contd.)

shipper to the destination receiver. For purposes of the requirements set forth in subdivision (b)(2)(B)1 of this regulation, an intermodal cargo container is also regarded as first used in interstate or foreign commerce prior to its entry into California if all of the following conditions are satisfied:

a. The contract for the sale or lease of the intermodal cargo container requires that the container be used in interstate or foreign commerce and such sales contract or lease contract is entered into prior to the entry of the intermodal cargo container into California;

b. The purchaser or lessee transports the intermodal cargo container into California with the specific intent that such intermodal cargo container will then be loaded with freight for transport in a continuous movement to a destination outside California, whether or not the purchaser knows which particular freight will be loaded into the intermodal cargo container at the time the intermodal cargo container first enters California; and

c. The intermodal cargo container is, in fact, first loaded with freight for transport in a continuous movement to a destination outside California, and the intermodal cargo container is thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

(C) Use tax does not apply to the use of certain new motor vehicles purchased for subsequent delivery to a foreign country and so delivered pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610).

(3) PURCHASE FOR USE IN THIS STATE. Property delivered outside of California to a purchaser known by the retailer to be a resident of California is regarded as having been purchased for use in this state unless a statement in writing, signed by the purchaser or the purchaser's authorized representative, that the property was purchased for use at a designated point or points outside this state is retained by the vendor.

Notwithstanding the filing of such a statement, property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. For purposes of this regulation, "functional use" means use for the purposes for which the property was designed. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

Regulation 1620. (Contd.)

(4) PURCHASE FOR USE IN THIS STATE—VEHICLES, VESSELS AND AIRCRAFT. A vehicle, vessel or aircraft purchased outside of California which is 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. When the vehicle, vessel or aircraft is first functionally used outside of California, the vehicle, vessel or aircraft will nevertheless be presumed to have been purchased for use in this state 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:

(A) Physically Located Outside California. Use tax will not apply if the vehicle, vessel or aircraft is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.

(B) Used in Interstate or Foreign Commerce.

1. If the property is a vehicle, 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.

2. If the property is a vessel, 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.

3. If the property is an aircraft, 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.

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(4), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit business.

Examples of what constitutes interstate or foreign commerce include, but are not limited to the following:

Example 1. A sightseeing tour bus group (charter) or regularly scheduled bus service (per capita) originates in California and travels to another state or country for a single day or several days, then returns to California where the charter or schedule terminates.

Example 2. A charter bus, vessel or aircraft deadheads under contract to another state, picks up the group and operates the charter without entering the State of California, drops the group in the other state, and deadheads back into the State of California. (The charter was quoted round trip.)

Example 3. A commercial vehicle deadheads to another state or country or transports property to another state or country and delivers that property within the other state or country or to another state or country. The vehicle then returns to California, either loaded or empty.

Regulation 1620. (Contd.)

Example 4. A charter bus group tours under contract to another state or country for a day or several days, drops the passengers in the other state or country, and then deadheads back under contract to its terminal or next assignment.

Example 5. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft and transported to another state or country for a day or several days. The commercial vehicle, vessel or aircraft then returns to California, either loaded or empty.

Example 6. A sightseeing tour bus group (charter) arriving in California via plane, train, or ship from another state or country is picked up by bus and tours California for a number of days, goes to another state or country for a number of days, and then terminates service either in another state, country, or California.

Example 7. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft, which may be operating wholly within California, and transported for further distribution to one or more California locations or to locations in another state or country. The vehicle, vessel or aircraft then returns empty to pick up another load arriving in California via plane, train, or vessel from another state or country.

Example 8. A commercial vehicle, vessel, aircraft, or regularly scheduled bus service operating wholly within California is picking up or feeding passengers or property arriving from, or destined to, a state or country other than California to another form of transportation be it plane, train, ship, or bus. (Example: an airport bus service or a bridge carrier for Amtrak.)

Example 9. Property is transported by a commercial vehicle, vessel or aircraft from another state or country to California or from California to another state or country. While engaged in this transportation, the commercial vehicle, vessel or aircraft also transports property from one point in California to another.

Example 10. A commercial vehicle, vessel or aircraft is dispatched from one location in California to another location in California to pick up property and transport it to another state or country.

Example 11. A commercial vehicle, vessel or aircraft, sightseeing tour bus group (charter), or regularly scheduled bus service operating in interstate or foreign commerce experiences a mechanical failure and is replaced by another vehicle, vessel or aircraft. The replacement vehicle, vessel or aircraft is also deemed to be operating in interstate or foreign commerce as a continuation of the original trip.

Example 12. A vehicle, vessel or aircraft transports persons or property for commercial purposes (a) from California to another state or country; (b) from another state or country to California; (c) entirely within California, but the vehicle, vessel or aircraft picks up persons or property arriving in California via train, bus, truck, vessel, or aircraft from another state or country and then transports the persons or property in a continuous route or journey to one or more California locations or to locations in another state or country.

Example 13. A vessel transports persons or property for commercial purposes (a) from a California port to a port in another state or country; or (b) from a port in another state or country to a port in California.

Regulation 1620. (Contd.)

(5) IMPORTS. Use tax applies with respect to purchases of property imported into this state from another country when the use occurs after the process of importation has ceased and when sales tax is not applicable, regardless of whether the property is in its original package.

(6) "STORAGE" AND "USE"—EXCLUSIONS. "Storage" and "use" do not include the keeping, retaining or exercising any right or power over property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured, into, attached to, or incorporated into, other property to be transported outside the state and thereafter used solely outside the state.

The following examples are illustrative of the meaning of the exclusion:

Example 1. An engine installed in an aircraft which is flown directly out of the state for use thereafter solely outside the state qualifies for the exclusion. The use of the engine in the transporting process does not constitute a use for purposes of the exclusion. However, if any other use is made of the aircraft during removal from this state, such as carrying passengers or property, the exclusion does not apply.

Example 2. An engine installed in a truck which is transported by rail or air directly out of the state for use thereafter solely outside the state qualifies for the exclusion.

Example 3. An engine transported outside the state and installed on an aircraft which returns to the state does not qualify for the exclusion. It does not matter whether the use of the aircraft in California is exclusively interstate or intrastate commerce or both.

Example 4. An engine transported outside the state and installed on an aircraft which does not return to the state qualifies for the exclusion.

(c) RAIL FREIGHT CARS. Sales tax does not apply to the sale of, and the use tax does not apply to the storage, use or other consumption in this state of rail freight cars for use in interstate or foreign commerce.

History: Effective September 9, 1953.
Amended September 14, 1955.
Amended September 18, 1963.
Amended and renumbered December 9, 1970, effective January 15, 1971.
Amended July 27, 1976, effective August 28, 1976. Noted "original package" doctrine was overruled and that goods held for export are not yet in export stream.
Amended December 7, 1977, effective January 19, 1978. In (a)(3)(D) changed "export declarations" to "bills of lading" and "import documents."
Amended September 28, 1978, effective November 18, 1978. Amends (b)(1); adds (b)(2) and (3); renumbers (b)(2) to (b)(4) and (b)(3) to (b)(5).
Amended November 6, 1985, effective February 8, 1986. In subdivision (a)(3)(C), "Exports", added language to more clearly define what constitutes an export for sales and use tax purposes, and gives specific examples of what constitutes an exempt sale in foreign commerce and examples of what does not qualify. In subdivision (a)(3)(C)(2), amended language expands the definition of the

Regulation 1620. (Contd.)

requirements for a sale to qualify as a sale in foreign commerce when the property is delivered to the purchaser's conveyance in this state. Amended language includes examples of exempt and taxable sales. In subdivision (b)(5), ''Storage and 'Use'—Exclusions'', language amended to reflect court decision in *Stockton Kenworth, Inc.* v. *State Board of Equalization* 157 Cal. App. 3d 344. Amendment explains certain uses that may be made of property which is to be subsequently transported outside this state that do not constitute a taxable use of the property in this state.

Amended February 7, 1990, effective April 18, 1990. Paragraph (a)(3)(C) which explains that sales tax applies to property delivered to the purchaser in California prior to export was amended and paragraph (b)(2)(C) was added to explain that deliveries of certain motor vehicles to foreign tourists are exempt. Amended (a)(3)(C)2.(c) and (b)(2)(A) to correct erroneous references in the California Administrative Code.

Amended May 3, 1994, effective June 14, 1994. Amended paragraph (a)(2)(A) to define when sales tax will apply to sales which follow the movement of tangible personal property into California by adding ''independent contractor'' to the term ''other place of business'' and ''installation'' and ''assembly'' to the functions performed.

Amended June 28, 1995, effective November 4, 1995. Amended paragraph (a)(2)(A) to delete the term ''independent contractor'' from the term ''other place of business'' and deleting ''installation'' and ''assembly'' from the functions performed as amended in error.

Amended November 18, 1998, effective February 7, 1999. Subdivision (a)(2)(C) amended by adding phrase '', if . . . regulation.'' Sentence ''Property . . . regulation'' added to last unnumbered paragraph of subdivision (a)(3)(C).

Amended November 19, 1999, effective February 23, 2000. Subdivision (a)(3)(c)2.c.—The word ''Example'' added before examples 1 through 6. Subdivision (b)(3)—new language ''All . . . California.'' added to first unnumbered paragraph; also new unnumbered paragraph with examples 1 through 11 added. Subdivision (b)(5)—word ''Example'' added before examples 1 through 4.

Amended August 30, 2000, effective December 17, 2000. Revenue and Taxation Code sections 6051 and 6201 added to the Reference section. Subdivision (b)(2)(A)—''(b)(5)'' corrected to read ''(b)(6).'' Subdivision (b)(3)—definition for ''functional use'' moved from the very end of this subdivision to be second sentence of first unnumbered paragraph and word ''subparagraph'' changed to ''regulation.'' The language ''All . . . California.'' taken from first unnumbered paragraph and moved to new subdivision (b)(4). First sentence—word ''All'' replaced with ''A;'' word ''are'' replaced with ''is;'' phrase ''or aircraft'' added. Second sentence—phrases ''or aircraft,'' ''exclusive . . . vehicle,'' and '', or . . . commerce'' added. Phrase ''or aircraft'' added to Examples 2, 5, 7, and 9–11, word ''aircraft'' added to Example 8, and Example 12 added. Subdivisions (b)(4) and (5) renumbered (5) and (6) accordingly.

Amended March 28, 2001, effective July 6, 2001. Subdivision (b)(1)—phrase ''with respect'' deleted and phrase ''the use of'' added. Subdivision (b)(2)(A)—phrase ''the use of'' added twice. Both amendments were to clarify that the use tax attaches to the use of the property, not the property itself. Subdivision (b)(2)(B) entitled ''Interstate and Foreign Commerce'' and its

language transferred to new subdivision (b)(2)(B)1., which was entitled "In General" with phrase "the use of" added to clarify that the use tax attaches to the use of the property, not to the property itself. New paragraph (b)(2)(B)2. added to state rules for intermodal cargo containers. Subdivision (b)(2)(C)—word "however" deleted and phrase "the use of" added to clarify that the use tax attaches to the use of the property, not the property itself.

Amended October 24, 2001, Effective February 7, 2002. Subdivision (b)(2)(B)2., first un-numbered paragraph, last line—word "satisfying" deleted and words "are satisfied" added. Subdivision (b)(3)—second paragraph, phrase "unless the property is used or stored outside of California" was replaced with "unless the property is used, stored, or both used and stored outside of California". Subdivision (b)(4)—word "VESSELS" added to title, and word "vessel," added to each of the first two sentences and colon added after "unless"; substance of second sentence after "unless" and before "(B)" transferred to new subdivision (A) and words "Physically . . . if" and ", vessel" and ", or both used and stored" added and semi-colon and word "or" replaced by period; new subdivision (B) added and entitled "Used in Interstate or Foreign Commerce"; substance of second sentence from "(B)" through first "commerce" transferred to new subdivision (B)1. with word "if" capitalized and words "the property is" and "use tax will not apply if" and "or foreign" added and "; or" replaced with period; new subdivision (B)2. added; substance of second sentence from "or" through end transferred to new subdivision (B)3. with word "if" capitalized and words "the property is" and "use tax will not apply if" and "or foreign" added; last sentence made into new unnumbered paragraph and new sentence added; word, ", vessel" added to introduction to Examples and to Examples 2, 5, 7–12; new Example 13 added.

Regulation 1620.2. BEVERAGES SOLD OR SERVED BY CARRIERS.

Reference: Sections 6006, 6009, 6051, 6091, 6201, 6352, and 7053, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) CARRIER. "Carrier" means any person or firm who engages in the business of transporting by vehicle, train, vessel, or aircraft persons or property for hire or compensation. The term includes common and contract carriers engaged in intrastate, interstate or foreign commerce. It does not include, however, the National Railroad Passenger Corporation (Amtrak).

(2) TRANS-STATE TRIP. "Trans-state trip" means the act of crossing California territory or airspace during a continuous journey between points outside this state without stopping or landing in this state.

(3) TAXABLE BEVERAGES. "Taxable Beverages" means all beverages sold or served by carriers except beverages described as food products in Section 6359 of the Revenue and Taxation Code and Regulation 1602.

(b) APPLICATION OF TAX. Tax applies to the sale or use of taxable beverages in this state by carriers, except when the sale or use occurs during a trans-state trip. This includes taxable beverages sold or served on a complimentary no charge basis by carriers to passengers or crew.

(c) ACQUISITION OF TAXABLE BEVERAGES. Taxable beverages which will be sold to passengers or crew may be purchased for resale. Beverages which are served only on a complimentary no charge basis may not be purchased for resale. (See Regulation 1668 for provisions regarding the effect and form of resale certificates.)

(d) REPORTING METHODS.

(1) GENERAL. In reporting taxable measure, a carrier may utilize the California passenger mile method described in (d)(2) or any other reporting method which accurately reports the tax due on taxable beverages sold or used in this state. The carrier must be prepared to demonstrate by records which can be verified by audit that the method used accurately reflects the taxable measure. Carriers contemplating use of other reporting methods are encouraged to submit an outline of the proposed method to the nearest board office for review and formal approval prior to use of the method.

(2) CALIFORNIA PASSENGER MILES METHOD. Under this method, a carrier may report its tax liability from the sale and consumption of taxable beverages in this state by allocating a portion of its total gross receipts and its total cost of taxable beverages served on a complimentary basis to California based on the ratio that its passenger miles in California bears to its total system-wide passenger miles.

The ratio of passenger miles in California to total passenger miles may be determined by tests. The test shall be representative of the carrier's operations. Further, new tests

should be made when there is any significant change in routes, schedules, or other operating conditions. All detail and test data shall be retained for examination by Board representatives.

The California mileage used in computing the ratio should exclude trans-state trip mileage. Air carriers shall make no adjustment for ascent and descent miles unless total system wide mileage is adjusted for total ascent and descent miles.

(A) Determination of Taxable Receipts Under the Passenger Miles Method. In determining taxable receipts under this method, a carrier must apply the ratio to its total gross receipts from the sale of taxable beverages system-wide. As used in this subsection, ''total gross receipts'' means the total amount of the sales price of all taxable beverages including sales tax reimbursement. Since the taxable receipts determined under this method represents taxable receipts before adjustment for sales tax included therein, taxable receipts may be adjusted to compensate for California sales tax included in total gross receipts.

(B) Determination of Cost of Taxable Beverages Consumed Under the Passenger Miles Method. In determining the cost of taxable beverages consumed in this state, a carrier must apply the ratio to its total cost of beverages served on a complimentary basis system-wide.

Separate calculations must be made for taxable beverages of a kind which are resold and those of a kind not resold. For example, soft drinks normally are not resold, while beer, wine and liquor normally are resold.

1. Beverages of a Kind Not Generally Resold. The cost of taxable beverages consumed in this state may be determined by applying the passenger miles method to the cost of taxable beverages served on a complimentary basis system-wide. A credit may be taken for taxable beverages acquired on which California sales tax reimbursement was paid to the vendor. However, the credit may not exceed the total cost of taxable beverages consumed in California as determined by the passenger miles method.

2. Beverages of a Kind Generally Resold. The cost of taxable beverages of a kind normally resold but which are served on a complimentary basis may be determined on the passenger miles method. If the carrier has paid California sales tax reimbursement at the time of acquisition, a credit may be taken for taxable beverages so acquired.

History: Adopted March 6, 1985, effective May 31, 1985.

Regulation 1621. SALES TO COMMON CARRIERS.

Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) COMMON CARRIER. As used herein the term ''common carrier'' means any person who engages in the business of transporting persons or property for hire or compensation and who offers these services indiscriminately to the public or to

Regulation 1621. (Contd.)

some portion of the public. With respect to water transportation the term includes any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce. This includes those vessels commonly called ‘‘ocean tramps,’’ ‘‘trampers,’’ or ‘‘tramp vessels.’’

(2) FOREIGN AIR CARRIERS. As used herein, the term ‘‘foreign air carrier’’ means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(b) APPLICATION OF TAX.

(1) COMMON CARRIERS. The sale of tangible personal property, other than fuel and petroleum products, to common carriers, including foreign air carriers, is exempt from sales tax pursuant to Section 6385(a) of the Revenue and Taxation Code when such property is:

(A) Shipped by the seller via the facilities of the purchasing carrier under a bill of lading, to an out-of-state point, and

(B) Actually transported by the common carrier to the out-of-state destination, pursuant to the bill of lading, over a route the California portion of which the purchasing carrier is authorized to transport cargo under common carrier rights, and

(C) Not put to use until after the transportation by the purchasing carrier to the out-of-state destination, and

(D) Used by the carrier in the conduct of its business as a common carrier.

(2) FOREIGN AIR CARRIERS. The sale of tangible personal property, other than aircraft fuel and petroleum products, to foreign air carriers is exempt from sales tax pursuant to Section 6385(b) of the Revenue and Taxation Code when such property is:

(A) Transported by the foreign air carrier to a foreign destination, and

(B) Not put to use until after the transportation by the purchasing foreign air carrier to the foreign destination, and

(C) Used by the foreign air carrier in the conduct of its business as a common carrier by air of persons or property.

(3) FUEL AND PETROLEUM PRODUCTS.

(A) Operative July 15, 1991, sales of fuel and petroleum products delivered to the purchasing carriers in California are subject to sales tax except as provided in paragraph (b)(3)(B) and (b)(3)(C) of this regulation. Sales tax applies notwithstanding the fact that the purchaser may issue a bill of lading to the seller and notwithstanding the fact that the seller may purport to reserve a title to the property until the property arrives at an out-of-state destination.

(B) Operative January 1, 1989, the sale, storage, use, or other consumption of, fuel or petroleum products is exempt from sales and use tax pursuant to Section 6357.5 of the Revenue and Taxation Code when such property is:

Regulation 1621. (Contd.)

1. sold to an air common carrier which holds a valid seller's permit or which has timely obtained a fuel exemption registration number,

2. for immediate consumption or shipment, and

3. shipped or consumed by the carrier in the conduct of its business as an air common carrier on a flight whose first destination is a foreign destination. Effective January 1, 1993, a flight which has an intermediate stop within the United States will qualify for the exemption if the final destination of that flight is a foreign destination.

For the period January 1, 1989 through December 31, 1992, the tax will not apply to the sale or use of fuel or petroleum products which are shipped or consumed on a flight to a foreign destination even though there is an intermediate stop at a point within the United States, provided no cargo, including mail, or passengers are loaded or discharged at such intermediate stop. The tax will not apply if crew members are loaded or discharged at such intermediate stop; however, the tax will apply if other airline personnel flying without charge (deadhead) are loaded or discharged. The tax also will not apply to fuel used on flights which are aborted for emergency purposes if such flights otherwise would have qualified for the exemption.

To qualify for the exemption, the sale of the fuel or other petroleum products must be for "immediate consumption or shipment".

A "sale" occurs when the purchaser takes either title to or possession of the fuel. "Immediate consumption or shipment" occurs when the delivery of fuel by the seller is directly to an aircraft for consumption in propulsion to a foreign destination or for transportation to a foreign destination and not for storage. Fuel is sold for storage, and not for immediate consumption or shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller. Fuel is sold for storage, and not for immediate consumption or shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale providing that the seller shall retain title to the fuel until the fuel is loaded onto the aircraft. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

To qualify for the exemption, a common carrier which is not otherwise required to hold a valid seller's permit shall be required to register with the Board and obtain a fuel exemption registration number. The fuel exemption registration number will be considered obtained timely if the purchasing carrier receives such registration number from the Board no later than 45 days after taking the fuel on board.

In the event that the federal exemption provided in Section 1309 of Title 19 of the United States Code, relating to supplies for certain vessels and aircraft, is repealed, this exemption also is repealed as of that date.

(C) For the period January 1, 1993 through December 31, 2002, the sale of fuel and petroleum products is exempt from sales tax pursuant to section 6385(c) of the Revenue and Taxation Code when such property is:

1. Sold to a water common carrier who holds a valid seller's permit or who has timely obtained a fuel exemption registration number,

Regulation 1621. (Contd.)

2. For immediate shipment outside this state,

3. Consumed by the water carrier in the conduct of its business as a common carrier after the first out-of-state destination.

The sales tax applies with respect to sales of fuel and petroleum products which will be consumed in a voyage from the California point where the fuel is taken on to the first destination outside of California.

For purposes of this subdivision (b)(3)(C), the term ''first destination outside of California'' means the first point reached outside this state by a water common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is bunkered, or docking fees are charged. The term also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

To qualify for the exemption, the ''sale'' of the fuel (or other petroleum product) must be for ''immediate shipment''. A ''sale'' occurs when the purchaser takes either title to or possession of the fuel. An ''immediate shipment'' occurs when the delivery of fuel by the seller is directly to a vessel for transportation outside this state and not for storage.

Fuel is sold for storage and not for immediate shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller.

Fuel is sold for storage, and not for immediate shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale provides that the seller shall retain title to the fuel until the fuel is loaded onto the vessel. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller into storage facilities maintained by a third party, the seller has contracted with the third party to store the fuel, and title does not pass to the purchaser until the fuel is loaded onto the vessel.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller to storage facilities maintained by a third party, even though the purchaser may have contracted with the third party to store the fuel, if the sale occurs when the fuel is loaded onto the vessel and the seller has the legal obligation to deliver the fuel to the purchaser's vessel. If the obligation of the seller to deliver the fuel is complete upon transfer of the fuel to the third party, then any retention or reservation of title to the fuel after such transfer is limited in effect to a reservation of a security interest, and the fuel will be regarded as having been delivered to the purchaser for storage and not for immediate shipment outside this state. A mere recital in the contract of sale that the delivery will occur at the vessel, or that the seller will retain title to the fuel until delivery at the vessel, is insufficient of itself to establish that delivery of the fuel by the seller is directly into the vessel.

Regulation 1621. (Contd.)

In determining whether the delivery occurs at the vessel, and not upon transfer of the fuel to the third party, the board shall consider the following factors: whether the losses during storage are for the account of the seller; whether the seller has the right to remove the fuel from the storage facilities; whether the seller has the duty to remove the fuel from the storage facilities at the seller's expense should the seller's deliveries into the storage facilities exceed specified quantities, and whether the contract between the seller and purchaser is a requirements contract. The presence or absence of one or more factors is not conclusive.

A sale of fuel, otherwise qualifying as a sale for immediate shipment under the above rules, will qualify for the exemption even though the fuel is delivered to a fuel truck or barge from which the fuel is delivered directly into the vessel.

(c) PROOF OF EXEMPTION.

(1) COMMON CARRIER. Any seller claiming a transaction as exempt from sales tax under Section 6385(a) must receive at the time of the transaction, and retain, a properly executed bill of lading, or copy thereof, pursuant to which the goods are shipped. The bill of lading must show the seller as consignor. It must indicate that the described goods are consigned to the common carrier at a specified destination outside this state. Where the form of the transaction is "freight collect," no specific freight charge need be shown on the bill of lading, inasmuch as such charges are not ordinarily shown thereon in "freight collect" transactions. Furthermore, the carrier need not actually collect freight charges from itself. The form and language of the bill of lading should be similar to the form and language normally used where the purchaser and carrier are not the same. A bill of lading will be considered obtained at the time of the transaction if it is received either before the seller bills the purchaser for the property, within the seller's normal billing and payment cycle, or upon delivery of the property to the purchaser.

In addition to a bill of lading, the seller must obtain from the purchaser prior to or at the time of the transaction, and retain, a certificate in writing that the property shall be transported and used in the manner described in subdivision (b)(1) of this regulation. The certificate shall be in substantially the same form as Certificate A or B, appearing in the appendix of this regulation. Certificate B may be used when multiple transactions claimed as exempt are made between a seller and a carrier and may be included as part of a transaction by reference to the certificate on the purchase order or other appropriate documentation for each transaction.

(2) FOREIGN AIR CARRIER. Any seller claiming a transaction as exempt from sales tax pursuant to Section 6385(b) of the Revenue and Taxation Code must receive from the purchaser a certificate in writing that the property shall be transported and used in the manner described in section (b)(2) of this regulation. The certificate shall be in substantially the same form as Certificate C, appearing in the appendix to this regulation. Effective January 1, 1990, if a seller does not have a certificate on hand at the time the board requests it be made available for verification of a transaction claimed to be exempt from sales tax, the seller will have 45 calendar days from the date of the board's written request to obtain the certificate from the purchasing foreign air carrier. A "blanket" certificate, i.e., one issued to cover future

Regulation 1621. (Contd.)

transactions, may be issued by a foreign air carrier and included as part of a transaction by reference to the certificate on the purchase order or other appropriate documentation for each transaction.

The provisions of (c)(3) and (d)(3) of this regulation shall apply with respect to sales of aircraft fuel and petroleum products to foreign air carriers.

(3) FUEL AND PETROLEUM PRODUCTS. Any seller claiming a transaction as exempt from sales tax pursuant to Section 6357.5 or 6385(c) of the Revenue and Taxation Code should timely obtain an exemption certificate in writing from the purchasing common carrier. The exemption certificate will be considered timely if obtained by the seller within the seller's normal billing and payment cycle or within 45 days from the date of delivery, whichever is later. The exemption certificate must show either the purchaser's seller's permit number, or if the purchaser is not required to hold a seller's permit, the purchaser's fuel exemption registration number. The exemption certificate must conform in substance with one of the following, appearing in the appendix to this regulation.

(A) Certificate D is to be used for purchases of fuel or petroleum products within Section 6357.5 by air common carriers (including foreign air carriers) operating under authority from the Federal Aviation Administration. One certificate may be provided for each regularly scheduled flight number which has a foreign destination as its final destination. Such certificate will remain valid until revoked in writing.

(B) Certificate E is to be used for purchases of fuel or petroleum products within Section 6385(c) by a steamship company which is a common carrier. This includes any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) EFFECT OF EXEMPTION DOCUMENTS.

(1) COMMON CARRIERS. Copies of the bill of lading and supporting certificate described in (c)(1) of this regulation, accepted in good faith, constitute prima facie evidence of the facts entitling the seller to the exemption provided under Section 6385(a) of the Revenue and Taxation Code.

Unless both of these documents are received and retained, the seller is liable for sales tax on the transaction.

(2) FOREIGN AIR CARRIERS. A copy of the exemption certificate described in (c)(2) of this regulation, accepted in good faith, relieves the seller from liability for the sales tax.

(3) FUEL AND PETROLEUM PRODUCTS. A copy of the exemption certificate described in subdivision (c)(3) of this regulation, accepted timely in good faith, shall relieve the seller from liability for the sales tax on fuel and petroleum products delivered by the seller directly into a ship or an aircraft. If the seller does not obtain an exemption certificate, or does not obtain an exemption certificate within the time specified by paragraph (c)(3) of this regulation, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the sale met

the requirements of Sections 6357.5 or 6385(c) of the Revenue and Taxation Code, including the requirement that the purchaser held a valid seller's permit at the time of the sale or a fuel exemption number with the Board at the time of sale or within 45 days after taking the fuel on board.

(e) LIABILITY OF PURCHASER. A purchasing common carrier or foreign air carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempted from sales tax under Sections 6357.5 or 6385 of the Revenue and Taxation Code, but uses the property in some other manner or for some other purpose, or fails to document the transportation of the property to the first out of state destination, is liable for sales tax under Sections 6357.5(h) or 6385(k) of the Revenue and Taxation Code.

A common carrier or a foreign air carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from sales tax under Section 6357.5 of the Revenue and Taxation Code shall make available to the Board, upon request, records, including, but not limited to, a copy of a log abstract, an air waybill, or a cargo manifest, documenting its consumption or transportation of the fuel or petroleum product to a foreign destination and the amount claimed as exempt.

A foreign air carrier, who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from tax under Section 6385(b) of the Revenue and Taxation Code must maintain records in this state, such as a copy of a bill of lading, an airway bill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination and the amount claimed as exempt.

A common carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from sales tax under Section 6385(c) of the Revenue and Taxation Code shall make available to the Board, upon request, records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt.

A purchaser liable for tax under this paragraph (e) must report and pay the sales tax as if the purchaser were a retailer making a retail sale of the property at the time of the use or failure to provide supporting documentation. If the purchaser does not report and pay tax, the purchaser will be subject to a deficiency determination which will include applicable penalties and interest.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1621. (Contd.)

CERTIFICATE A

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE SUPPORTING BILL OF LADING

Sales of tangible personal property free from sales tax under Section 6385(a) of the California Revenue and Taxation Code.

This is to certify, that the XYZ Company, the purchaser of the tangible personal property described herein, is a common carrier lawfully authorized and permitted to operate as such under the laws of the United States, having been issued (*here insert permit or certificate number*) by the (*here insert name of agency issuing certificate or permit*), that the personal property purchased exempt from sales tax reimbursement is to be shipped by the seller via the purchasing carrier's facilities under a bill of lading from (*here insert point of origin*) to (*here insert point of destination*), the out-of-state destination, for use by the XYZ Company in the conduct of its business as a common carrier, and that the XYZ Company is legally authorized to transport cargo under the aforementioned common carrier rights over the routes in or through this state by which it will transport the personal property.

This is also to certify that the property purchased will not be used to carry a payload or for any other purpose prior to its delivery at the destination point.

Description of property to be purchased:

_____

_____

Purchaser_____

By_____

Address_____

Date_____

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1621. (Contd.)

CERTIFICATE B

CALIFORNIA BLANKET SALES TAX EXEMPTION CERTIFICATE SUPPORTING BILL OF LADING

Sales of tangible personal property free from sales tax under Section 6385(a) of the California Revenue and Taxation Code.

_____
(Name of Purchaser)

_____
(Address of Purchaser)

This is to certify that the above named company is a common carrier lawfully authorized and permitted to operate as such under the laws of the United States; that the personal property for use in the conduct of our business as a common carrier to be purchased from _____ is to be shipped by
(Name of Vendor)
the seller via our facilities under a bill of lading to an out-of-state destination using routes in or through the State of California over which we are legally authorized to transport cargo; that any property purchased from you for which a bill of lading is issued showing _____
(Name of Vendor)
as shipper and showing an out-of-state destination will not be used to carry a payload or for any other purpose prior to its delivery at the destination point shown on the bill of lading.

In the event any of the property purchased is used for any purpose prior to its delivery at the out-of-state destination, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property.

Description of property to be purchased:

_____
_____
_____

Purchaser_____
By_____
Title_____
Date_____

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1621. (Contd.)

CERTIFICATE C

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE

Sales of tangible personal property to a foreign air carrier free from sales tax under Section 6385(b) of the California Revenue and Taxation Code.

This is to certify that the purchaser of tangible personal property described herein is a foreign air carrier as that term was defined in Section 1301 of Title 49 of the United States Code on January 1, 1980, and that the sale of tangible personal property to the purchaser is exempt from California state and local sales tax. The tangible personal property shall be or has been transported by the purchaser's facilities to a foreign destination for use by the purchaser in the conduct of its business as a common carrier by air of persons or property.

In the event any of such property is used for any purpose other than that specified in the certificate, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property.

Description of property to be purchased:

_____

_____

Purchaser_____
By_____
Address_____
Date_____

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1621. (Contd.)

CERTIFICATE D

CALIFORNIA BLANKET SALES TAX EXEMPTION CERTIFICATE SUPPORTING EXEMPT PURCHASES UNDER SECTION 6357.5—AIR COMMON CARRIERS

Sales of aviation fuel or petroleum products to an air common carrier (including a foreign air carrier) free of sales tax under Section 6357.5 of the California Revenue and Taxation Code.

1. Purchasing Common Carrier:_____
2. Fuel Exemption Registration No.
   or Seller's Permit No. of Purchaser:_____
3. Flight No.:_____
4. Final Destination:_____
5. Airport Where Loaded:_____
6. Description of Property Purchased:_____
   _____
7. Retailer:_____

The undersigned certifies that the purchaser of the tangible personal property described above is an air common carrier or foreign air carrier lawfully operating as such, and that the aviation fuel or other petroleum product described above which is purchased exempt from sales tax is to be consumed on a flight to a foreign destination or shipped to a foreign destination for use by said Company in the conduct of its business as an air common carrier, and that the undersigned purchasing carrier is lawfully engaged in transporting persons or cargo as an air common carrier or foreign air carrier operating under authority of the Federal Aviation Administration.

In the event any of such property is used for any purpose other than that specified in this certificate, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. To qualify for the exemption a common carrier who is not otherwise required to hold a valid seller's permit must register with the Board and obtain a fuel exemption number no later than 45 days after taking the fuel on board.

This certificate will remain valid and in effect until revoked by the purchaser in writing. However, this certificate will not be valid for sales of fuel or other petroleum products loaded onto flights of which the seller is aware the final destination is not a foreign destination.

Purchaser:_____
(Company Name)

Signed By: _____Date:_____
(Signature of Authorized Agent)

Title:_____
(Owner, Partner, Purchasing Agent, etc.)

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1621. (Contd.)

CERTIFICATE E

**EXEMPTION CERTIFICATE
SUPPORTING EXEMPT FUEL PURCHASES
UNDER SECTION 6385(c)—WATER CARRIERS**

Sales of petroleum products free of sales tax under Section 6385(c) of the California Revenue and Taxation Code.

1. Purchasing Common Carrier:_____
2. Fuel Exemption Registration No.
   or Seller's Permit No. of Purchaser:_____
3. Vessel Name:_____
4. Voyage No.:_____
5. Port of Loading:_____
6. Delivery Date:_____
7. First Out-of-State Destination:_____
8. Retailer of the Petroleum Product:_____
9. * Invoice No. of Purchaser:_____

(* To be completed by retailer.)

***

Regulation 1621. (Contd.)

The undersigned certifies that it is a common carrier lawfully operating as such, and that the fuel oil or other petroleum products purchased exempt from sales tax reimbursement are to be shipped to an out-of-state destination for use by said Company in the conduct of its business as a common carrier, and that the undersigned purchasing carrier is lawfully engaged in transporting cargo as a common carrier over the route in this state by which it will transport the fuel oil or other petroleum products. In the event any of such property is used for any purpose other than that specified in the certificate, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. To qualify for the exemption, a common carrier who is not otherwise required to hold a valid seller's permit must register with the Board of Equalization and obtain a fuel exemption number no later than 45 days after taking the fuel on board.

Purchaser:_____
(Company Name)

Signed By: _____Date:_____
(Signature of Authorized Agent)

Title:_____
(Owner, Partner, Purchasing Agent, etc.)

History: Adopted November 3, 1969, effective December 5, 1969.

Amended October 19, 1977, effective November 27, 1977. Clarified when a bill of lading must be received in order to qualify for common carrier exemption with respect to sales of fuel under Revenue and Taxation Code Section 6385.

Amended October 19, 1977, effective November 27, 1977. Correction of wording in the second, third and fourth paragraphs of subsection (d) (1).

Amended January 9, 1980, effective February 29, 1980. Added heading (a)(1), added (a)(2). Added (b)(1) heading, included "foreign air carriers" and code reference, changed subparagraph numbers to letters, added "and" to (A) and (B), and substituted "until after" for "in this state prior to" in (C). Added (b)(2). Added (d)(1) heading and changed former (1) to (A), former (2) to (B); in (d)(1)(B) added "for purchase of petroleum products" to certificates A and B, deleted "by" in certificate C and added "for purchases . . . tangible personal property by"; added (2). In (e) added heading (1) and "described in (d)(1)"; added (2). In (f) substituted "purchasing common carrier or foreign air carrier" for "purchaser" and added (a) to 6385; added second and third paragraphs; added "or failure to provide supporting documentation" to final paragraph. In appendix, Certificate A added "(Company Name)" and added lines for signature of Authorized Person, printed or typed name, and title. In Certificate B added "or foreign air carrier," and deleted "common" from Bill of Lading. Added Certificate D.

Amended July 30, 1987, effective October 1, 1987. In subdivision (b) and (b)(3), added reference to application of tax to sales of fuel and petroleum products for periods beginning on or after September 27, 1985. In subdivisions (c) and (d), added requirements for obtaining and use of proof of exemption certificates. In appendix, added Exemption Certificates A, B, C, D, E and F.

Amended April 30, 1990, effective July 5, 1990. Added subparagraph (B) to subparagraph (B) to subdivision (b) to add provisions for the exemption for the

Regulation 1621. (Contd.)

sale or use of fuel and petroleum products under Section 6357.5. Added subparagraph (D) to subdivision (c) and added second paragraph in subdivision (e).

Amended July 31, 1991, effective October 19, 1991. Amended pursuant to Chapter 280, Statutes of 1989. Amended paragraph (a)(1) to eliminate reference to gender. Amended paragraph (c)(2) and Certificate F to provide that the sales tax exemption certificate may be obtained by the seller up to 45 calendar days after it is requested by the Board.

Amended March 17, 1992, effective July 3, 1992. Deletes reference to the repealed exemption for sale of fuel and petroleum products to an air, water, or rail common carrier to be consumed in its business as a common carrier after reaching the first out-of-state destination.

Amended February 8, 1995, effective July 7, 1995. Amended subparagraph (b)(3)(B) and Certificate D to explain the exemption for fuel sold to an air common carrier for use in international flights; amended subparagraphs (b)(3)(A), (b)(3)(C), (c)(3), (c)(3)(A) & (B), (d)(3) and (e) and reinstated Certificate E to explain the reinstated exemption for the sale of fuel and petroleum products to water common carriers, all as provided by Assembly Bill 2396 (Stats. 1992, Ch. 905).

Amended March 26, 1998, effective April 25, 1998. Amended subdivision (b)(3)(C) to extend a repeal date as provided by Chapter 615, Statutes of 1997.

Regulation 1628. TRANSPORTATION CHARGES.

Reference: Sections 6010.5, 6011, 6012, Revenue and Taxation Code.

(a) TRANSPORTATION BY CARRIER. Except as provided in paragraph (c) below, in the case of a sale, whether by lease or otherwise, tax does not apply to ‘‘separately stated’’ charges for transportation of property from the retailer’s place of business or other point from which shipment is made ‘‘directly to the purchaser,’’ provided the transportation is by other than facilities of the retailer, i.e., by United States mail, independent contract or common carrier. The place where the sale occurs, i.e., title passes to the customer or the lease begins, is immaterial, except when the property is sold for a delivered price or the transportation is by facilities of the retailer, as explained in (b) below. The amount of transportation charges excluded from the measure of tax shall not exceed the cost of the transportation to the retailer.

Transportation charges will be regarded as ‘‘separately stated’’ only if they are separately set forth in the contract for sale or in a document reflecting that contract, issued contemporaneously with the sale, such as the retailer’s invoice. The fact that the transportation charges can be computed from the information contained on the face of the invoice or other document will not suffice as a separate statement. If a separately stated charge is made designated ‘‘postage and handling’’ or ‘‘shipping and handling’’, only that portion of the charge which represents actual postage or actual shipment may be excluded from the measure of tax. Such amounts may be excluded from the measure of tax even though such amounts are not affixed to, or noted on, the package. A separately stated charge designated ‘‘handling’’ or ‘‘handling charge’’ is not a separate statement of transportation charges. Tax applies

to such charges, notwithstanding the fact that postage or shipment charges may or may not be affixed to or noted on the package.

Property will not be considered delivered ''directly to the purchaser'' if it is shipped to the retailer, to the retailer's agent or representative, or to anyone else acting in the retailer's behalf. Any separately stated charges by the retailer for the transportation of property to, rather than from, the retailer's place of business, or to another point from which the property will then be ''delivered directly to the purchaser,'' are included in the measure of tax. Such charges represent incoming freight and are taxable as part of the cost of the property sold by the retailer.

(b) TRANSPORTATION BY RETAILER'S FACILITIES OR PROPERTY SOLD FOR DELIVERED PRICE.

(1) DEFINITION. ''Delivered Price.'' Property is sold for a delivered price when the price agreed upon in the contract for sale includes whatever cost or charge may be made for transportation of the property directly to the purchaser. A sale for a ''guaranteed price'' including a separately stated amount for transportation is a sale for a ''delivered price.'' Property is not sold for a delivered price when the price is agreed upon and to this price is added a separately stated amount representing the cost or charge for transportation of the property directly to the purchaser and any increase or decrease in the actual cost of transportation is borne by or credited to the purchaser.

(2) IN GENERAL. Except as provided in paragraph (c) below, when transportation is by facilities of the retailer or the property is sold for a delivered price, tax applies to charges for transportation to the purchaser, unless (A) the transportation charges are separately stated, (B) are for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, and (C) the transportation occurs after the sale of the property is made to the purchaser. When the sale occurs before the transportation to the purchaser commences, the tax does not apply to separately stated charges for the transportation. The amount that may be excluded from the measure of the tax cannot exceed a reasonable charge for transportation by facilities of the retailer or the cost of transportation by other than facilities of the retailer.

(3) DETERMINATION OF WHEN SALE OCCURS.

(A) Security Agreements. When a sale is made pursuant to a security agreement in which the retailer retains the title as security for the payment of the price, the sale occurs when possession of the property is transferred by the retailer to the purchaser or other person at the purchaser's direction.

(B) Leases. When the sale is by lease, the sale occurs upon the transfer of possession or granting of the right of possession of the property by the lessor to the lessee or other person at his direction.

(C) Sale on Approval. When the sale is on approval, the sale does not occur until the purchaser accepts the property.

(D) Other Sales. Unless explicitly agreed that title is to pass at a prior time, the sale occurs at the time and place at which the retailer completes his performance

Regulation 1628. (Contd.)

with reference to the physical delivery of the property, even though a document of title is to be delivered at a different time or place. If the contract requires or authorizes the retailer to send the property to the purchaser but does not require him to deliver it at destination, the retailer completes his performance with reference to the physical delivery of the property at the time and place of shipment, e.g., delivery of the property to a carrier for delivery by the carrier to the purchaser; but if the contract expressly requires delivery at destination, including cases where one of the terms of the contract is F.O.B. place of destination, the retailer completes his performance with reference to the physical delivery of the property on tender to the purchaser there. When delivery of the property is by facilities of the retailer, title passes when the property is delivered to the purchaser at the destination unless there is an explicit written agreement executed prior to the delivery that title is to pass at some other time.

(4) PLACE OF SALE. For the purposes of the State Sales and Use Tax Law (but not for the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law nor for the purposes of the Transactions and Use Tax Law) the place of the sale or purchase of tangible personal property is the place where the property is physically located at the time the act constituting the sale or purchase takes place.

(c) TRANSPORTATION OF LANDFILL MATERIAL. Operative January 1, 1989, tax does not apply to separately stated charges for transportation of landfill material, e.g., sand, dirt or gravel, removed from the ground and transported from the excavation site to a landfill site specified by the purchaser if:

(1) the amount of transportation charges excluded from the measure of tax does not exceed a reasonable charge for transportation by facilities of the retailer or the cost of the transportation by other than facilities of the retailer, or

(2) the consideration received is solely for the purpose of transporting the material to a specified site and the material is transferred without charge. If such transportation charges are in excess of a reasonable charge for transportation by facilities of the retailer or in excess of the cost of the transportation by other than facilities of the retailer, the provisions of this paragraph will not apply.

For purposes of this paragraph, it is immaterial when title passes to the purchaser of the landfill material.

Regulation 1628. (Contd.)

APPENDIX

(a) EXAMPLES OF CONTRACT FOR DELIVERED PRICE.

(1) The contract for sale provides for the sale of property for $100 per unit delivered to the purchaser.

(2) The contract for sale provides for the sale of property for $100 per unit "which includes cost of delivery at $10 per unit."

(3) The contract for sale provides for the sale of property for $100 per unit delivered, freight prepaid.

(4) The contract for sale provides for the sale of property for $100 per unit freight collect and allowed.

(5) The contract for sale calls for the sale of property for a guaranteed price of $100 consisting of $90 plus $10 freight.

(b) EXAMPLES OF CONTRACTS WHICH ARE NOT FOR A DELIVERED PRICE.

(1) The contract for sale provides for the sale of property for $100 per unit freight collect.

(2) The contract for sale provides for the sale of property for $100 per unit actual freight prepaid and added to the sales price.

(c) EXAMPLES OF APPLICATION OF TAX. All deliveries are by independent carrier.

All billings are in accordance with the terms of the contract.

(1) The contract for sale provides for the sale of property for $100 per unit delivered to the purchaser with freight prepaid.

Tax applies to sales price of $100 per unit with no deduction for freight charge since the freight charges are not separately stated. The contract is for a delivered price and requires delivery to the purchaser. Title does not pass to the purchaser prior to delivery.

(2) Contract for sale provides for the sale of property for $100 per unit. The retailer is required to ship the property to the purchaser freight collect.

Tax applies to $100 per unit since the responsibility for the payment of the freight is upon the purchaser, and the seller makes no charge for freight. Since the carrier will bill the purchaser for the actual freight charge, there will be a separate statement of the freight. The property is not sold for a delivered price.

(3) The contract for sale provides for the sale of property for $100 per unit freight collect and allowed.

The measure of tax is $100 per unit less the amount of the freight paid to the carrier and shown on the payment voucher sent to the retailer by the purchaser.

The sale is for a delivered price. Separately stated transportation charges are excludable from the measure of tax since the transportation occurred after the sale of

Regulation 1628. (Contd.)

the property. If the contract for sale explicitly provided for passage of title upon delivery to the destination, then the measure of tax would be $100 per unit since the sale was for a delivered price and title did not pass prior to transportation.

(4) The contract for sale provides for the sale of property for $100 per unit plus actual freight of $10 per unit. Any increase or decrease in the freight is for the account of the buyer.

Tax applies to $100 per unit since the contract is not for a delivered price and shipment is by independent carrier.

(5) The contract for sale provides for the sale of property for $100 plus freight of $10, and the seller guarantees the price will not exceed $110.

Tax applies to $100 because the sale is for a delivered price and there is no showing that title was to pass upon delivery at the destination. A contract will be construed as a shipment contract unless it expressly requires delivery at destination point. If the contract for sale explicitly provided for passage of title upon delivery to the destination, then the measure of tax would be $110 since the sale was for a delivered price and title did not pass prior to transportation.

(6) The contract for sale provides for the sale of property for $100 per unit freight equalized with x city. The invoice shows 10 units at $100 per unit, $1,000, freight from x city $100, total $1,100.

Under these circumstances, tax applies to $1,000 since the only separate statement of freight is the freight equalized with x city in the amount of $100. If the actual freight paid to the carrier for the transportation of the property from the retailer's place of business or other point from which shipment is made directly to the purchaser is less than $100, the exclusion will be limited to the amount paid to the carrier.

(7) Assuming the same facts as above, except the invoice shows 10 units at $100 per unit, $1,000, freight equalized with x city $100, total $1,100. The invoice also shows the notation, "Actual freight prepaid from point of shipment to destination is $200."

The sale is not for a delivered price. On the basis of the above billing, a separate statement of freight is made in the amount of $200. Accordingly, the measure of tax is $1,100 minus $200, or $900.

History: Adopted June 20, 1962, effective July 3, 1962.
Amended August 8, 1962.
Amended September 2, 1965.
Amended by renumbering November 3, 1971, effective December 3, 1971.
Amended November 11, 1971, effective December 16, 1971.
Amended October 11, 1984, effective December 13, 1984. In (a) deleted former second sentence and added last paragraph. Completely revised (b)(3)(D) and examples (c)(3) and (c)(5).
Amended April 5, 1989, effective June 21, 1989. Amended to provide that a charge for the transportation of landfill from an excavation site to a site specified by

Regulation 1628. (Contd.)

the purchaser of the landfill is exempt from the tax if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

Amended February 8, 1995, effective July 19, 1995. Amended subdivision (a) to reflect that where a separately stated charge is designated ''postage and handling'' or ''shipping and handling,'' the exact amount of postage or shipping charges need not be affixed to the package but that such a charge marked ''handling'' is not a separate statement of transportation charges. Amended subdivisions (b)(2) & (3) to correct cross references in the California Code of Regulations.

Regulation 1629. GOODS DAMAGED IN TRANSIT.

Reference: Sections 6006, 6010, Revenue and Taxation Code.

(a) SALES TAX. If damage to goods in transit to the consumer occurs after the ''sale'' as defined in Section 6006 of the Revenue and Taxation Code is made, sales tax applies to the sale. If the damage occurs prior thereto, sales tax applies as follows:

(1) If the goods are destroyed, tax does not apply to damages paid the retailer for their destruction.

(2) If the goods are not destroyed, and are sold at retail in their damaged condition, tax applies to that portion of the total amount paid to the retailer representing the fair retail value of the goods in their damaged condition.

(b) USE TAX. Use tax does not apply with respect to goods destroyed before the purchaser makes any storage or use of the goods. If the goods are damaged but are nevertheless stored or used by the purchaser, tax applies to that portion of the total amount paid to the retailer representing the fair retail value of the goods in their damaged condition.

History: Effective as to Sales Tax August 1, 1933.
Effective as to Use Tax July 1, 1935.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended by renumbering August 5, 1969, effective September 6, 1969.

Regulation 1630. PACKERS, LOADERS, AND SHIPPERS.

References: Sections 6007, 6359.7, 6359.8, and 6364, Revenue and Taxation Code.

(a) IN GENERAL—DEFINITIONS. Packers, loaders, and shippers (hereinafter collectively called ''shippers'') purchase tangible personal property to be used in conditioning the goods to be shipped and to preserve, protect, and contain the goods during transportation. Such property includes, but is not limited to, the following:

Regulation 1630. (Contd.)

(1) PROPERTY USED TO CONDITION THE GOODS FOR SHIPMENT OR TO PRESERVE AND PROTECT THE GOODS DURING SHIPMENT.

bracing materials
car strips
cleaning compounds
degreasing compounds
derusting compounds
dunnage or "loose" lumber (except as otherwise specified in (2) below)
gas (including dispensers)
ice and dry ice
miscellaneous preservatives
rust preventing compounds
salt
solvents
tarpaulin (weather protection)

(2) PROPERTY USED AS CONTAINERS OR AS PARTS OF CONTAINERS OF THE GOODS SHIPPED.

bags
barrels
bottles
boxes
cans
carboys
cartons
crates
cylinders
drums
excelsior and other packing and crating material
gummed tape
kegs
lumber (including "loose" lumber used in the same manner and for the same purpose as pallets)
pallets
sacks
strapping
twine
wrapping paper

(3) PROPERTY THAT WHEN PHYSICALLY INCORPORATED IN THE FINAL PRODUCT BEING SOLD IS A SALE FOR RESALE.

wax and fungicide
post harvest protective shields
protective coatings
salts, acids & caustics

(b) APPLICATION OF TAX.

(1) PROPERTY USED TO CONDITION, PRESERVE OR PROTECT GOODS DURING SHIPMENT.

(A) General. Tax applies to sales to shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods during transportation. It is immaterial whether or not a separate charge or separate billing is made by the shipper for the particular item, that it may not be returned to or reused by the shipper, that the goods are shipped in interstate or foreign commerce, or that the shipper's contract is with the United States. The property is purchased by the shipper for a purpose other than resale, i.e., conditioning the goods, or preserving and protecting the goods during shipment. Thus, the sale to the shipper is a retail sale, even though he or she may not retain title to the property used by him or her.

Regulation 1630. (Contd.)

(B) Ice, Carbon Dioxide and Preservatives.

1. Ice. The sale or use of ice or dry ice used in packing and shipping or transporting food products for human consumption is exempt from tax when the food products are shipped or transported in intrastate, interstate or foreign commerce by common carriers, contract carriers, or proprietary carriers.

2. Carbon Dioxide. Operative January 1, 1995, the sale or use of carbon dioxide used in packing and shipping or transporting fruits or vegetables for human consumption is exempt from tax when the fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers provided the fruits or vegetables are not sold to the ultimate consumer in the package that contains the carbon dioxide.

3. Preservatives. Tax does not apply to the sale or purchase of preservative products under the following two circumstances:

a. The preservative product is included in the shipping container of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These include moisture-absorbing desiccants, gas-absorbing ethylene sachets, and gas emitting sulfur dioxide pads or similar products.

b. The preservative product serves a beneficial purpose in preserving the food product and remains in the packaged food product until opened by the ultimate consumer. This includes nitrogen gas used to maintain an inert atmosphere in packaged food products which remains in the packaged food as a preservative until opened by the consumer; and moisture absorbing desiccants included in individual packages of beef jerky which remain sealed until opened by the consumer.

(2) PROPERTY USED AS CONTAINERS OR PARTS OF CONTAINERS OF GOODS SHIPPED.

(A) General. Tax applies to the sale or use of containers or container materials under the provisions of regulation 1589, "Containers and Labels", (18 CCR 1589). However, except as provided in paragraph (b)(2)(C), when the shipper is not the seller of the contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sale unless the shipper expressly contracts with his or her customer for the sale to his or her customer of the container or container material, making a separate charge therefor, with title passing from the shipper to his or her customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper for reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier of the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.

(B) Carbon Dioxide. Operative January 1, 1995, the sale or use of nonreturnable container materials containing carbon dioxide atmosphere is exempt from the tax when used in packing and shipping or transporting fruits or vegetables in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers, whether or not the shipper is the seller of the fruits or vegetables.

Regulation 1630. (Contd.)

(C) Packing Food Products for Human Consumption. Sales tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale.

History: Effective May 24, 1945.
Amended June 29, 1945.
Amended and renumbered July 8, 1971, effective August 19, 1971.
Amended January 9, 1980, effective February 29, 1980. In (b)(1)(B) substituted "Until July 1, 1980, tax" for "Tax"; added second sentence; substituted "in every instance" for "however" in third (former second) sentence.
Amended May 6, 1986, effective July 9, 1986. In subdivision (b)(1)(B), amended regulation to provide that sale or use of ice or dry ice used in packing and shipping or transporting food products for human consumption is exempt from tax as specified.
Amended December 13, 1995, effective January 12, 1996. Amended paragraph (b)(1)(B) to incorporate provisions of SB 1774 (Stats. 1994, Ch. 624) which exempted the sale and use of carbon dioxide under certain named conditions.
Amended August 21, 1996, effective November 22, 1996. Added subdivision (b)(2)(C); amended subdivision (b)(2)(A) to provide that transactions qualifying under new subdivision (b)(2)(C) are excluded from its provisions.
Amended July 29, 1999, effective October 27, 1999. Subdivision (a) new subdivision (3) added. Subdivision (b)(1)(B) deleted the word "and" in the title "Ice and Carbon Dioxide", also added the words "and Preservatives." New subdivision (b)(1)(B)(3) added.

Regulation 1632. C.O.D. FEES.

Reference: Sections 6011, 6012, Revenue and Taxation Code.

On and after July 1, 1970, tax applies to any C.O.D. fee paid by the retailer's customer on taxable C.O.D. sales except where the C.O.D. fee is not included in the invoice and the carrier collects it from the retailer's customer and retains it.

History: Adopted March 24, 1970, effective April 29, 1970.

Regulation 1641. CREDIT SALES AND REPOSSESSIONS.

References: Sections 6006, 6011, 6012, Revenue and Taxation Code.
Bad Debts, see Regulation 1642.
Returns, defects, replacements, see Regulation 1655.
Personal Property Leases Generally, see Regulation 1660.

(a) IN GENERAL. If tangible personal property is sold on credit, either under a security agreement, or otherwise the whole amount of the contract is taxable, unless the retailer keeps adequate and complete records to show separately the sales price of the tangible personal property, and the insurance, interest, finance, and carrying

Regulation 1641. (Contd.)

charges made in the contract. If such records are kept by the retailer, the insurance, interest, finance and carrying charges may be excluded from the computation of the tax.

(b) CONTRACTS DESIGNATED AS LEASES. If tangible personal property is, for all intents and purposes, sold, but the transaction is designated as a lease or rental for the purpose of retaining title in the seller as security for payment of the purchase price, or for the purpose of avoiding the tax, the transaction is taxable as a sale under a security agreement.

(c) DUE DATE OF TAX. The total amount of the tax on the entire sales price in credit transactions is due and payable on the due date of the return to be filed after the close of the reporting period in which the sale is made. No reduction in the amount of tax payable by the retailer is allowable by reason of his transfer at a discount of a sale under security agreements or other evidence of indebtedness.

(d) REPOSSESSIONS. No deduction is allowable in the event that property sold on credit is repossessed except where the entire consideration paid by the purchaser is refunded to him or where a credit for a worthless account is allowable.

History: Adopted September 16, 1959.
Amended March 8, 1961.
Adopted January 6, 1970, as a restatement of former Ruling 62 (Cal. Admin. Code 2042) and a portion of former Ruling 61 (Cal. Admin. Code 2041), effective February 7, 1970.

Regulation 1642. BAD DEBTS.

Reference: Sections 6055 and 6203.5, Revenue and Taxation Code.

(a) IN GENERAL. A retailer is relieved from liability for sales tax (section 6055 of the Revenue and Taxation Code) or from liability to collect use tax (section 6203.5 of the Revenue and Taxation Code) insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the retailer's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the retailer is not required to file income tax returns and the retailer's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A retailer may claim a bad debt deduction provided that the sales tax, or amount of use tax, was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

Regulation 1642. (Contd.)

Failure to take the deduction on the proper return will not in itself prevent the allowance of a refund measured by an amount for which a retailer could have taken a timely deduction provided a claim for refund is filed with the board within the limitation periods specified in section 6902 of the Revenue and Taxation Code.

(b) AMOUNT SUBJECT TO DEDUCTION.

(1) TAXABLE RECEIPTS. If the amount of an account found to be worthless and charged off is comprised in part of nontaxable receipts such as interest, insurance, repair, or installation labor and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only with respect to the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account may be applied ratably against the various elements comprising the amount the purchaser contracted to pay (pro rata method), may be applied as provided in the contract of sale (contract method), or may be applied by another method which reasonably determines the amount of the taxable receipts (alternative method). When claiming a bad debt deduction or refund using an alternative method, the retailer must include a clear explanation of that method along with the claiming of the deduction or refund. After having applied payments and credits using one method and claiming a deduction or refund based on such method, a retailer shall not thereafter reapply the payments or credits using another method with respect to such losses previously claimed.

(2) EXPENSES OF COLLECTION. No deduction is allowable for expenses incurred by the retailer in attempting to enforce collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(c) REPORTING. All retailers must report sales tax liability on an accrual basis. Bad debt deductions will not be disallowed solely for the reason that a retailer is on a cash reporting basis for income tax purposes.

(d) WORTHLESS ACCOUNT SUBSEQUENTLY COLLECTED. If any account found worthless and charged off is thereafter collected by the retailer, in whole or in part, the taxable percentage of the amount so collected shall be included in the first return filed after such collection and tax shall be paid on such amount with the return. The same percentage of the account which the retailer claimed as an allowable bad debt deduction or refund shall be used to determine the taxable percentage of the recovery. The taxable percentage of any amounts received from a third party for the sale of an account after the retailer has found them to be worthless and has claimed a bad debt deduction or refund are regarded as amounts subsequently collected for purposes of this provision, and the retailer must include such amounts in the first return filed after receipt of such amounts and pay tax thereon.

(e) RECORDS. In support of deductions or claims for refund for bad debts, retailers must maintain adequate and complete records showing:

Regulation 1642. (Contd.)

(1) Date of original sale.
(2) Name and address of purchaser.
(3) Amount purchaser contracted to pay.
(4) Amount on which retailer paid tax.
(5) The jurisdiction(s) where the local taxes and, when applicable, district taxes were allocated.
(6) All payments or other credits applied to account of purchaser.
(7) Evidence that the uncollectible portion of gross receipts on which tax was paid actually has been legally charged off as a bad debt for income tax purposes (whether or not the income tax return has yet been filed) or, if the retailer is not required to file income tax returns and the retailer's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.

(8) The taxable percentage of the amount charged off as a bad debt properly allocable to the amount on which the retailer reported and paid tax. (See Appendix 1.)

(f) ALLOWABLE METHODS OF COMPUTING LOSS.

(1) IN GENERAL. When there is a repossession, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax has been paid. This will be when the amount of all payments and credits allocated to the purchase price of the merchandise, including the wholesale value of the repossessed article, is less than that price. If the pro rata method is used to apply payments, a retailer incurs an allowable bad debt deduction if the wholesale value of the repossessed merchandise is less than the net contract balance (after excluding unearned insurance and finance charges) at the date of repossession. If the contract method is used to apply payments, a retailer incurs an allowable bad debt deduction if the wholesale value of the repossessed merchandise is less than the net contract balance at the date of repossession. An alternative method of computing a bad debt loss may be used subject to approval by the Board.

(2) METHOD OF COMPUTING LOSS—PRO RATA METHOD.

(A) Loss Per Records. The loss per records is the bad debt loss the retailer writes off for income tax purposes. An estimate of bad debt losses based in part upon the history of the business or industry averages, may not be used to claim bad debt deductions or refunds for sales and use tax purposes.

(B) Taxable Portion of Loss Per Records. Only that portion of a bad debt loss attributable to the amount on which the retailer paid tax may be used to claim a bad debt deduction or refund for sales and use tax purposes. Even an account with all sales subject to tax may include some amounts on which tax was not paid, such as the tax or tax reimbursement charged to the consumer which is included in the account balance. The percentage of loss on which tax was paid for an account which is secured by the merchandise purchased, or which represents a single purchase of a significant amount, should be calculated on an actual basis. The percentage of loss on which tax was paid for accounts involving a large volume of small transactions may

Regulation 1642. (Contd.)

be calculated based on an analysis of the composition of the accounts receivable. All accounts of the retailer for which this calculation is made should use the same method of applying payments for the calculation (e.g., use FIFO for all accounts or use LIFO for all accounts). Examples using the pro rata method are attached as Appendices 1 and 2.

(3) METHOD OF COMPUTING LOSS—CONTRACT METHOD. The allowable bad debt deduction is calculated by subtracting all payments and credits from the purchase price of the merchandise pursuant to the method of applying payments set forth in the applicable contract(s) with the customer and, to the extent the contract is silent on the method of applying payments, the loan accounting systems used by the retailer in the ordinary course of business, and from that amount subtracting the proceeds of the sale of any repossessed merchandise in accordance with (4) below.

(4) DETERMINING THE WHOLESALE VALUE OF REPOSSESSED MERCHANDISE. The wholesale value of repossessed merchandise must be determined in order to calculate the allowable bad debt deduction, if any, for the account. When the retailer sells the repossessed merchandise to a reseller in an arm's length transaction, the amount the retailer receives for the sale, less the direct cost of reconditioning the property prior to that sale and direct auction expenses paid to a third party, is the wholesale value. Otherwise, other sources must be used to determine the wholesale value. In the case of automobiles, industry-recognized price guides are generally the best source of such information. Adjustments should be made to the published wholesale prices in those instances where the automobile is in other than average condition.

Establishing the wholesale value of other types of repossessed merchandise, such as jewelry, furniture, appliances, etc., presents a more difficult problem if the retailer does not sell the merchandise to a reseller in an arm's length transaction. Each case must be considered on its own merits. Generally, if the retailer places the repossessed property into resale inventory, the retailer should use the amount at which the merchandise is recorded in resale inventory as its wholesale value. This amount should not, however, include any costs of repossessing, reconditioning, or other expense to put the merchandise in saleable condition.

(5) CONSOLIDATION OF NUMEROUS REPOSSESSED ITEMS. Retailers who have several repossessions each reporting period will find it convenient and time saving to consolidate the pertinent data. When this is done, only one calculation for each set of transactions need be made to compute the allowable deduction. The consolidations may be made by using 15-column working paper with one column for each of the elements required to compute the deduction (see Appendix 2).

Only those repossessions on which a loss is incurred should be scheduled. The retailer may quickly determine whether a particular transaction should be scheduled by comparing the net payoff with the wholesale value of the merchandise. If the net payoff is greater, a loss has been suffered and the transaction should be scheduled.

(g) BAD DEBT LOSSES OTHER THAN REPOSSESSIONS. Allowable bad debt deductions or refunds also may arise from sales made on an open account or on

Regulation 1642. (Contd.)

an unsecured installment basis. The deduction or refund should be computed in substantially the same manner as those involving repossessions (i.e., by prorating all payments or credits between the sales price of the merchandise on which the retailer paid tax and the non-taxable charges or by applying all payments and credits as provided in the contract of sale and, if the contract is silent, the loan accounting systems used by the retailer in the ordinary course of business). No deduction or claim for refund will be allowed in any period subsequent to the period in which a bad debt deduction is taken based on a method of calculating the bad debt deduction different from that originally used in calculating the bad debt deduction.

(h) SPECIAL SITUATIONS.

(1) BAD DEBT DEDUCTIONS FOR PERSONS OTHER THAN THE RETAILER OR LENDER.

(A) A successor who pays full consideration for receivables acquired from the predecessor is entitled to a bad debt deduction to the same extent that the predecessor would have been entitled had the predecessor continued the business. A "successor" for purposes of this provision is one who is required by Revenue and Taxation Code section 6811 to withhold sufficient of the purchase price of the subject business to cover amounts due from the seller of the business under the Sales and Use Tax Law. A predecessor may not claim a bad debt deduction for any transaction or account for which a successor is entitled to a bad debt deduction under this provision.

(B) Except as provided in subdivision (h)(1)(A) and subdivision (i), a purchaser of receivables cannot claim a bad debt deduction or refund for accounts which are not collected.

(C) A retailer who sells receivables with recourse so that the retailer will bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the receivables had not been sold. The fact that a retailer sells receivables at a discount, however, with or without recourse, does not in itself entitle the retailer to a bad debt deduction to the extent of the discount.

(2) BAD DEBTS OF CONSTRUCTION CONTRACTORS. A construction contractor who is a consumer of materials or fixtures, or both, under Sales and Use Tax Regulation 1521 cannot claim a bad debt deduction or refund with respect to such materials or fixtures. A United States construction contractor as defined in subdivision (a)(3) of Regulation 1521 is always the consumer of both materials and fixtures, and thus can never claim a bad debt deduction or refund with respect to such materials or fixtures. A construction contractor, other than a United States construction contractor, is generally the consumer of materials, and thus may claim a bad debt deduction with respect to materials only when the contractor is regarded as selling those materials under subdivision (b)(2)(A)2. of Regulation 1521. A construction contractor, other than a United States construction contractor, is the retailer of fixtures and thus may claim a bad debt deduction or refund with respect to its retail sales of such fixtures. A construction contractor incurring a bad debt loss for which it is entitled to a bad debt deduction or refund as just explained must claim the deduction or refund in the same manner as those resulting from other types of taxable retail sales of tangible personal property.

Regulation 1642. (Contd.)

(3) ENTITY AFFILIATED WITH RETAILER. The provisions of this subdivision (h)(3) apply only with respect to bad debt losses incurred on accounts created as a result of retail sales of tangible personal property for which the retailer remitted California sales or use tax on or after January 1, 2000.

(A) If a retailer wishes to assign to a person who is its affiliated entity under section 1504 of Title 26 of the United States Code the right to claim a deduction or refund for the amount of bad debts for which the retailer is otherwise entitled to a deduction or refund, the retailer and the affiliated entity must file an election with the Board prior to the affiliated entity's claiming of any deduction or refund. This election filed with the Board must include all the following elements:

1. The name, address, and seller's permit number of the retailer who reported or will report the tax; and the name, address, and seller's permit number of the affiliated entity of the retailer to whom the assignment is made.
2. A statement clearly specifying that the affiliated entity is entitled to any (and all) deductions or refunds as a result of any bad debt losses charged off on the account(s) covered by the election and the effective date of that election, and a statement that the retailer relinquishes all claims to such deductions or refunds.
3. A list of accounts to which the election pertains.
4. The agreement of the retailer to furnish any and all documentation required by the Board to support the claiming of deductions or refunds by the affiliated entity.
5. The acknowledgement by both the retailer and its affiliated entity that the Board may disclose relevant confidential information to all parties involved in order to support and confirm any deductions or refunds claimed.
6. A statement that the election may not be amended or revoked unless a new election signed by both the retailer and its affiliated entity is filed with the Board.
7. The acknowledgement by the affiliated entity that it cannot further assign the right to claim a deduction or refund for bad debts charged off on the account.
8. The dated signatures of the retailer and its affiliated entity, or their authorized representatives. If a copy of the signed election is filed with the Board rather than the original, the affiliated entity must retain the election with the original signatures.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes an entity affiliated with a retailer under section 1504 of Title 26 of the United States Code with respect to those accounts for which the affiliated entity is the person entitled to the bad debt deduction or claim pursuant to an election filed under this subdivision (h)(3).

(i) BAD DEBTS INCURRED IN CONNECTION WITH ACCOUNTS HELD BY LENDERS. The provisions of this subdivision (i) apply only with respect to bad debt losses incurred on accounts created as a result of retail sales of tangible personal property for which the retailer remitted California sales or use tax on or after January 1, 2000.

Regulation 1642. (Contd.)

(1) LENDER DEFINED. A "lender" for purposes of this regulation is defined as any of the following:

(A) A person who holds an account which that person purchased without recourse directly from a retailer who reported California sales or use tax with respect to the sales of tangible personal property for which credit was extended under the retail account.

(B) A person who holds an account without recourse pursuant to that person's contract directly with a retailer who reported California sales or use tax with respect to the sales of tangible personal property for which credit was extended under the retail account.

(C) A person who is either an affiliated corporation (or affiliated entity electing to be taxed as a corporation) under section 1504 of Title 26 of the United States Code or an assignee of a person described in subdivision (i)(1)(A) or (i)(1)(B). A person is a "lender" under this subdivision (i)(1)(C) only if an election is filed under subdivision (i)(4).

(2) CONDITIONS TO CLAIMING DEDUCTION OR REFUND. With respect to an account held by a lender without recourse, a deduction or refund may be claimed for bad debt losses on the account only if all of the following conditions are met:

(A) No deduction or refund was previously claimed or allowed on any portion of the account.

(B) The account has been found worthless and charged off by the lender for income tax purposes (which include circumstances where the lender's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the lender is not required to file income tax returns and the lender's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.

(C) The contract between the retailer and the lender under which the lender has the right to the account contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The account is for sales for which the retailer remitted California sales or use tax on or after January 1, 2000.

(E) The retailer and the lender file an election with the Board which contains the elements specified in subdivision (i)(3) and which designates either the retailer or the lender as the person entitled to claim any deduction or refund under this regulation for tax previously paid by the retailer measured by amount of the account found to be worthless and charged off. No deduction or refund can be claimed until this election is filed with the Board.

(3) ELECTION BETWEEN RETAILER AND LENDER.

(A) In order for the retailer or the lender to claim a deduction or refund for bad debt losses from an account held by the lender without recourse, the retailer and the lender must file an election with the Board designating which of them may claim

Regulation 1642. (Contd.)

such deduction or refund. The election may be in any form, including an existing contract between the retailer and the lender, so as long as the election contains the following elements:

1. The name, address, and seller's permit number of the retailer who reported or will report the tax and the name, address, and seller's permit number, if any, of the lender to whom the account(s) is assigned.

2. An agreement that the retailer relinquishes all rights to the account to the lender.

3. A statement clearly specifying whether the retailer or the lender is entitled to claim any (and all) deductions or refunds as a result of any bad debt losses charged off by the lender for the account(s) covered by the election, the effective date of that election, and a statement that the other party relinquishes all rights to claiming such deductions or refunds.

4. A list of accounts to which the election pertains. If the election is a blanket election for all accounts assigned without recourse by the retailer to the lender or all accounts held by the lender without recourse pursuant to the lender's contract directly with the retailer, the election must so state.

5. The agreement of both the retailer and the lender to furnish any and all documentation requested by the Board to support the deductions or refunds claimed.

6. The acknowledgement by both the retailer and the lender that the Board may disclose relevant confidential information to all parties involved in order to support and confirm any deductions or refunds claimed.

7. If the lender is the person entitled to claim any deduction or refund for bad debts on the account, the Certificate of Registration—Lender account number of the lender. If the lender does not yet hold such a registration, the agreement of the lender that it will apply for the Certificate of Registration—Lender no later than on the date the lender first claims a deduction or refund for bad debts charged off on the account.

8. A statement that the election may not be amended or revoked unless a new election signed by both the retailer and the lender is filed with the Board.

9. The date of the election and the signatures of the retailer and the lender, or their authorized representatives. If a copy of the signed election is filed with the Board rather than the original, the person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts, and its filing would be regarded as perfected as of the filing of the second signed counterpart, provided each counterpart is identical except for the signature and date of the signature. If copies of the signed counterparts are filed with the Board, the person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures not filed with the Board.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes a lender with respect to those accounts for which the lender is the person entitled to the bad debt deduction or claim pursuant to an election filed under this subdivision (i)(3).

Regulation 1642. (Contd.)

(4) ELECTION BETWEEN LENDER AND AFFILIATED ENTITY OR OTHER ASSIGNEE.

(A) If a person who is a lender under subdivision (i)(1)(A) or (i)(1)(B) and who has the right to claim any deduction or refund for bad debts the lender charges off on the account wishes to assign to a person who is its affiliated entity under section 1504 of Title 26 of the United States Code or to some other assignee the right to claim any deduction or refund for the amount of bad debts charged off on the account, the lender and the affiliated entity or other assignee must file an election with the Board prior to the affiliated entity's or other assignee's claiming of any deduction or refund. The election filed with the Board may be in any form, but must include all the following elements:

1. The name, address, and seller's permit number of the retailer who reported or will report the tax; the name, address, seller's permit number, if any, and Certificate of Registration—Lender account number, if any, of the lender under subdivision (i)(1)(A) or (i)(1)(B) making the assignment; and the name, address, seller's permit number, if any, and Certificate of Registration—Lender account number, if any, of the person to whom the assignment is made under subdivision (i)(1)(C).

2. A copy of the election between the retailer and the lender under which the lender has the right to any (and all) deductions or refunds as a result of any bad debt losses charged off by the lender on the account(s). If that election has not yet been filed with the Board, then that election must be filed along with the election between the lender and its affiliated entity or other assignee. If the election with the original signature was retained by the lender rather than filing it with the Board, that election must either be filed with the Board or retained by the affiliated entity or other assignee.

3. A statement clearly specifying that the affiliated entity or other assignee is entitled to any (and all) deductions or refunds as a result of any bad debt losses charged off on the account(s) covered by the election and the effective date of that election, and a statement that the lender under subdivision (i)(1)(A) or (i)(1)(B) relinquishes all claims to such deductions or refunds.

4. A list of accounts to which the election pertains. If the election is a blanket election for all accounts held by the lender, the election must so state.

5. The agreement of the lender to furnish any and all documentation required by the Board to support the claiming of deductions or refunds by the affiliated entity or other assignee.

6. The acknowledgement by both the lender and its affiliated entity or other assignee that the Board may disclose relevant confidential information to all parties involved in order to support and confirm any deductions or refunds claimed.

7. If the affiliated entity or other assignee does not yet hold a Certificate of Registration—Lender, the agreement that it will apply for that certificate no later than on the date it first claims a deduction or refund for bad debts charged off on the account.

8. The acknowledgement by the affiliated entity or other assignee that it cannot further assign the right to claim a deduction or refund for bad debts charged off on the account.

Regulation 1642. (Contd.)

9. A statement that the election may not be amended or revoked unless a new election signed by both the lender and the affiliated entity or other assignee is filed with the Board.

10. The date of the election and the signatures of the lender and the affiliated entity or other assignee, or their authorized representatives. If a copy of the signed election is filed with the Board rather than the original, the person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts, and its filing would be regarded as perfected as of the filing of the second signed counterpart, provided each counterpart is identical except for the signature and date of the signature. If copies of the signed counterparts are filed with the Board, the person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures not filed with the Board.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes an entity affiliated with a lender under section 1504 of Title 26 of the United States Code, or other assignee, with respect to those accounts for which the affiliated entity or other assignee is the person entitled to the bad debt deduction or claim pursuant to an election filed under this subdivision (i)(4).

(5) REGISTRATION, RETURNS, CLAIMS FOR DEDUCTION AND REFUNDS, AND PAYMENT OF TAX.

(A) A retailer who has the right to claim deductions or refunds for bad debts charged off by a lender on an account held by that lender pursuant to an election filed under subdivision (i)(3) shall claim those deductions or refunds under the provisions of this regulation in the same manner as if the retailer held the account itself.

(B) Without regard to whether a lender holds a seller's permit for its own sales of tangible personal property, a lender who has the right to claim deductions or refunds for bad debts charged off on accounts pursuant to an election filed under subdivision (i)(3) and, if applicable, subdivision (i)(4), shall register with the Board for a Certificate of Registration—Lender no later than the date on which it first claims such a deduction or refund.

(C) A lender who has the right to claim deductions or refunds for bad debts charged off pursuant to an election filed under subdivision (i)(3) and, if applicable, subdivision (i)(4), is entitled to the same amount of deduction or refund, calculated in the same manner under the provisions of this regulation, as if the lender were the retailer who had sold the tangible personal property for which the retailer had reported and paid tax. If the lender has provided the name, address, and seller's permit number of the retailer responsible for paying the tax, in determining whether to grant the lender's claim for deduction or refund, the Board shall regard the retailer as having paid the applicable tax due unless the Board establishes otherwise. (Regardless of the Board's action on the lender's claim for deduction or refund, a retailer who failed to pay the applicable tax due remains liable for that tax.)

Regulation 1642. (Contd.)

(D) A lender who claims a deduction or refund for bad debts charged off shall be liable for tax on the taxable percentage of worthless accounts subsequently collected under subdivision (d), including amounts received for the sale of accounts for which the lender has claimed a bad debt deduction or refund.

(E) A lender who has a seller's permit for its own sales of tangible personal property may not commingle the claiming of its deductions pursuant to an election under subdivision (i)(3) and, if applicable, subdivision (i)(4), with any bad debt deductions related to its own sales of tangible personal property but must instead report such deductions on a separate return or schedule in the form specified by the Board. If the lender files a schedule attached to its sales and use tax return, it may apply the amount of its deduction calculated on that separate schedule against its liability for sales and use tax. To the extent that the deduction is not fully exhausted when applied to the lender's own sales and use tax liability, the lender may file a claim for refund.

(F) The filing by a lender of a claim for deduction or refund for bad debts on accounts covered by this subdivision (i) is not valid if an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), has not been filed with the Board. If a lender files a claim for deduction or refund and the applicable election(s) is filed thereafter, the claim for deduction or refund will be regarded as having been filed on the date of the filing of the election(s).

(G) A lender holding a Certificate of Registration—Lender shall file a return in a form specified by the Board to report the taxable percentage of recoveries and claim losses on accounts covered by an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4). This return shall be filed on a quarterly basis unless otherwise specified by the Board. The return shall include the taxable percentage of the amount of any recoveries for which the lender is liable for tax under subdivision (i)(5)(D). The lender may offset the amount of tax for which it would otherwise be entitled to a bad debt refund for the reporting period against the amount of tax for which it is liable for the taxable percentage of recoveries received during that same reporting period. The lender must file a return without regard to whether the lender received any net recoveries of previously claimed bad debts in the filing period. If the lender files a return under a seller's permit it holds for its own sales of tangible personal property, the lender must file a separate schedule to report the taxable percentage of its bad debt recoveries and losses on accounts covered by an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), in a form specified by the Board, as an attachment to the lender's sales and use tax return rather than filing a separate return for such recoveries and losses.

(H) A lender claiming a deduction or refund for bad debts, or reporting tax on recoveries for accounts for which it previously claimed a bad debt deduction or refund, must properly allocate the local and district taxes. If the transactions were approved by the lender on a transaction-by-transaction basis or the lender has the necessary information to do so, local and district taxes should be allocated on an actual basis. The lender may allocate local and district taxes related to all other accounts on an appropriate basis subject to approval by the Board.

Regulation 1642. (Contd.)

History: Amended August 2, 1965, effective on and after August 1, 1965.

Adopted January 6, 1970, as a restatement of a portion of former Ruling 61 (Cal. Admin. Code 2041), effective February 7, 1970.

Amended November 5, 1970, effective December 10, 1970.

Amended February 4, 1976, effective April 1, 1976. In (h) (2) added new category where contractor is a retailer of materials prior to installation.

Amended August 17, 1976, effective September 19, 1976. In (h) (2) noted U.S. construction contractors are not retailers and corrected an erroneous reference.

Amended April 9, 1980, effective June 19, 1980. Appendices 1 and 2, reflecting a 6% tax rate, replace the former 5% appendices.

Change without regulatory effect, effective July 9, 1986.

Amended November 30, 1988, effective February 16, 1989.

Amended June 28, 1995, effective October 12, 1995. Amended subdivision (a) to clarify that if a deduction is not taken in the period in which the debt is found to be worthless and charged off, a claim for refund must be filed with the Board within the limitations period set forth in Revenue and Taxation Code Section 6902.

Amended September 26, 2001, effective January 16, 2002. Subdivision (a): word "Section" changed to lower case; phrases "(which . . . return)" and "and . . . return" added. Subdivision (b)(1): title changed to "Taxable Receipts"; phrase "by . . . credits" replaced by phrase "using . . . method" and phrase "by the" replaced with "using the" and "with . . . claimed". Subdivision (d): words "are" and "in whole or in part" replaced with "is" and "in whole or in part" and "the taxable percentage of the" and "the" and " the tax thereupon paid" replaced with "the tax shall be paid on such"; new second and third sentences added. Subdivision (e): word "credit" replaced with "refund". New subdivision (e)(5) added. Former subdivisions (e)(5) & (e)(6) re-designated (e)(6) & (e)(7) accordingly and in the latter phrases "(whether . . . filed)" and "and . . . return" added. Subdivision (f): title changed to "ALLOWABLE METHODS OF COMPUTING LOSS". Subdivision (f)(1)- phrase "Depending on whether" replaced by word "If"; phrase "or the contract method" deleted; period added after "repossession" phrase "or (2) if" replaced with "If . . . deduction" to split previous third sentence into two sentences; new fifth sentence added. Current subdivision (f)(2) deleted. Former subdivision (f)(3) re-termed (f)(2) and re-titled "Method of Computing Loss—Pro Rata Method". Language of subdivisions (f)(2) & (3) replaced. In subdivision (f)(4), first sentence deleted, new first, second, and third sentences added; phrases "information contained in", "wholesale and retail" and "will be acceptable" replaced with "are generally the best source of information"; and in former third sentence word "may" replaced with "should". Former subdivision (f)(6) re-designated (f)(5) with word "taxpayer" replaced with "retailer" in un-numbered paragraph. Former subdivision (f)(7) deleted. Subdivision (g): language added to explain that this subdivision applies whether or not a deduction or refund is claimed and phrase "and, . . . business)" added. Subdivision (h)(1): in title, word "TO" replaced with "FOR" and words "OR LENDER" added; in subdivision (A) new second and third sentences added; in subdivision (B) a cross-reference to subdivisions (h)(1)(A) and (i) added, words ", other than a successor," deleted, word "obtain" replaced with "claim;" and word "on" replaces with "or refund for". Subdivision (h)(2): current language replaced with

Regulation 1642. (Contd.)

"A . . . property". Subdivision (h)(3) added. Subdivision (i) added. Appendix 1 replaced with figures rewritten for clarity regarding one repossessed vehicle. Appendix 2 redrafted to apply not to repossessed merchandise generally but to multiple repossessed vehicles only.

Regulation 1642. (Contd.)

Appendix 1

EXAMPLE OF COMPUTING ALLOWABLE BAD DEBT DEDUCTION FOR A REPOSSED VEHICLE USING PRO RATA METHOD

I. Step One. Compute the Repossession Loss Per Records

a.	Retail sales price		$12,000	
b.	Taxable fees (i.e., doc/smog)		230	
c.	*Total amount subject to tax*		12,230	(a+b)
d.	Sales tax (6%)	734		(c*.06)
e.	License fees	240		
f.	Other non-taxables	0		
g.	*Total non-taxable charges*	974		(d+e+f)
h.	*Total sales price*	13,204		(c+g)
i.	Down payment	2,000		
j.	*Balance on contract*		11,204	(h-i)
k.	Finance charges/accrued interest		3,000	
l.	*Total contract value*		14,204	(j+k)
m.	Payments received on contract		2,100	
n.	*Balance on date of repossession*		12,104	(l-m)
o.	Unearned finance charges		2,750	
p.	*Net contract balance*		9,354	(n-o)
q.	Value of repossession		6,000	
r.	***Repossession loss per records***		***$ 3,354***	

II. Step Two. Compute the Taxable Percentage of Loss.

This is done by dividing the total amount subject to tax (line c) by the total sales price (line h).

12,230 / 13,204 = 92.62%

III. Step Three. Compute the Allowable Deduction.

This is done by multiplying the taxable percentage of loss (step Two) by the repossession loss per records (step One).

92.62% * 3,354 = *$3,106.47*

Appendix 2

CONSOLIDATION OF ALLOWABLE BAD DEBT DEDUCTION FOR MULTIPLE REPOSSESSED VEHICLES USING PRO RATA METHOD

(A) *Date of Repos-session*	*(B)* *Car #*	*(C)* *Sales Price of Mdse* [A]	*(D)* *Sales Tax (6%)*	*(E)* *License Fee*	*(F)* *Insurance (Net)* [B]	*(G)* *Total Sales Price*	*(H)* *Down Payment*	*(I)* *Balance to Finance*	*(J)* *Finance Charges (Net)* [C]	*(K)* *Net Contract Balance*	*(L)* *Payments*	*(M)* *Value of Repos-session*	*(N)* *Repos-session Loss Per Records*
			[C*.06]			[C...F]		[G-H]		[I+J]			[K-L-M]
09-30-00	507	$9,000	$540	$160	$200	$9,900	$2,000	$7,900	$400	$8,300	$1,900	$5,000	$1,400
10-27-00	521	8,000	480	140	160	8,780	1,700	7,080	350	7,430	1,650	4,400	1,380
11-04-00	540	6,000	360	110	120	6,590	1,300	5,290	260	5,550	1,250	3,300	1,000
12-09-00	575	5,000	300	90	100	5,490	1,100	4,390	200	4,590	1,000	2,700	890
Totals		$28,000	$1,680	$500	$580	$30,760	$6,100	$24,660	$1,210	$25,870	$5,800	$15,400	$4,670
		(1)				(2)							(3)

Computation of the Taxable Percentage of Loss:

$$\frac{\$28{,}000\ ^{(1)}}{\$30{,}760\ ^{(2)}} = 91.03\%$$

Computation of Allowable Deduction:

$$91.03\% \times \$4{,}670\ ^{(3)} = \$4{,}251$$

[A] Includes taxable amounts, such as doc and smog fees
[B] Original insurance charge less rebate of unearned premium.
[C] Total finance charges per contract less unearned charges.

Regulation 1643. DEBIT CARD CHARGES.

Reference: Sections 6011 and 6012, Revenue and Taxation Code.

Generally, tax does not apply to automated teller machine (A.T.M.) charges when an access device (commonly known as a debit card or credit card) is used to make a cash withdrawal from, or to engage in any other transaction that is not subject to tax at, an A.T.M. The transaction is not regarded as a sale of tangible personal property but is a nontaxable financial transaction.

Debit cards may also be used by consumers to pay for a retail purchase of tangible personal property. Gross receipts from the retail sale of tangible personal property do not include debit card charges which the retailer may collect from the customer when all of the following apply:

(1) the debit card charges are separately stated,

(2) the consumer would not incur the charge if he or she did not use the debit card,

(3) the fee is not calculated as a percentage of the amount of the purchase, and

(4) the charge is reasonably related to the cost of the transaction to the retailer.

Under these circumstances, the charge is regarded as a cash access fee and is not subject to tax.

History: Adopted May 15, 1996, effective September 22, 1996.

Regulation 1654. BARTER, EXCHANGE, ''TRADE-INS'' AND FOREIGN CURRENCY TRANSACTION.

References: Sections 6006, 6010, 6011, 6012, Revenue and Taxation Code.
Exchange in connection with repairs, see Regulation 1546.
Occasional Sales—Sale of a Business, see Regulation 1595.
Reimbursement for tax, effect of collecting, see Regulation 1700.
Vehicle Engine Exchanges in lieu of repairs, see Regulation 1547.

(a) BARTER AND EXCHANGE GENERALLY. The terms ''sale'' and ''purchase'' as defined in Sections 6011 and 6012 respectively, include exchange and barter, and gross receipts and sales price constituting the measure of tax include the amount allowed by a retailer to his customer for property or services of any kind. Thus, the operator of an ''exchange'' where customers pay for their purchases of tangible personal property entirely or in part by other property is a retailer and taxable upon his gross receipts, unless his sales are insufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.

(b) MERCHANDISE TRADED IN.

(1) IN GENERAL. When merchandise is ''traded in'' on the purchase price of other merchandise, the retailer accepting the trade-in must include in the measure of

tax the amount agreed upon between seller and buyer as the allowance for the merchandise traded in. Should, however, the board find that the allowance stated in the agreement is less than the fair market value, it shall be presumed that the allowance actually agreed upon is such market value.

(2) DISCOUNT AND TRADE-IN ALLOWANCE ON SAME TRANSACTION. Although discounts allowed and taken by purchasers are not a part of taxable gross receipts, if there is a trade-in and also a discount, the contract between seller and buyer must make it clear that the parties contract for both a trade-in allowance and for a discount. Otherwise, the amount of the claimed discount will be considered to be an overallowance, and the total sales price will be subject to tax.

(c) EXCHANGE OF COMMODITIES.

(1) IN GENERAL. When commodities are exchanged on a weight or volume basis, each party to the exchange is a seller with respect to the property transferred and a purchaser with respect to the property received. Each sale is subject to sales tax unless it is otherwise exempt, such as a sale for resale or a sale in interstate commerce.

With respect to each retail sale, sales tax is measured by the fair retail market value of the property received in payment for the property sold. The measure of tax includes all charges made to the purchaser, such as storage and handling charges, not expressly excluded from tax by statute.

(2) DETERMINING FAIR RETAIL MARKET VALUE.

(A) Simultaneous Exchanges. When the properties are transferred simultaneously, the property received must be valued in money on the date and at the place the property is paid and delivered to the retailer. The date of the contract is immaterial. Actual cost of the property to the transferor or book value of the property for accounting purposes are irrelevant. The measure of tax for use tax purposes is the same as for sales tax purposes.

(B) Successive Exchanges. When properties are transferred successively, each sale occurs when each property is transferred.

Where the obligations of the parties are specified in the contract, the measure of tax for each sale is the fair retail market value of the property on the contract date. The fair retail market value to be used must be the fair retail market value at the place where the property received in payment is delivered to the retailer.

Where the obligations of the parties are not specified in the contract but rather are contingent on future events, i.e., an output or requirements contract, the measure of tax for each sale is the fair retail market value of the property on the date of sale or on the date property received in payment for the sale is delivered to the retailer, whichever occurs first. The fair retail market value to be used must be the fair retail market value at the place where the property received in payment is delivered to the retailer.

Regulation 1654. (Contd.)

(3) EXAMPLES.

(A) On January 1, Company A and Company B enter into a contract whereby Company A agrees to deliver 1,000,000 barrels of fuel oil to Company B in Los Angeles on February 1 and Company B agrees to deliver 1,000,000 barrels of fuel oil to A in San Francisco on February 1.

This is a simultaneous exchange. Company A has made a retail sale of fuel oil to Company B on February 1. The measure of tax is the fair retail market value of the 1,000,000 barrels of fuel oil in San Francisco on February 1. The value must be the fair retail market value at the place where the property is paid and delivered to the retailer, i.e., San Francisco.

Company B has made a retail sale of fuel oil to Company A on February 1. The measure of tax is the fair retail market value of the 1,000,000 barrels in Los Angeles on February 1.

The measure of tax includes all charges made to the purchaser, such as storage and handling charges, not expressly excluded from tax by statute.

(B) On January 1, Company A and Company B enter into a contract whereby Company A is to deliver 1,000,000 barrels to Company B in Los Angeles on February 1 and Company B is to deliver 500,000 barrels in San Francisco on March 1 and 500,000 barrels in Houston, Texas on April 1.

This is a successive exchange pursuant to a contract where the obligations of the parties are specific. Company A has made a retail sale of fuel oil to Company B on February 1. The measure of tax is the fair retail market value of the 1,000,000 barrels of fuel oil on January 1 (the contract date). The fair retail market value to be used is the value of 500,000 barrels in Houston and 500,000 barrels in San Francisco on January 1.

Company B has made two sales, one on March 1 and the other on April 1. The sale on April 1 is an exempt sale in interstate commerce. The measure of tax on the March 1 sale is the fair retail market value of the 500,000 barrels of fuel oil in Los Angeles on January 1. (the contract date).

(C) On January 1, Company A and Company B enter into a contract whereby Company A agrees to deliver excess fuel oil to Company B, as such excesses may develop in the future, in exchange for the return of like quantities of fuel oil at times and places mutually to be agreed upon in the future. Company B delivers 600,000 barrels of fuel oil to Company A in Long Beach on February 1, 200,000 barrels in San Francisco on April 1, and 200,000 barrels in Los Angeles on July 1. Company A delivers 1,000,000 barrels to Company B in Los Angeles on March 1.

This is a successive exchange pursuant to an output or requirements contract. The measure of tax is the fair retail market value of the property at the date the property received in payment is delivered to the retailer or the date of sale, whichever occurs first. Company A received an advance payment from Company B of 600,000 barrels delivered in Long Beach on February 1. The payments made by Company B to Company A on April 1 and July 1 are deferred payments on Company A's sale of

Regulation 1654. (Contd.)

March 1. The measure of tax with respect to the sale by Company A is the fair retail market value on February 1 of the 600,000 barrels delivered to Company A in Long Beach on that date, plus the fair market retail value on March 1 (date of sale) of the 400,000 barrels to be delivered by Company B in the future at the place where the property is to be delivered.

Company B has made three retail sales; one on February 1, one on April 1, and one on July 1. The measure of tax for the February 1 sale is the fair retail market value on February 1 of the 600,000 barrels to be delivered by Company A in the future at the place where the property is to be delivered. This is a sale with deferred payment, and tax must be reported on an accrual basis. The measure of tax for the April 1 sale is the fair retail market value of 200,000 barrels in Los Angeles on March 1. The measure of tax for the July 1 sale is the fair retail market value of 200,000 barrels in Los Angeles on March 1. The sales on April 1 and July 1 were sales with advance payments and must be valued on the date the property received in payment was delivered to the retailer (March 1).

(d) FOREIGN CURRENCY TRANSACTIONS. If a purchaser or seller enters into a contract where the consideration is set forth in terms of foreign currency, tax is measured in United States dollars based on the conversion rate of the foreign currency to United States dollars on the date of the contract.

History: Effective August 1, 1933.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Adopted November 3, 1969, as a restatement of former Rulings 41 (Cal. Admin. Code 1971) and 65 (Cal. Admin. Code 2055), effective December 5, 1969.
Amended May 9, 1985, effective July 18, 1985. Amended title and added subdivisions (c) and (d).

Regulation 1655. RETURNS, DEFECTS AND REPLACEMENTS.

References: Sections 6006–6012, Revenue and Taxation Code; Sections 1793.2–1793.25, Civil Code; Section 11713.12, Vehicle Code.
Barter, Exchange, Trade-Ins, see Regulation 1654.
Auction Sales, agreement not to deliver property or to return amount paid, see Regulation 1565.

(a) RETURNED MERCHANDISE. The amount upon which tax is computed does not include the amount charged for merchandise returned by customers if, (1) the full sale price, including that portion designated as ‘‘sales tax’’, is refunded either in cash or credit and (2) the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer. The amount withheld for rehandling and restocking may not exceed the actual cost of rehandling and restocking the returned merchandise. However, in lieu of using the actual cost for each transaction, the amount withheld

Regulation 1655. (Contd.)

for 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). If the seller elects to withhold rehandling and restocking amounts based on a percentage of sales price, the seller is bound by that election for the entire accounting cycle for which the election is made and must apply that percentage in lieu of actual cost during that period on all returned merchandise transactions for which rehandling and restocking costs are withheld. The amount withheld as rehandling and restocking costs may not include compensation for increased overhead costs because of the return, for refinishing or restoring the property to salable condition where the necessity therefor is occasioned by customer usage, or for any expense prior to the ''sale'' (i.e., transfer of title, lease, or possession under a conditional sale contract).

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

(b) DEFECTIVE MERCHANDISE.

(1) IN GENERAL. Amounts credited or refunded by sellers to consumers on account of defects in merchandise sold may be excluded from the amount on which tax is computed. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the ''trade-in'' value must be included in the measure of tax.

(2) RESTITUTION OR REPLACMENT UNDER CALIFORNIA LEMON LAW.

(A) General. Under subdivision (d) of Civil Code section 1793.2, if a manufacturer is unable to service or repair a ''new motor vehicle,'' as that term is defined in subdivision (e)(2) of Civil Code section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either replace the motor vehicle or provide the buyer restitution of the purchase price, less specified amounts, at the buyer's election.

(B) Restitution. A manufacturer who pays a buyer restitution pursuant to, and in complete compliance with, subdivision (d)(2) of Civil Code section 1793.2 is entitled to a refund of the amount of sales tax or sales tax reimbursement included in the restitution paid by the manufacturer to the buyer. The manufacturer may file a claim for refund of that amount with the Board. The claim must include a statement that the claim is submitted in accordance with the provisions of section 1793.25 of the Civil Code. The manufacturer must submit with the claim documents evidencing that restitution was made pursuant to, and in complete compliance with, subdivision (d)(2) of Civil Code section 1793.2 including: a copy of the original sales agreement between the buyer and the dealer of the non-conforming motor vehicle; copies of documents showing all deductions made in calculating the amount of restitution paid to the buyer along with full explanations for those deductions, including settlement documents and odometer statements; a copy of the title branded ''Lemon Law

Regulation 1655. (Contd.)

Buyback" for the non-conforming motor vehicle returned by the buyer; and proof that the decal the manufacturer is required to affix to that motor vehicle has been so affixed in accordance with section 11713.12 of the Vehicle Code. The manufacturer must also submit with the claim the seller's permit number of the dealer who made the retail sale of the non-conforming motor vehicle to the buyer, and evidence that the dealer had reported and paid sales tax on the gross receipts from that sale. For purposes of this regulation, the number of attempts made to repair the non-conforming motor vehicle, if any, prior to providing the customer restitution is not relevant for purposes of determining whether restitution has been made pursuant to subdivision (d)(2) of Civil Code section 1793.2.

(C) Replacement. For purposes of this regulation, a manufacturer who, pursuant to subdivision (d)(2) of Civil Code section 1793.2, replaces a non-conforming motor vehicle with a new motor vehicle substantially identical to the motor vehicle replaced is replacing the motor vehicle under the terms of the mandatory warranty. No additional tax is due unless the buyer is required to pay an additional amount to receive the replacement motor vehicle, in which case tax is due measured by the amount of that payment. If an amount is refunded to the customer as part of the exchange of the non-conforming motor vehicle for the replacement motor vehicle, then that amount is regarded as restitution for purposes of this regulation if it satisfies the requirements of subdivision (d)(2) of Civil Code section 1793.2. The manufacturer may file a claim for refund under subdivision (b)(2)(B) of this regulation for the amount of sales tax or sales tax reimbursement that is included in the amount of that restitution paid by the manufacturer to the buyer. For purposes of this regulation, the number of attempts made to repair the non-conforming motor vehicle, if any, prior to providing the customer a replacement is not relevant for purposes of determining whether the replacement has been made pursuant to subdivision (d)(2) of Civil Code section 1793.2.

(c) REPLACEMENT PARTS—WARRANTIES.

(1) IN GENERAL—DEFINITIONS. "Mandatory Warranty." A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. "Optional Warranty." A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller, i.e., the buyer is free to contract with anyone he or she chooses.

(2) MANDATORY WARRANTIES. The sale of tangible personal property includes the furnishing, pursuant to the guaranty provisions of the contract of sale, or mandatory warranty, of replacement parts or materials, and if the property subject to the warranty is sold at retail, the measure of the tax includes any amount charged for the guaranty or warranty, whether or not separately stated. The sale of the replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable.

(3) OPTIONAL WARRANTIES. The person obligated under an optional warranty contract to furnish parts, materials, and labor necessary to maintain the property is the consumer of the materials and parts furnished and tax applies to the

Regulation 1655. (Contd.)

sale of such items to that person. If he or she purchased the property for resale or from outside California, without tax paid on the purchase price, he or she must report and pay tax upon the cost of such property to him or her when he or she appropriates it to the fulfillment of the contract of warranty.

(4) DEDUCTIBLES. A deductible paid by a customer under the terms of a mandatory or optional warranty contract is subject to tax measured by the amount of the deductible allocable to the sale of tangible personal property to the customer. For example, if the itemized sales price of tangible personal property (or the fair retail value if not separately itemized) provided pursuant to a warranty is 50 percent of the total fair retail value of the repairs and the deductible is $100, 50 percent of that deductible, $50, would be allocable to the sale of tangible personal property and would be subject to tax, whether the warranty were optional or mandatory. Unless otherwise stated in the warranty contract, when either an optional or a mandatory warranty provides that the customer will pay a deductible towards repairs and services provided under the warranty, the person providing the warranty contract is liable for any tax or tax reimbursement otherwise payable by the customer with respect to that deductible.

History: Adopted August 7, 1957, as restatement of previous Ruling 64 (Cal. Admin. Code 2054), effective September 11, 1957.
Effective August 1, 1933 (Rulings 66 and 67, Cal. Admin. Codes 2056 and 2057).
Adopted as of January 1, 1945, as a restatement of previous rulings.
Adopted November 3, 1969, as a restatement of former Rulings 64 (Cal. Admin. Code 2054); 66 (Cal. Admin. Code 2056) and 67 (Cal. Admin. Code 2057), effective December 5, 1969.
Amended November 5, 1970, effective December 10, 1970.
Amended October 31, 1984, effective December 30, 1984.
First paragraph of (a) revised to provide for withholding of rehandling and restocking costs on basis of average cost and to require retention of adequate records.
Amended November 1, 2000, effective January 18, 2001. Subdivision (b)—current language re-designated (b)(1) and entitled ''IN GENERAL.'' New subdivision (b)(2) added. Subdivision (c)(3)—gender specific language deleted and the phrase ''or from outside California'' added. New subdivision (c)(4) added.

Regulation 1660. LEASES OF TANGIBLE PERSONAL PROPERTY—IN GENERAL.

References: Sections 6006, 6006.1, 6006.3, 6006.5, 6009, 6010, 6010.1, 6010.65, 6010.7, 6011, 6012, 6012.6, 6016.3, 6092.1, 6094, 6094.1, 6243.1, 6244, 6244.5, 6379, 6390, 6391, 6407, and 6457, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) LEASE. The term ''lease'' includes rental, hire, and license. It includes a contract under which a person secures for a consideration the temporary use of tangible personal property which, although not on his or her premises, is operated by,

or under the direction and control of, the person or his or her employees. ''Lease,'' however, does not include a use of tangible personal property for a period of less than one day for a charge of less than twenty dollars ($20) when the privilege to use the property is restricted to use thereof on the premises or at a business location of the grantor of the privilege (see (e) below).

(2) SALE UNDER A SECURITY AGREEMENT.

(A) Where a contract designated as a lease binds the ''lessee'' for a fixed term and the ''lessee'' is to obtain title at the end of the term upon completion of the required payments or has the option to purchase the property for a nominal amount, the contract will be regarded as a sale under a security agreement from its inception and not as a lease. The option price will be regarded as nominal if it does not exceed $100 or 1 percent of the total contract price, whichever is the lesser amount.

(B) In the case of a contract designated as a lease with any state or local government, the governmental agency designated as a lessee shall be treated as bound for a fixed term notwithstanding any right it may have to terminate the contract to the extent that sufficient funds are not appropriated to pay amounts due under the contract. Such transactions are subject to tax as sales under a security agreement at their inception.

(3) SALE AND LEASEBACK TRANSACTIONS.

(A) General. Transactions structured as sales and leasebacks will be treated as financing transactions if (1) the ''lease'' transaction would be regarded as a sale at inception under paragraph (a)(2) of this regulation, (2) the purchaser-lessor does not claim any deduction, credit or exemption with respect to the property for federal or state income tax purposes, and (3) the amount which would be attributable to interest, had the transaction been structured originally as a financing agreement, is not usurious under California law. Transactions treated as financing transactions are not subject to sales or use tax.

(B) Special Application. Transactions structured as sales and leasebacks will also be treated as financing transactions if all of the following requirements are met:

1. The initial purchase price of the property has not been completely paid by the seller-lessee to the equipment vendor.
2. The seller-lessee assigns to the purchaser-lessor all of its right, title and interest in the purchase order and invoice with the equipment vendor.
3. The purchaser-lessor pays the balance of the original purchase obligation to the equipment vendor on behalf of the seller-lessee.
4. The purchaser-lessor does not claim any deduction, credit or exemption with respect to the property for federal or state income tax purposes.
5. The amount which would be attributable to interest, had the transaction been structured originally as a financing agreement, is not usurious under California law.
6. The seller-lessee has an option to purchase the property at the end of the lease term, and the option price is fair market value or less.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1660. (Contd.)

(C) Tax Benefit Transactions. Tax does not apply to sale and leaseback transactions entered into in accordance with former Internal Revenue Code Section 168(f)(8), as enacted by the Economic Recovery Tax Act of 1981 (Public Law 97-34).

(D) Acquisition Sale and Leaseback Transactions. No sales or use tax applies to the transfer of title to, or the lease of, tangible personal property pursuant to an acquisition sale and leaseback, which is a transaction satisfying all of the following conditions:

1. The seller/lessee has paid California sales tax reimbursement or use tax with respect to that person's purchase of the property.

2. The acquisition sale and leaseback is consummated within 90 days of the seller/lessee's first functional use of the property (this 90 day period does not begin to run until the first functional use of the property; a period of storage after the purchase but before the first functional use is not used to calculate the 90 day period).

3. The acquisition sale and leaseback transaction is consummated on or after January 1, 1991.

The sale of the property at the end of the lease term is subject to sales or use tax. Any lease of the property by the purchaser/lessor to any person other than the seller/lessee would be subject to use tax measured by rentals payable. A lease to the seller/lessee at the end of the original lease term is subject to use tax measured by rentals payable unless such lease is pursuant to an election to exercise an option to extend the lease term, which option was contained in the original lease agreement.

(b) LEASES AS SALES OR PURCHASES.

(1) IN GENERAL. Any lease of tangible personal property in any manner whatsoever for a consideration is a "sale" as defined in Section 6006 of the Revenue and Taxation Code, and a "purchase" as defined in section 6010 of the Revenue and Taxation Code, except a lease of:

(A) Motion picture films and video tapes, including television films and video tapes, whether or not they are productions complete in themselves. See, however, subdivision (d)(2) below for application of tax for periods on and after September 1, 1983, to leases of video cassettes, videotapes, and videodiscs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, videotape, or videodisc.

(B) Linen supplies and similar articles, including such items as towels, uniforms, coveralls, shop coats, dust cloths, caps and gowns, etc., when an essential part of the lease is the furnishing of the recurring service of laundering or cleaning of the articles leased.

(C) Household furnishings with a lease of the living quarters in which they are to be used. The lessor of the household furnishings must also be the lessor of the living quarters. The living quarters must be real property rather than tangible personal property.

Regulation 1660. (Contd.)

(D) Mobile transportation equipment for use in transportation of persons or property (see Regulation 1661 (18 CCR 1661)).

(E) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor as to which the lessor or his or her transferor acquired the property in a transaction that was a retail sale with respect to which the lessor or the transferor has paid sales tax reimbursement or as to which the lessor or the transferor has timely paid use tax measured by the purchase price of the property.

As used herein, ''transferor'' means:

1. A person from whom the lessor acquired the property in a transaction described in Section 6006.5(b) of the Revenue and Taxation Code, or

2. A decedent from whom the lessor acquired the property by will or by law of succession.

For purposes of 1. above, the transaction will qualify if the property is acquired in a transfer of all or substantially all of the tangible personal property held or used by the transferor in all of his or her activities requiring the holding of a seller's permit or permits or in an activity or activities not requiring the holding of a seller's permit or permits, and the ownership of the tangible personal property is substantially similar after the transfer.

(F) Tangible personal property occurring on or after January 1, 1997 described in sections 17053.49 or 23649 of the Revenue and Taxation Code by the manufacturer of that property when leased to a qualified person, as described in sections 17053.49 or 23649 of the Revenue and Taxation Code, in a form not substantially the same as acquired as to which the manufacturer made a timely election to report and pay tax measured by the cost price of that property as defined in section 6244.5 of the Revenue and Taxation Code and Regulation 1525.3.

(G) A mobilehome, as defined in Sections 18008(a) and 18211 of the Health and Safety Code, other than a mobilehome originally sold new prior to July 1, 1980 and not subject to local property taxation.

(2) LEASES AS CONTINUING SALES AND PURCHASES. In the case of any lease that is a ''sale'' and ''purchase'' under subdivision (b)(1) above, the granting of possession by the lessor to the lessee, or to another person at the direction of the lessee, is a continuing sale in this state by the lessor, and the possession of the property by a lessee, or by another person at the direction of the lessee, is a continuing purchase for use in this state by the lessee, as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other persons. The application of tax to such leases is set forth below.

(c) GENERAL APPLICATION OF TAX.

(1) NATURE OF TAX. In the case of a lease that is a ''sale'' and ''purchase'' the tax is measured by the rentals payable. Generally, the applicable tax is a use tax upon the use in this state of the property by the lessee. The lessor must collect the tax

Regulation 1660. (Contd.)

from the lessee at the time rentals are paid by the lessee and give him or her a receipt of the kind called for in Regulation 1686 (18 CCR 1686). The lessee is not relieved from liability for the tax until he or she is given such a receipt or the tax is paid to the state.

When the lessee is not subject to use tax (for example, insurance companies), the sales tax applies. The sales tax is upon the lessor and is measured by the rentals payable.

Neither the sales tax nor the use tax applies to leases to the United States and its instrumentalities unless federal law permits taxing the instrumentality. For a more complete explanation regarding sales to the United States and its instrumentalities see Regulation 1614 (18 CCR 1614).

The ''rentals'' subject to the tax include any payments required by the lease, including amounts paid for personal property taxes on the leased property, whether assessed directly against the lessee or against the lessor, but does not include amounts paid to the lessor for:

(A) Collection costs, including attorney's fees, court costs, repossession charges, and storage fees; but tax does apply to any delinquent rental payments, including those collected by court action;

(B) Insuring, repairing or refurbishing the leased property following a default;

(C) Cost incurred in defending a court action or paying a tort judgement arising out of the lessee's operation of the leased property, or any premiums paid on insurance policies covering such court actions or tort judgments;

(D) Cost incurred in disposing of the leased property at expiration or earlier termination of the lease;

(E) Late charges and interest thereon for failing to pay the rentals timely;

(F) Separately stated optional insurance charges, maintenance or warranty contracts;

(G) Personal property taxes assessed against personal property where a bank or financial corporation is the lessor.

(2) PROPERTY LEASED IN FORM ACQUIRED. No sales or use tax is due with respect to the rentals charged for tangible personal property leased in substantially the same form as acquired by the lessor, or by his or her transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price. If such tax has not been so paid, and the lessor desires to pay tax measured by the purchase price, it must be reported and paid timely with the return of the lessor for the period during which the property is first placed in rental service. A timely return is a return filed within the time prescribed by Sections 6452 or 6455 of the Revenue and Taxation Code, whichever is applicable.

(3) PROPERTY PURCHASED TAX PAID. In the case of property ultimately leased in substantially the same form as acquired, payment of tax or tax reimbursement measured by the purchase price at the time the property is acquired

constituted an irrevocable election not to pay tax measured by rental receipts. The lessor may not change his or her election by reporting tax on rental receipts and claiming a tax-paid-purchase-resold deduction.

(4) PROPERTY ACQUIRED IN EXEMPT TRANSACTIONS.

(A) A purchaser of tangible personal property acquired in a transaction defined as an occasional sale in section 6006.5(a) of the Revenue and Taxation Code and leased in substantially the same form as acquired by him or her, may elect to pay use tax measured by the purchase price of the property in lieu of tax measured by rental receipts.

(B) A purchaser of tangible personal property acquired in a transaction which qualifies under section 6006.5(b) of the Revenue and Taxation Code and leased in substantially the same form as acquired by his or her transferor may elect to pay use tax measured by his or her transferor's purchase price of the property in lieu of tax on rental receipts. This provision has application where the transferor did not pay tax or tax reimbursement when he or she acquired the property.

For purposes of this provision, the transaction will qualify if the property is acquired in a transfer of all or substantially all of the tangible personal property held or used by the transferor in all of his or her activities requiring the holding of a seller's permit or permits or in an activity or activities not requiring the holding of a seller's permit or permits and the ownership of the tangible personal property is substantially similar after the transfer (see also (b)(1)(E) above).

(C) The election provided for in subdivisions (c)(4)(A) and (c)(4)(B) above shall be exercised by the lessor in a timely return filed for the period in which the property is first leased by him or her.

(5) PROPERTY SUBLEASED. Tax does not apply to receipts from subleases of tangible personal property which is leased in substantially the same form as acquired by the prime lessor where the prime lessor has paid sales tax reimbursement or use tax measured by his or her purchase price. Also, tax does not apply to subleases of tangible personal property if the tax is paid on rental receipts derived under the prime lease, or any prior sublease.

(6) USE OF PROPERTY BY LESSOR. If a lessor, after leasing property and collecting and paying use tax, or paying sales tax, measured by rental receipts, makes any use of the property in this state, other than incidental use, he or she is liable for use tax measured by the purchase price of the property. He or she may, however, apply as a credit against the tax so computed, the amount of tax previously paid to the Board with respect to rentals of the property. If the credit is less than the tax, he or she must pay the difference with his return, but may apply the amount of such payment against his or her liability for tax on subsequent rentals of the property. Effective January 1, 1973, through December 31, 1978, any amount collected as tax or tax reimbursement by the lessor from the lessee on such subsequent rentals will be regarded as excess tax reimbursement to the extent that the lessor is permitted by the foregoing provisions to apply the amount of his or her payment for use tax against his or her liability for tax on subsequent rentals of the property. An incidental use, e.g.,

Regulation 1660. (Contd.)

a brief loan of property which otherwise is leased by the lessor pursuant to leases which are continuing sales, subjects the lessor to liability for use tax measured by the fair rental value of the property during the period of the incidental use. (See Regulation 1669.5(b) (7) (18 CCR 1669.5(b)(7)).)

(7) OPTIONS TO PURCHASE. An agreement providing for the lease of tangible personal property and granting the lessee an option to purchase the property results in a sale when the option is exercised. The tax applies to the amount required to be paid by the purchaser upon the exercise of the option.

(8) TAX PAID TO ANOTHER STATE. A lessor who leases property in substantially the same form as acquired and who has paid a retail sales or use tax, or reimbursement therefor, imposed with respect to that property by any other state, political subdivision thereof or the District of Columbia prior to leasing the property in this state may credit the payment against any use tax imposed on him or her by this state because of such lease. However, to be entitled to the credit the lessor must make a timely election to measure any tax liability for the property by its purchase price, unless the out-of-state tax equals or exceeds the tax imposed on him or her by this state. If the out-of-state tax equals or exceeds the tax imposed on him or her by this state, the lessor will be deemed to have made a timely election and the rental receipts will not be subject to tax provided the property is leased in substantially the same form as acquired. If a timely election is not made, no credit will be allowed because the tax due will be a use tax measured by rental receipts and imposed directly against the lessee, a person other than the one who paid the out-of-state tax or tax reimbursement. If the lessee is not subject to use tax and the lessor does not make a timely election to pay tax measured by his or her purchase price, he or she may not credit the amount of the out-of-state tax against the tax due on the rental receipts because the tax due is a sales tax rather than a use tax.

A credit otherwise permitted by the foregoing provisions shall not be allowed against taxes which are measured by periodic payments made under a lease, to the extent that taxes imposed by any other state, political subdivision or the District of Columbia were also measured by periodic payments made under a lease prior to the lease of the property in this state.

(9) ASSIGNMENT OF LEASES.

(A) In General—Status of Assigned Leases. The situations described in (B), (C), and (D) below involve existing leases which are ‘‘sales’’ and ‘‘purchases’’ subject to tax measured by rental payments. When such a lease is assigned, whether or not title to the leased property is transferred, the rental payments remain subject to tax, without any option to measure tax by the purchase price. An assignee-purchaser who uses the property after termination of the lease is subject to use tax measured by the purchase price as provided in (c)(6) above.

Generally, when an existing lease that is not a ‘‘sale’’ and ‘‘purchase’’ is assigned, whether or not title to the leased property is transferred, the rental payments are not subject to tax. If title is transferred, tax applies measured by the sales price.

For rules relating to the assignment of leases of mobile transportation equipment coming within the exclusions provided in sections 6006(g)(4) and 6010(e)(4) of the Revenue and Taxation Code, see Regulation 1661 (18 CCR 1661).

Regulation 1660. (Contd.)

(B) Assignment of a Right and Creation of a Security Interest. This type of assignment is an assignment by the lessor of the right to receive the rental payments together with the creation of a security interest in the leased property which is designated as such. The assignee has recourse against the assignor.

The assignee in this situation does not have the rights of a lessor and is not obligated to collect or pay the tax measured by the rental payments. The lessor remains subject to the obligation of collecting and reporting the tax even if he or she does not receive the rental payments directly from the lessee. The assignee, however, is obligated to remit to the Board any amounts paid to him or her by the lessee as tax.

If the assignee enforces the security agreement and takes title to the property, the assignee as lessor becomes responsible for collecting and reporting the tax.

(C) Assignment of Contract with Transfer of Right, Title, and Interest for Security Purposes. This type of assignment is an assignment by the lessor of the lease contract together with the transfer of the right, title, and interest in the leased property for security purposes. After the termination of the lease, the property usually reverts to the original lessor. The assignment contract may specify that the transfer is for security purposes, or the circumstances may otherwise demonstrate it (e.g., a separate agreement that the property will be returned to the assignor at the termination of the lease). The assignee has recourse against the assignor.

In this situation, the assignee has assumed the position of a lessor. He or she is required to hold a seller's permit and is obligated to collect, report and pay the tax to the Board. The assignor should obtain a resale certificate, covering the property in question, from the assignee.

(D) Assignment of Contract and All Right, Title, and Interest. This type of assignment is an assignment by the lessor of the lease contract together with the transfer of all right, title, and interest in the leased property. The assignment is not for security purposes, and the assignor does not retain any substantial ownership rights in the contract or the property. The assignee has no recourse against the assignor.

In this situation, the assignee has assumed the position of a lessor. He or she is required to hold a seller's permit and is obligated to collect, report and pay the tax to the Board. The assignor should obtain a resale certificate, covering the property in question, from the assignee.

(d) PARTICULAR APPLICATIONS.

(1) PORTABLE TOILETS. A lease of a portable toilet unit is a sale or purchase and tax applies measured by the lease or rental price regardless of whether the unit is leased in substantially the same form as acquired and regardless of whether sales tax reimbursement or use tax has been paid.

Charges for mandatory maintenance or cleaning services of portable toilet units are subject to tax as part of the rental price. Charges for optional maintenance or cleaning services of portable toilet units are not part of the rental price of the portable toilet units and are not subject to tax. Maintenance or cleaning services are mandatory within the meaning of this regulation when the lessee, as a condition of the lease or

Regulation 1660. (Contd.)

rental agreement, is required to purchase the maintenance or cleaning service from the lessor. Maintenance or cleaning services are optional within the meaning of this regulation when the lessee is not required to purchase the maintenance or cleaning service from the lessor.

Charges for maintenance or cleaning services will be considered mandatory and therefore part of the taxable rental price, unless the lessor provides documentary evidence establishing that such charges are optional. The terms of the lease or rental agreement determine whether the maintenance or service charges are mandatory or optional. In the absence of a lease or rental agreement, or in the absence of language in the lease or rental agreement specifying whether the maintenance or service charges are mandatory or optional, an invoice stating that the maintenance or cleaning charges are optional, and separately stating these charges from the rental charge, will be sufficient to support the exemption from tax.

Other documentary evidence may be accepted by the Board to establish that the maintenance or cleaning is performed at the option of the lessee.

When the maintenance or cleaning services are subject to tax, the supplies used to perform these services are considered to be sold with the services and may be purchased for resale. When the maintenance or cleaning services are not subject to tax, the provider of these services is the consumer of the supplies, and tax generally applies to the sale to or the use of these supplies by the provider of the maintenance or cleaning services.

(2) VIDEO CASSETTES, VIDEOTAPES, VIDEODISCS. On and after September 1, 1983, the rental or lease of a video cassette, videotape, or videodisc for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, videotape, or videodisc is a sale or purchase and tax applies measured by rental receipts. Tax applies measured by rental receipts regardless of whether the property is leased in substantially the same form as acquired and regardless of whether sales tax reimbursement or use tax has been paid by the lessor with respect to the purchase price of the video cassette, videotape, or videodisc. If the property was rented, leased or otherwise used prior to September 1, 1983, no refund, credit, or offset for any sales tax reimbursement or use tax paid on the purchase price will be allowed against the tax measured by the lease or rental price after September 1, 1983.

(3) LEASE OF AN ANIMAL. A lease of any form of animal life of a kind the products of which ordinarily constitute food for human consumption is not subject to tax.

(4) COMPOSED TYPE, REPRODUCTION PROOFS, IMPRESSED MATS. Tax does not apply to leases of composed type or reproduction proofs thereof by a typographer to another person for use in the preparation of printed matter or to leases of such reproduction proofs or impressed mats to a printer or publisher for use in printing, except when the reproduction proof is a component part of a ‘‘paste-up’’, ‘‘mechanical’’ or ‘‘assembly’’.

(5) REPAIR PARTS. Sales tax does not apply to sales of repair parts to a lessor which are used by him or her in maintaining the leased equipment pursuant to a

Regulation 1660. (Contd.)

mandatory maintenance contract where the rental receipts are subject to tax. Such repair parts are regarded as being part of the sale of the leased item and may be purchased for resale. The amount paid by the lessee under the mandatory maintenance contract is regarded as part of the rental payments.

(6) NEON SIGNS. A lease of a neon sign that is personal property is subject to the provisions of the Sales and Use Tax Law as any other lease of personal property.

(7) PROPERTY AFFIXED TO REALTY. For the purpose of this regulation, ''tangible personal property'' includes any leased fixture affixed to realty if the lessor has the right to remove the fixture upon breach or termination of the lease agreement, unless the lessor of the fixture is also the lessor of the realty to which the fixture is affixed. The term fixture as used herein has the same meaning as the term ''fixture'' in Regulation 1521 (18 CCR 1521).

Leases of structures together with the component parts of such structures, e.g., plumbing fixtures, air conditioners, water heaters, etc., will be treated as leases of real property. Accordingly, tax applies to contracts to construct such structures and the attached components in accordance with Regulation 1521 (18 CCR 1521).

On and after September 26, 1989, leases of factory-built school buildings (relocatable classrooms) as defined in paragraph (c)(4)(B) of Regulation 1521 (18 CCR 1521), ''Construction Contractors'', will be treated as leases of real property with the lessor to the school or school district as the consumer. If the lessor is the manufacturer, tax applies to the manufacturer's costs of all tangible personal property used in constructing the factory-built school building. If the lessor is other than the manufacturer, tax applies to 40% of the sales price of the factory-built school building to such lessor.

For purposes of this section, ''structure'' does not include any prefabricated mobile homes, or similar items which are registered with the Department of Motor Vehicles. It also does not include a portable building, such as a shed or kiosk, which is moveable as a unit from its site of installation, unless the building is physically attached to the realty, upon a concrete foundation or otherwise. Such a building resting in place by its own weight, whether upon the ground, a concrete slab, or sills or piers, is not a ''structure.'' A prefabricated or modular building similar in size to, but which is not, a factory-built school building (relocatable classroom) is a ''structure'' whether the building rests in place by its own weight or is physically attached to realty.

Those fixtures which are essential to the structure such as heating and air conditioning units, sinks, toilets, and faucets, which are leased by the lessor of the structure to which they are attached are considered part of the structure and therefore improvements to real property.

On the other hand, those fixtures which although being a component part of the structure are leased by other than the lessor of the structure, will be considered tangible personal property. Accordingly, the tax consequences with respect to such fixtures will be the same as with respect to any other lease of tangible personal property.

Regulation 1660. (Contd.)

(8) MOBILEHOMES.

(A) The leasing of any mobilehome purchased by a retailer without payment of sales tax reimbursement or use tax and first leased prior to July 1, 1980, is a continuing sale and tax is due measured by the periodic lease payments unless the mobilehome becomes subject to local property taxation, in which event the lease of the property is thereafter exempt from the sales and use tax.

(B) The lease of a new mobilehome purchased by a retailer without payment of sales tax reimbursement or use tax and first leased on or after July 1, 1980, is excluded from classification as a continuing sale and the lessor's use of such property by leasing is subject to the use tax.

If the use of the property is for occupancy as a residence then the tax is measured by an amount equivalent to 75 percent of the purchase price paid by the lessor's vendor. In the absence of satisfactory evidence of the vendor's purchase price it shall be presumed that the measure of use tax is an amount equivalent to 60 percent of the sales price of the mobilehome to the lessor unless the vendor is also the manufacturer. If such mobilehome is purchased by the lessor from the manufacturer, the measure of the use tax liability is 75 percent of the purchase price of the mobilehome to the lessor.

If the use of the property is not for occupancy as a residence, then the tax is measured by the full retail sales price to the lessor.

(C) The subsequent lease of a used mobilehome which was first sold new in this state after July 1, 1980, is exempt from the sales and use tax.

(e) GRANT OF PRIVILEGE TO USE WHICH IS NOT A LEASE.

(1) IN GENERAL. Certain restricted grants of a privilege to use property are excluded from the term ''lease.'' To fall within the exclusion, the use must be for a period of less than one continuous 24-hour period, the charge must be less than $20, and the use of the property must be restricted to use on the premises or at a business location of the grantor of the privilege to use the property.

(2) DEFINITIONS.

(A) ''Grantor of the privilege'' means a person who allows another person to use the personal property.

(B) ''Use'' includes the possession of, or the exercise of any right or power over personal property by a grantee of a privilege to use the personal property.

(C) ''Premises'' or ''business location'' means a building or specific area owned or leased by a grantor or to which a grantor has an exclusive right of use or a space occupied by the personal property which a grantor allows other persons to use in place. For example:

1. A place in a depot at which a grantor places a coin-operated amusement device pursuant to a contract with the management of the depot.

2. An area in an apartment house or motel where a grantor has a right to place coin-operated washing machines and dryers for use by occupants of the apartment house or motel.

Regulation 1660. (Contd.)

3. A laundromat owned or leased by a person who places therein coin-operated washing machines and dryers for use by customers.

4. A riding stable at which horses are furnished to the public at an hourly rate with a restriction that the horses be ridden within a specific area owned or leased by a grantor of the privilege. The ''specific area'' might be an enclosed arena or other place the exterior boundaries of which are defined by walls, fences or otherwise in such a manner that the area readily can be recognized and distinguished from adjoining or surrounding property.

5. A golf course owned or leased by a golf club which owns or leases golf carts that it furnishes to persons for use in playing the course, or a golf course under the supervision and control of a golf professional who owns or leases golf carts that he or she furnishes to persons for use in playing the course.

(3) EXAMPLES OF SITUATIONS WHICH DO NOT QUALIFY FOR EXCLUSION FROM THE TERM ''LEASE''.

(A) One of several rental firms permitted by a hospital to do so rents a portable television set and stand to a hospital patient for a charge of $4.00 per day for a period of six days.

This situation does not qualify for the exclusion because the period of ''use'' is not for less than one day, the total rental is not less than $20 and the place of use is not the ''premises'' or ''business location'' of the rental firm since it does not have ''exclusive right of use'' of the hospital as regards the placing of its rental units therein nor is the space regularly occupied by it for use in place.

(B) Rental of a canoe for a period of eight hours for a total charge of $4 when the customer will use the canoe on the Russian River.

This situation does not qualify for the exclusion because the river is not the premises or business location of the grantor of the privilege.

(C) Rental of tools to be used on the premises of the owner of the tools for a period of eight hours invoiced as follows:

1	Portable lamp	$ 4
1	Wheel pulley	4
1	Portable hoist	4
1	Sander	4
1	Spray gun	5
	Total rental	$21

This situation does not qualify for the exclusion because the agreement for rental of the property is a single agreement involving rental charges of $21 and does not meet the requirement that the charge be less than $20.

(D) An equipment rental firm rents a cement mixer to a customer who takes the mixer to his or her home and uses it for less than one day. The rental charge is $9. The mixer is of a type which must be firmly ''in place'' during the cement mixing operation.

Regulation 1660. (Contd.)

This situation does not qualify for the exclusion because although the mixer is firmly ''in place'' during the mixing operation, it is not in a space regularly occupied by it for use in place by customers of the grantor.

(4) APPLICATION OF TAX TO SITUATIONS QUALIFYING FOR EXCLUSION FROM THE TERM ''LEASE.'' The grantor of the privilege to use property under the conditions described in (e)(1) above is the consumer of the property. Accordingly, charges by him or her for the privilege to use the property are not subject to tax. Tax applies to the sale of the property to him or her by a retailer or to his or her use of the property, measured by his or her purchase price, when the property is purchased from a retailer in California under a resale certificate or from a retailer at an out-of-state location. If the property is acquired through an ''occasional sale'' as defined in Section 6006.5 of the Revenue and Taxation Code, or other exempt transaction, no tax applies to the acquisition or use of the property by the grantor nor to his or her charges for the privilege to use the property.

History: Amended November 3, 1969, applicable on and after November 10, 1969.
Amended November 5, 1970, effective December 10, 1970.
Amended and renumbered November 3, 1971, effective December 3, 1971.
Amended December 15, 1971, applicable on and after December 15, 1971.
Amended February 16, 1972, effective March 25, 1972.
Amended November 15, 1972, effective December 21, 1972.
Amended June 24, 1976, effective July 30, 1976. In (c)(7) added and defined ''incidental use.''
Amended August 17, 1976, effective September 19, 1976. Noted that sales tax on United States or its instrumentalities is legal only when permitted by federal law.
Amended August 17, 1976, effective October 23, 1976. Added part of (c)(1) previously deleted in error.
Amended December 7, 1978, effective January 28, 1979. Deletes language pertaining to excess tax reimbursement; amends subsection (b)(1)(E) which provides when leases of tangible personal property are not considered sales; and amends subsection (c)(1) to provide that after 1/1/79 leases of tangible personal property to the United States are subject to sales tax.
Amended March 7, 1979, effective May 16, 1979. Altered definition of ''lease'', operative 1/1/79.
Amended February 6, 1980, effective March 29, 1980. Added Sections 6092.1, 6243.1 and 6381.5 to references. In (c)(1) deleted ''state and national banks,'' and substituted ''a federally-chartered bank exempt from direct state taxation under federal law,'' and added four conditions for exemption from sales tax; in (c)(8) deleted ''bank'' and substituted ''federally-chartered bank exempt from direct state taxation under federal law.''; in (c)(9)(A) deleted sentences referring to Section 6094(d) and 6244(d); added final paragraph.
Amended August 1, 1980, effective August 22, 1980, operative July 1, 1980. In (b), added (1)(F); in (d), added (8).
Amended November 19, 1980, effective January 16, 1981. In (d)(8)(B) added provisions regarding manufacturer; added paragraph re measure when property not used as residence.
Amended April 1, 1981, effective August 19, 1981. In (b)(1)(E) deleted requirement that lessors prove that retailer paid tax to the Board; substituted

Regulation 1660. (Contd.)

"lessor or the transferor has paid sales tax reimbursement." In (c)(2) added "has paid sales tax reimbursement"; deleted "or their vendor has paid sales tax measured by gross receipts."

Amended October 26, 1983, effective November 17, 1983. Added last sentence to subparagraph (b)(1)(A) and new subparagraph (2) to subdivision (d), and renumbered former subparagraphs (2) through (8) to (3) through (9).

Amended May 9, 1985, effective September 22, 1985. In Subdivision (c)(1), deleted references indicating that sales tax applies to leases to the United States and its tax-exempt instrumentalities. In subdivision (c)(1), added definitions of "rentals subject to tax" and provided for the exclusion of certain other charges by the lessor which are not part of rentals. In subdivision (c)(8), deleted references to the United States and its tax-exempt instrumentalities and added reference to the lessee who is "not subject to use tax".

Amended May 10, 1989, effective July 26, 1989. Amended to include changes necessitated by AB 4417, Chapter 825, Statutes of 1986, and by the holding in *Cedars-Sinai Medical Center* v. *State Board of Equalization,* 162 Cal.App.3d 1182 (1984). See subdivisions (a)(2)(B) and (a)(3)(A), (B) and (C). Also amended subdivisions (d)(1), (d)(3) and (e) to delete unnecessary language and subdivision (d)(8) to correct a typographical error.

Amended June 5, 1991, effective August 22, 1991. Deleted explanation of the application of tax to leases of certain structures which were entered into prior to 1971. Amended paragraph (b)(1)(F) to limit definition of "mobilehome" for purposes of this regulation to paragraph (a) of Section 18008 and to paragraph 18211, Health and Safety Code. Amended paragraph (d)(8) to delete outdated information and to clarify treatment of leases of factory-built school buildings.

Amended August 1, 1991, effective August 27, 1991.

Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, to repeal an exemption from sales and use tax for tax on the sale or use of a photograph when possession but not title of the photograph is transferred for the purpose of being reproduced one time only in a newspaper regularly issued at average intervals not exceeding three months. Subparagraphs of paragraph (b) were renumbered.

Amended May 3, 1994, effective July 30, 1994. Added subdivision (a)(3)(D) to define acquisition sale and leaseback, the period of time the provision will be used, and interprets its application to various post-lease transactions.

Amended June 22, 1995, effective July 22, 1995. Deleted subparagraph (a)(3)(D)4. as provided in Statutes of 1994, Chapter 286.

Amended November 5, 1997, effective December 5, 1997. Added new subdivision (b)(1)(F) to incorporate provisions of Chapter 954, Statutes of 1996, and renumbered the following subdivision.

Amended February 23, 2000, effective May 25, 2000. Added subdivision (c)(1)(G).

Amended September 26, 2001, effective January 5, 2002. Subdivision (d)(1)—word "chemical" changed to "portable." New unnumbered paragraphs added.

Regulation 1661. LEASES OF MOBILE TRANSPORTATION EQUIPMENT.

Reference: Sections 6006, 6006.1, 6006.3, 6006.5, 6009, 6010, 6010.1, 6011, 6012, 6016.3, 6023, 6024, 6092.1, 6094, 6243.1, 6244, 6352, 6390, 6391, 6407, 6457, 23154 and 23182, Revenue and Taxation Code; and Article XIII, section 27, California Constitution.

Leases Generally, see Regulation 1660.

(a) DEFINITIONS

(1) "Mobile Transportation Equipment." The term "mobile transportation equipment" includes only equipment for use in transporting persons or property for substantial distances, such as railroad cars and locomotives, buses, trucks (except "one-way rental trucks"), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. The term does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay or airport. Examples of such items are hand dollies, forklift trucks, mine cars, pilot boats, tugboats and lighters, not including, however, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment.

The following items are specifically excluded from the definition of mobile transportation equipment:

(A) Passenger vehicles as defined in section 465 of the California Vehicle Code;

(B) Trailers and baggage containers designed for hauling by passenger vehicles; and

(C) One-way rental trucks. These vehicles are motor trucks of a kind required to be registered under the Vehicle Code, not exceeding the manufacturer's gross vehicle weight rating of 24,000 pounds, which are principally employed by a person in the rental business in being leased out for short-term periods of not more than thirty-one (31) days to individual customers for one-way or local hauling of personal property of the customers, and which upon acquisition or being employed in this state by the person, are identified to the board by reporting tax measured by rental receipts on a timely return for the first reporting period in which the truck is leased and maintaining records which can be verified by audit of the vehicles as to which such an election has been made.

Upon the leasing of such a truck to a customer, the lessor shall make known to the customer the fact that the vehicle is designated as a one-way rental truck and any taxes which are imposed are measured by the rentals. Once a truck is identified to the board as a one-way rental truck, the election may not be revoked with respect to the equipment as to which it is made. However, failure of the lessor to make such a timely election will cause such vehicles to be classified as mobile transportation equipment.

Regulation 1661. (Contd.)

(2) "Bogie." The term "bogie" means a vehicle consisting of an axle or axles with wheels and tires with a device mounted on its frame to support a container (van body) as an undercarriage. It acts as wheels for and in conjunction with the container (or van body). Bogies are specifically designed to couple under a container temporarily for highway use, being detachable when not required. Bogies may be designed and constructed so as to allow a sliding movement under a container (or van body) to several positions under the container to adjust to desired axle loading.

(3) "Chassis." The term "chassis" means a frame with one or more axles designed to be used in conjunction with and as a temporary support or undercarriage for a container or other van-type box. The chassis and axle or axles may be designed and constructed so as to allow a sliding movement for extending the chassis to allow the carriage of various length bodies or to allow movement of one or more axles to any given position under the container. When operated as a semitrailer, the front portion of the container and chassis is attached to a motor vehicle or dolly.

(4) "Dolly." The term "dolly" means a vehicle consisting of a tongue, fifth wheel and axle equipped with wheels and tires to be connected to a semitrailer so as to support the front end of the semitrailer, including a portion of the cargo thereon, but which is not permanently attached to the semitrailer.

When coupled to the semitrailer by its fifth wheel (which is mounted on the frame) and to a trailer by the tongue, the semitrailer becomes in effect a "full" trailer. A dolly may also be designed and used as the third or rear axle of a two-axle tractor to act as an additional axle to support a portion of the weight of a towed semitrailer and any load thereon, thus reducing tractor axle loads. Pole, pipe, and logging dollies consist of a tongue, bolster and axle or axles equipped with wheels and tires. When connected to a motor vehicle by its tongue, or by the cargo, this type of dolly is used to transport long poles, timbers, logs, pipes or structural materials with the rear end of the cargo resting on the dolly bolster and the front end on the motor vehicle.

(5) "Ships." The term "ships" includes vessels, such as trawlers, fishing boats, sailboats, yachts and houseboats, which are 30 feet or more in length. The term does not include vessels less than 30 feet in length.

(b) APPLICATION OF TAX.

(1) With respect to leases of mobile transportation equipment, the sale to the lessor is the retail sale and the lessor is the consumer of the equipment. Accordingly, either the sale of the equipment to the lessor or its use in this state may be subject to tax. For example, if a dealer of that mobile transportation equipment makes the sale and delivery within California, the transaction is subject to sales tax unless the lessor makes a timely election to report his or her tax liability measured by the fair rental value as provided in subdivision (b)(2). On the other hand, if the sale and delivery occur outside California and the property is purchased for use in California, use tax will apply measured by the purchase price unless the equipment enters the state in interstate commerce and is used continuously thereafter in interstate commerce, or the lessor makes a timely election to report use tax liability measured by the fair rental value as provided in subdivision (b)(2).

Regulation 1661. (Contd.)

If in connection with an assignment of an existing lease of mobile transportation equipment, title to the leased property is transferred to the assignee, the transfer is a sale to the assignee and the assignee is the consumer of the equipment. Application of tax is governed by the rules set forth in this subdivision (b)(1).

(2) If the use of mobile transportation equipment purchased without the payment of tax or tax reibursement on the purchase price is limited to leasing the equipment, the purchaser may elect to pay his or her use tax liability measured by the fair rental value. Such election must be made on or before the due date of a return for either the period in which the equipment is first leased or the period in which the equipment first enetered California, whichever is later. The election must be made by reporting tax measured by the fair rental value on a timely return for that period. Tax must thereafter be paid with the return for each reporting period, measured by the fair rental value, whether the equipment is within or without this state. The election may not be revoked with respect to the equipment as to which it is made. Any separately stated amount collected from a lessee by a lessor electing to report use tax measured by fair rental value under the representation by the lessor that the amount is use tax imposed on the customer must be returned to the customer or paid to the Board. A designation by the lessor of a separately stated amount as ''use tax,'' without further explanation, will be regarded as a representation that the amount is use tax imposed on the customer.

This election is available to any purchaser who leases mobile transportation equipment, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, and such purchaser may properly issue a resale certificate for the limited purpose of reporting use tax liability based on fair rental value.

(A) Fair Rental Value. ''Fair rental value'' means the rentals required by the lease, except where the Board determines the rental receipts are nominal. Fair rental value does not include any payment made by the lessee to reimburse the lessor for the lessor's use tax, whether or not the amount is separately stated, and regardless of how the charge is designated in the lease documentation and invoices. Lump-sum charges to the lessee will be assumed to include reimbursement for the lessor's use tax whether or not any statement to that effect is made to the lessee.

For example, assuming a 6 percent tax rate, if the invoice to the lessee states ''rental $100, tax reimbursement to the lessor $6,'' ''rental $100, sales and use taxes $6,'' or similar wording, the fair rental value is $100. If the invoice to the lessee states ''rental $106'' and makes no reference to reimbursement, the fair rental value is $100 ($106 divided by 1.06). Assuming a 6.5 percent tax rate, the fair rental value is $99.53 ($106 divided by 1.065).

Fair rental value includes any deficiency payment required from the lessee on disposition of mobile transportation equipment at the termination of an open-end lease and such payment is subject to tax. Any surplus rentals, however, which are returned to the lessee at the termination of an open-end lease may be deducted from the total fair rental value reported for the period in which the surplus rentals are returned. In the alternative, a refund may be claimed within the applicable statute of limitations period for any tax paid on such surplus rentals.

Regulation 1661. (Contd.)

Fair rental value includes any capitalized cost reduction payment, which is a one-time payment by the lessee at the start of the lease to reduce the lessor's investment and the lessee's rentals. The payment may either be reported for the period in which it became due from the lessee or it may be reported in equal increments over the lease term. On early termination of such a lease, any unreported portion of the capitalized cost reduction payment shall be reported for the period in which termination occurred.

The term "fair rental value" includes any payments required by the lease, including amounts paid for personal property taxes on the leased property, whether assessed directly against the lessee or against the lessor, but does not include amounts paid to the lessor for:

1. Collection costs, including attorney's fees, court costs, repossession charges, and storage fees; but tax does apply to any delinquent rental payments, including those collected by court action;
2. Insuring, repairing or refurbishing the leased property following a default;
3. Costs incurred in defending a court action or paying a tort judgement arising out of the lessee's operation of the leased property, or any premiums paid on insurance policies covering such court actions or tort judgements;
4. Costs incurred in disposing of the leased property at expiration or earlier termination of the lease;
5. Late charges and interest thereon for failing to pay the rentals timely;
6. Separately stated optional [insurance charges,] maintenance or warranty contracts;
7. Personal property taxes assessed against personal property where a bank or financial corporation is the lessor.

(B) Tax Application. Tax applies to fair rental value for all periods during which the mobile transportation equipment is leased even though the lessee may not make the required rental payments. The lessor must pay tax at the rate in effect at the time the equipment is first leased. The tax rate will remain the same for all periods during which the equipment is leased, including the periods during the first lease of the equipment and all periods during any subsequent leases of the equipment.

Tax on fair rental value does not apply either (a) for periods during which the equipment is not leased and is merely held for lease; or (b), for periods after the lessor has formally demanded return of the equipment if the lessee wrongfully retains possession of the property and is not required to make rental payments under the lease. If mobile transportation equipment is sold while subject to an existing lease and the new purchaser elects to pay tax measured by fair rental value, the applicable tax rate during the existing lease and during all subsequent leases is the rate in effect at the time of the sale of the mobile transportation equipment to the new purchaser.

History: Adopted January 6, 1970, effective February 8, 1970.
Amended December 8, 1970, effective January 15, 1971.
Amended December 15, 1971, applicable on and after December 15, 1971.
Amended January 17, 1973, effective March 1, 1973.

Regulation 1661. (Contd.)

Amended December 7, 1978, effective February 18, 1979. Subsection (e)(2) is amended to provide that for periods from 1/1/72 to 12/31/78 the purchaser's use tax liability may not be charged to the lessee as separately stated tax; subsections (g)(1) and (g)(2) are amended to provide that for certain mobile transportation equipment no sales tax or use tax would apply to the rental receipts of the lessor if certain requirements are met.

Amended June 27, 1979, effective August 12, 1979. In (e)(2) adds two sentences starting with "Beginning July 1, 1979 . . ."

Amended February 6, 1980, effective March 29, 1980. Added to references, Sections 6092.1, 6243.1, and 6352. In (e)(2) deleted last paragraph and added two new paragraphs. In (f) added second paragraph. In (g) added second paragraph.

Amended February 3, 1983, effective July 3, 1983. Added paragraph (5) to subdivision (b) and renumbered existing subdivision (5) to (6). Also, deleted the last three paragraphs of subdivision (e)(2) and inserted the language relating to the election to report and pay tax on fair rental value by dealers only prior to January 1, 1980 and all lessees of mobile transportation equipment on or after that date; defined "fair rental value"; and explains tax application.

Amended May 9, 1985, effective September 22, 1985. In subdivision (e)(2)(A), adds the definition of "fair rental value" and provides for the exclusion from fair rental value of certain amounts paid to the lessor which do not relate to the actual charge for the possession and use of the property by the lessee under the lease.

Amended March 9, 1994, effective June 22, 1994. Deleted subdivisions (a), (b), (c), (d), (e), (f), (g) and (h) and replaced them with new subdivisions (a) and (b) to explain how a change in the tax rate affects the application of tax to transactions in which lessors of mobile transportation equipment elected to pay use tax measured by fair rental value; deleted obsolete provisions and rearranged the remaining provisions.

Amended February 23, 2000, effective May 27, 2000. Added subdivision (b)(2)(A)(7). Added Revenue and Taxation Code sections 23154 and 23182, and Article XIII, section 27, California Constitution to the Reference section.

Amended September 13, 2000, effective December 1, 2000. In subdivision (a)(1), added phrase ", such as . . . equipment." In subdivision (a)(5), added phrase ", such as . . . are."

Amended September 26, 2001, effective January 3, 2002. Subdivision (b)(1): phrase "a dealer . . . makes"; word "occur" deleted; word "subdivision" added and word "below" deleted. Subdivision (b)(2): phrase "without . . . price" added and phrase "under a resale certificate" deleted; first sentence split into two sentences with a period after "value", the words "if the" replaced with "Such", and the word "is" replaced with "must be" and "either" and phrase "or . . . later" added. First unnumbered paragraph: phrase ", such as" deleted. Subdivision (b)(2)(A): word "Example:" deleted as separate heading, and phrase "For example," added and word "Assuming" changed to lower case format. First unnumbered paragraph: phrase "within . . . period" moved.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1667. EXEMPTION CERTIFICATES.

References: Sections 6385 and 6421, Revenue and Taxation Code.

(A) Construction Contractors, see Regulation 1521.
Regulations that prescribe certificate forms:
Factory-built housing, see Regulation 1521.4.
Printed Sales Messages, See Regulation 1541.5.
Motor Vehicle and Aircraft Fuels, see Regulation 1598.
Mobilehomes and Commercial Coaches, see Regulation 1610.2.
Direct Payment Permits, see Regulation 1699.5.

(B) Other related regulations:
Interstate and foreign commerce, see Regulation 1620.

(a) IN GENERAL. The law provides that for the purpose of the proper administration of the sales and use tax and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

This presumption may be rebutted by the seller as to any sale by establishing to the satisfaction of the Board that the gross receipts from the sale are not subject to the tax or by timely taking a resale certificate as provided in Regulation 1668 or by taking a certificate as provided in this regulation.

(b) EFFECT.

(1) Except as stated hereinafter, a seller is relieved of the liability for sales tax if the purchaser timely certifies in writing to the seller that the property will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale to be exempted from the sales tax by one or more of the provisions of Chapter 4 (commencing with Section 6351) of the Sales and Use Tax Law. A certificate will be considered timely if it is given at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser.

The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.

Invoices on sales claimed by a seller as exempt should specify the names of the purchasers in order to relate them to exemption certificates.

(2) Effective January 1, 1990, a certificate of exemption from the sales tax for the sale of tangible personal property, other than fuel or petroleum products, to a foreign air carrier need not be received timely. A seller will be allowed 45 days from the date of the Board's written request to obtain an exemption certificate from the purchasing foreign air carrier as provided in Regulation 1621(c)(2), 18 CCR 1621.

(3) If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt from the sales tax and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of sales

Regulation 1667. (Contd.)

tax as if the purchaser were a retailer making a retail sale of the property at the time of such use and the sales price of the property to the purchaser shall be deemed the gross receipts from such retail sale.

The term ‘‘use’’ is the same as defined in Section 6009 of the Sales and Use Tax Law without the exclusion defined in Section 6009.1.

(c) ISSUANCE OF CERTIFICATES.

(1) FORM OF CERTIFICATES. Certain other regulations prescribe the form of exemption certificates to be used with respect to several specific kinds of transactions. Where no specific form of certificate is prescribed, the certification must be in writing and include the date; the signature of the purchaser, the purchaser’s agent, or the purchaser’s employee; the name and address of the purchaser; the number of the purchaser’s seller’s permit, or if the purchaser is not required to hold a seller’s permit, a notation to that effect and the reason; a

Regulation 1667. (Contd.)

description of the property purchased under the certificate; and a statement of the manner in which or the purpose for which the property will be used so as to make the sales tax inapplicable to the sale.

To relieve the seller from liability for the sales tax, the statement of the manner in which or the purpose for which the property will be used must be one which under the provisions of Chapter 4 (commencing with Section 6351) of the Sales and Use Tax Law does entitle the seller to regard the gross receipts from the sale as exempted from the sales tax.

(2) ISSUANCE OF CERTIFICATES WHERE NOT APPROPRIATE. There are several cases in which certification will not relieve the seller of liability for the sales tax. In such cases, an exemption certificate should not be obtained but rather the facts and documentation of the transaction must support the exemption. For example, a certification to the effect that sales tax does not apply because the property purchased will be exported and shipped out of state, does not relieve the seller of liability for the sales tax. A sale is exempt from sales tax as a sale in interstate or foreign commerce only if the conditions set forth in Regulation 1620 are met, and the seller should obtain the documentation required by that regulation in order to support the exemption.

History: Adopted April 6, 1977, effective July 1, 1977.
Amended December 7, 1977, effective January 19, 1978. In (b)(1) changed "exempt when received with knowledge of falsity" to "good faith" requirement, and in (b)(2) defined "use".
Amended July 31, 1991, effective October 19, 1991. Amended pursuant to Chapter 230, Statutes of 1989. Amended paragraph (a) to eliminate "timely". Renumbered paragraph (b)(2) to (b)(3) and added new paragraph (b)(2).

Regulation 1668. SALES FOR RESALE.

References: Sections 6012.8, 6012.9, 6072, 6091–6095, 6241–6245, Revenue and Taxation Code.
Automobile Dealers, effect of accepting from nondealer retailer, see Regulation 1566.
Construction Contractors, use by, see Regulation 1521.
Demonstration and Display, use of property purchased under resale certificates for, see Regulation 1669.
Drapery hardware installers accepting, see Regulation 1521.
Newspapers and Periodicals, for component parts of, see Regulation 1590.
Salt used by food processors, giving for, see Regulation 1525.
Vending machine operators furnishing, see Regulation 1574.

(a) RESALE CERTIFICATE.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as

Regulation 1668. (Contd.)

set forth in subdivision (b) and good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) FORM OF CERTIFICATE.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale". The use of phrases such as "non-taxable", "exempt", or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in paragraph (1) above is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

Regulation 1668. (Contd.)

(3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to deliver of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or whether tax applies to the order. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be assumed that the property covered by that purchase order was purchased for use, and not for resale. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for produced parts for resale and also for tooling used to produce the parts should specify that the parts are purchased for resale and that the sale of the tooling is subject to tax.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) GOOD FAITH. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) IMPROPER USE OF CERTIFICATE. Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. The purchaser will also be liable for penalty under section 6072 or 6094.5 for such improper use of a certificate.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not

Regulation 1668. (Contd.)

to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. If the person fails to report and pay the use tax due on the use of the property, the person may be liable for the penalty imposed under section 6484 or 6485.

(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) USE OF XYZ LETTERS. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or

Regulation 1668. (Contd.)

authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts (''tangible personal property''); or tax has been paid measured by the purchase price or fair rental value (''mobile transportation equipment'').

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

Regulation 1668. (Contd.)

(g) PURCHASER'S LIABILITY FOR TAX. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

Regulation 1668. (Contd.)

(i) MOBILE TRANSPORTATION EQUIPMENT. Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

History: Effective July 1, 1939.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended June 20, 1967, effective July 1, 1967.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended April 6, 1977, effective July 1, 1977. Added new method of proof for resale, detailed what is adequate proof for resale, and clarified effect of purchase for use on a resale certificate.
Amended December 7, 1977, effective January 19, 1978. In (e) added the tax that would be due.
Amended July 28, 1982, effective June 26, 1983. Added new (e) and (f), renumbered (g) and (h), and added reference to Section 6072 to (g).
Amended April 9, 1985, effective June 27, 1985. In subdivision (g), amended to specify that the penalty provisions are also applicable to any officer or employee of a corporation who gives a resale certificate for property which he or she knows at the time of purchase will be used rather than resold. Added a reference to Section 6094.5 of the Revenue and Taxation Code with respect to the type of penalties a purchaser may be liable for if the purchaser makes an improper use of a resale certificate. Deleted subdivision (h) since it pertained to the effective date of amendments to the regulation which occurred in 1977.
Amended April 9, 1986, effective July 5, 1986. In subdivision (e), amended explanation under which mobilehome retailers may issue resale certificates to mobilehome vendors.
Amended March 28, 2001, effective July 6, 2001. Subdivision (b)(2)—The paragraph labeled ''For Your Information'' was added to the sample Resale Certificate currently in the regulation. A new paragraph was added providing a cross-reference to the resale certificate for the auto body repair and painting industry and the new certificate was added.
Amended December 20, 2001, effective May 17, 2002. Regulation re-titled ''Sales for Resale.'' Word ''subsection'' replaced with ''subdivision'' throughout. Subdivision (a): re-titled ''Resale Certificate; subdivision (a)(2) deleted and its language transferred to new subdivision (g) and expanded; designation (a)(1) deleted and its language transferred to subdivision (a) and rewritten. Subdivision (b): subdivision (b)(1)(A) words ''or an agent or'' deleted and words ''purchaser's'' and ''authorized representative'' added; subdivision (b)(1)(c) comma after word ''purchaser'' replaced by a period and word ''or'' deleted in first sentence; phrase ''an . . . number.'' replaced with phrase ''the . . . number.'' at the end of the subdivision. Subdivision (b)(1)(D)—new third sentence added. Subdivision (b)(2)—word ''paragraph'' added to first sentence and word ''following'' deleted from second sentence with new phrase ''shown . . . regulation'' and new third sentence added and sample resale certificates moved to new Appendices A and B. Subdivision (b)(3)—phrase ''within . . . later)'' added to second sentence. Subdivision (b)(4) word ''that'' replaced with ''whether'' in the first sentence; phrase ''or . . . (a)'' added to third sentence. Subdivision (c) deleted and its language transferred to new subdivision (e) with new fourth sub-paragraph added.

Regulation 1668. (Contd.)

Subdivision (d) re-designated (c) accordingly. Phrase ''In . . . contrary,'' transferred to beginning of first sentence and capitalized and letter ''A'' changed to lower case, and phrase ''if . . . face'' added. New subdivisions (d)–(g) added. Former subdivision (e) re-designated (h) accordingly. Former subdivision (f) re-designated (i), accordingly; language ''person . . . equipment'' replaced with ''person . . . 1661.'' Former subdivision (g) deleted.

Note: See Business Taxes General Bulletin 61-2 following Regulation 1525.

Regulation 1668. (Contd.)

APPENDIX A

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: _____

2. I am engaged in the business of selling the following type of tangible personal property: _____.

3. This certificate is for the purchase from _____ of the items(s) I have listed in paragraph 5 below.
[Vendor's name]

4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.

5. Description of property to be purchased for resale:
_____
_____
_____.

6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or $500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1668. (Contd.)

APPENDIX B

California Resale Certificate
for the Auto Body Repair and Painting Industry

I HEREBY CERTIFY:

1. I hold valid California seller's permit number: _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have ***initialed*** in paragraph 5 below. [Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, ***I will owe use tax*** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my ***initials*** below (***not*** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	

_____ Other (specify items) _____

6. I have read and understand the following:

Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may not be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

Abrasives	Equipment repair parts	Masks	Reducers
Books	Goggles	Metal conditioners	Respirators
Cans	Hand cleaners	Paint remover	Rubbing compounds
Cleaning solvent	Manuals	Plastic bottles	Rubbing machines
Color charts	Masking paper	Polishing compounds	Thinners
Equipment	Masking tape	Polishing machines	Touch-up bottles

7. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or $500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1669. DEMONSTRATION, DISPLAY AND USE OF PROPERTY HELD FOR RESALE—GENERAL.

References: Sections 6092.1, 6094, 6243.1, 6244 and 6403, Revenue and Taxation Code.
Leases and Rentals in General, see Regulation 1660.
Demonstration and display—automobiles, see Regulation 1669.5

(a) IN GENERAL. A purchaser of tangible personal property who gives a resale certificate therefor, and who uses the property solely for demonstration or display while holding it for sale in the regular course of business, is not required to pay tax on account of such use. Except as otherwise provided in this regulation, if the property is used for any purpose other than or in addition to demonstration or display, such as making deliveries, personal use of employees, etc., the purchaser must include in the measure of the tax reported the purchase price of the property. Tax applies to the subsequent retail sale of the property.

(b) SALE TO SALES REPRESENTATIVES FOR DEMONSTRATION. Tax applies to sales by dealers to their sales representatives of tangible personal property to be used for demonstration. It is presumed that any such tangible personal property will be used for purposes in addition to demonstration, and any resale certificates given for such property by sales representatives to dealers will be questioned, even if the sales representatives hold seller's permits.

(c) RENTAL TO SALES REPRESENTATIVES FOR DEMONSTRATION. A dealer who rents property to sales representatives is regarded as making a continuous sale of the property and must collect and pay tax on the rental receipts unless tax has been paid measured by the purchase price of the property rented. The dealer must also include in the measure of the tax reported the gross receipts from the retail sale of such property following its rental to the sales representatives.

(d) LOANS TO SCHOOLS FOR EDUCATIONAL OR TRAINING PROGRAM. The loan by any retailer of any tangible personal property to any school district for an educational program conducted by the district is exempt from the use tax.

Regulation 1669. (Contd.)

(e) DONATIONS OF PROPERTY.

(1) IN GENERAL. Operative January 1, 1989, use tax does not apply to tangible personal property withdrawn from a resale inventory for the purpose of making a charitable contribution to a qualified organization located in this state. This exemption applies only to property which has been purchased for resale and subsequently donated without any use other than retention, demonstration or display while holding it for sale in the regular course of business. For purposes of this regulation, property purchased for the purpose of incorporation into a manufactured article is regarded as having been purchased for resale. For the period January 1, 1989 through October 1, 1989, this exemption is available only to retailers. Effective October 2, 1989 , this exemption is available to all sellers.

Property purchased specifically for donation to a qualified organization remains subject to the tax. As provided in Section 6094.5 of the Revenue and Taxation Code, a person is guilty of a misdemeanor if a resale certificate is issued for property which he or she knows at the time of purchase will be donated rather than resold. Such improper use of a certificate may cause the person to become liable for penalties called for by Sections 6072, 6094.5, 6484 or 6485 of the Revenue and Taxation Code.

(2) ''Qualified Organization.'' For purposes of this regulation, ''qualified organization'' means and includes any organization described in Section 170(b)(1)(A) of the Internal Revenue Code including but not limited to:

(A) religious organizations, e.g., synagogues, churches and associations of churches;

(B) charitable organizations, e.g., the Red Cross, the Salvation Army, nonprofit schools and hospitals, and medical assistance and research groups;

(C) organizations operated for educational, scientific, or literary purposes including nonprofit museums, art galleries, and performing arts groups;

(D) organizations operated for the protection of children or animals;

(E) fraternal lodges if the donated property is to be used for charitable purposes and not for the benefit of the members; and

(F) the United States, this state and any political subdivision of this state.

Effective January 1, 1990, a nonprofit museum will not be considered a ''qualified organization'' unless the donated property is used exclusively for purposes of display to the public within the museum and the museum either:

(1) has a significant portion of its display space open to the public without charge during its normal operating hours;

(2) has its entire display space open to the public without charge for at least six of its normal operating hours during each month of operation; or

(3) has its entire display space open without charge to a segment of the student or adult population for educational purposes.

Regulation 1669. (Contd.)

(f) USE OF RENTAL VALUE AS A MEASURE OF TAX.

(1) WHERE APPLICABLE.

(A) Accommodation Loans. If the use of property purchased under a resale certificate is limited to the loan of property to customers as an accommodation while awaiting delivery of property purchased or leased from the lender or while property is being repaired for customers by the lender, the measure of tax is the fair rental value of the property for the duration of each loan so made. The lender must also include in the measure of the tax reported the gross receipts from the retail sales of such property following its loan to customers.

(B) Property Used Both for Demonstration and Other Purposes. If property purchased under a resale certificate is used frequently for purposes of demonstration or display while holding it for sale in the regular course of business and is used partly for other purposes, the measure of tax is the fair rental value of the property for the period of such other use or uses. The gross receipts from the retail sale of the property after such use or uses must be included in the measure of tax.

This applies, for example, to a situation in which a dealer or lessor purchases property without tax paid on the purchase price and uses it personally, or allows sales representatives, sales managers, partners, corporate officers, or other authorized persons to use the property, for purposes in addition to demonstration and display.

The property must, in fact, be used frequently for demonstration or display. Mere incidental use for demonstration or display will not suffice. The dealer or lessor must maintain evidence substantiating the exempt use for examination by board auditors.

(C) Aircraft Dealers. The use of aircraft withdrawn from inventory for flight instruction and personal and business use is subject to tax. Tax may be reported on the fair hourly rental value of such use provided the requirements of (B) above are met.

(D) Mobile Transportation Equipment Leased While Being Held For Resale If the use of mobile transportation equipment purchased under a resale certificate is limited to leasing the equipment, the purchaser may elect to pay use tax liability measured by the fair rental value if the election is made on or before the due date of a return for the period in which the equipment is first leased. The election must be made by reporting tax measured by the fair rental value on the return for that period. Tax must thereafter be paid with the return for each reporting period, measured by the fair rental value, whether the equipment is within or without this state. The election may not be revoked with respect to the equipment as to which it is made.

This election is available to any purchaser who leases mobile transportation equipment, other than a person exempt from use tax under Revenue and Taxation Code Section 6352, and such purchaser may properly issue a resale certificate for the limited purpose of reporting use tax liability based on fair rental value.

1. Fair Rental Value. ‘‘Fair rental value’’ means the rentals required by the lease, except where the Board determines the rental receipts are nominal. Fair rental value does not include any payment made by the lessee to reimburse the lessor

Regulation 1669. (Contd.)

for the lessor's use tax, whether or not the amount is separately stated, and regardless of how the charge is designated in the lease documentation and invoices. Lump-sum charges to the lessee will be assumed to include reimbursement for the lessor's use tax whether or not any statement to that effect is made to the lessee.

Example:

Assuming a 6 percent tax rate, if the invoice to the lessee states "rental $100, tax reimbursement to the lessor $6", "rental $100, sales and use taxes $6", or similar wording, the fair rental value is $100. If the invoice to the lessee states "rental $106" and makes no reference to reimbursement, the fair rental value is $100 ($106 divided by 1.06). Assuming a 6.5 percent tax rate, the fair rental value is $99.53 ($106 divided by 1.065).

Fair rental value includes any deficiency payment required from the lessee on disposition of mobile transportation equipment at the termination of an open-end lease and such payment is subject to tax. Any surplus rentals, however, which are returned to the lessee at the termination of an open-end lease may be deducted from the total fair rental value reported for the period in which the surplus rentals are returned. In the alternative, a refund may be claimed for any tax paid within the applicable statute of limitations period on such surplus rentals.

Fair rental value includes any capitalized cost reduction payment, which is a one-time payment by the lessee at the start of the lease to reduce the lessor's investment and the lessee's rentals. The payment may either be reported for the period in which it became due from the lessee or it may be reported in equal increments over the lease term. On early termination of such a lease, any unreported portion of the capitalized cost reduction payment shall be reported for the period in which termination occurred.

The term "fair rental value" includes any payments required by the lease, including amounts paid for personal property taxes on the leased property, whether assessed directly against the lessee or against the lessor, but does not include amounts paid to the lessor for:

(a) Collection costs, including attorney's fees, court costs, repossession charges, and storage fees; but tax does apply to any delinquent rental payments, including those collected in court action;

(b) Insuring, repairing or refurbishing the leased property following a default;

(c) Cost incurred in defending a court action or paying a tort judgement arising out of the lessee's operation of the leased property, or any premiums paid on insurance policies covering such court actions or tort judgements;

(d) Cost incurred in disposing of the leased property at expiration or earlier termination of the lease;

(e) Late charges and interest thereon for failing to pay the rentals timely;

(f) Separately stated optional [insurance charges,] maintenance or warranty contracts;

(g) Personal property taxes assessed against personal property where a bank or financial corporation is the lessor.

Regulation 1669. (Contd.)

2. Tax Application. Tax applies to fair rental value for all periods during which the mobile transportation equipment is leased even though the lessee may not make the required rental payments.

Tax on fair rental value does not apply either (a) for periods during which the equipment is not leased and is merely held for lease; or (b), for periods after the lessor has formally demanded return of the equipment if the lessee wrongfully retains possession of the property and is not required to make rental payments under the lease.

(2) MEASURING FAIR RENTAL VALUE. The fair rental value for property other than mobile transportation equipment is the amount which normally is charged by the lender for the rental of similar property under similar circumstances. If the lender does not rent similar property, the rental rate which generally is charged by others in the area is to be used.

History: Effective July 1, 1939.

Adopted as of December 1, 1964, as a restatement of previous rulings.

Amended August 2, 1965, applicable on and after August 1, 1965.

Amended November 7, 1967, applicable on and after November 8, 1967.

Amended October 8, 1968, applicable on and after November 13, 1968.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended October 6, 1970, effective October 9, 1970, applicable on and after September 2, 1970.

Amended December 15, 1971, applicable on and after January 1, 1972.

Amended February 16, 1972, effective March 25, 1972.

Amended June 24, 1976, effective July 30, 1976. Added reference and deleted areas duplicated by adopted Regulation 1669.5.

Amended December 7, 1978, effective January 28, 1979. Amends section (e)(1)(D) to provide that, with regard to leases of mobile transportation equipment held for resale, use tax liability may not be charged to the lessee as a separately stated tax.

Amended February 3, 1983, effective July 3, 1983. Deleted the last paragraph of Section (e)(1)(D) and inserted the language relating to the election to report and pay tax on fair rental value by dealers only prior to January 1, 1980 and all lessees of mobile transportation equipment on or after that date; defined ‘‘fair rental value’’; and explains tax application. In subdivision (e)(2), inserted after ‘‘fair rental value’’ the language ‘‘for property other than mobile transportation equipment’’.

Amended May 9, 1985, effective September 22, 1985. In subdivision (e)(1)(D), added the definition of ‘‘fair rental value’’ in more specific terms and excluded from that term certain amounts paid by the lessee to the lessor which do not relate to the actual charge for the possession and use of the property by the lessee.

Amended May 1, 1991, effective July 17, 1991. Paragraph (e) was renumbered (f) and new paragraph (e) was added. Paragraphs (a), (c) and (f)(1)(A) were amended to replace the term ‘‘paid by him’’ with ‘‘reported’’. Renumbered paragraph (f) changed to delete dated information relating to leasing of mobile

Regulation 1669. (Contd.)

transportation equipment. Paragraphs (b), (c), and renumbered (f) amended to replace ''salesmen'' with ''sales representatives''. Paragraph (f)(1)(D)(3) was renumbered (f)(2).

Amended February 23, 2000, effective May 24, 2000. Added subdivision (f)(1)(D)1.g.

Regulation 1669.5. DEMONSTRATION, DISPLAY, AND USE OF PROPERTY HELD FOR RESALE—VEHICLES.

References: Sections 6094, 6244, and 6403, Revenue and Taxation Code.

(a) VEHICLE DEALERS, LESSORS, MANUFACTURERS, AND DISTRIBUTORS—IN GENERAL.

(1) ''VEHICLE''. Except as used in (a)(4), the term ''vehicle'' as used herein means passenger motor vehicles, as defined in Section 465 of the Vehicle Code, pickup trucks, and small vans.

(2) ''LESSOR''. The term ''lessor'', as used herein, means only a lessor whose leases are continuing sales.

(3) DEMONSTRATION OR DISPLAY. A purchaser of a vehicle under a resale certificate, who uses the vehicle solely for demonstration or display while holding it for sale in the regular course of business, is not required to pay tax on account of such use.

(4) LOANS TO SCHOOLS, COLLEGES, AND VETERANS' INSTITUTIONS FOR EDUCATIONAL OR TRAINING PROGRAMS.

(A) The loan by any retailer of any tangible personal property to any school district for an educational program conducted by the district is exempt from the use tax.

(B) The loan by any retailer of any motor vehicle to the California State Universities or the University of California for exclusive use in an approved driver education teacher preparation certification program conducted by the state college or university is exempt from the use tax.

(C) The loan by any retailer of a motor vehicle to be used exclusively for driver training in an accredited private or parochial secondary school in a driver education and training program approved by the State Department of Education as a regularly conducted course of study is exempt from the use tax.

(D) The loan by any retailer of any motor vehicle to a veterans' hospital or such other nonprofit facility or institution to provide instruction in the operation of specially equipped motor vehicles to disabled veterans is exempt from the use tax.

(5) DONATIONS OF VEHICLES. Operative January 1, 1989, vehicles withdrawn from resale inventory for donation to a qualified organization located in this state as described in paragraph (e) of Regulation 1669, (18 CCR 1669), are exempt from the use tax. For the period January 1, 1989 through October 1, 1989, this exemption is available only to retailers. Effective October 2, 1989, this exemption is available to all sellers.

Regulation 1669.5. (Contd.)

(6) PERSONAL OR BUSINESS USE. Vehicles withdrawn from resale inventory for personal or business use are subject to use tax except as provided in paragraph (a)(5). If the vehicle is not frequently demonstrated or displayed while holding it for resale in conjunction with such business or personal use, the tax is measured by the purchase price of the vehicle.

(7) VEHICLES CAPITALIZED AS FIXED ASSETS. Except for vehicles held for the purpose of leasing, vehicles which are capitalized in a fixed asset account and depreciated for income tax purposes are not held for sale in the regular course of business. Tax must be paid measured by the purchase price of such vehicles.

(8) REGISTRATION. If a vehicle manufacturer, distributor, dealer, or lessor registers a vehicle purchased for resale in a name other than that of the manufacturer, distributor, dealer, or lessor, while retaining title to the vehicle, the vehicle is not held for sale in the regular course of business, and the manufacturer, distributor, dealer, or lessor must pay use tax measured by his purchase price of the vehicle.

(9) VEHICLES USED BOTH FOR DEMONSTRATION AND OTHER PURPOSES. If vehicles purchased under a resale certificate are frequently demonstrated or displayed while being held for sale in the regular course of business, and are also used partly for other purposes, tax must be paid measured by the fair rental value of the vehicles for the periods of other use. Such interspersed demonstration or display and other use may occur when a dealer or lessor purchases vehicles without tax paid on the purchase price and uses them personally, or allows vehicle sales persons, vehicle sales managers, partners, corporate officers, or other persons to use them for purposes in addition to demonstration or display.

(10) RENTAL TO SALES PERSONS FOR DEMONSTRATION. A dealer who rents vehicles which are not mobile transportation equipment to sales persons is regarded as making continuing sales of the vehicles and must collect and pay tax on the rental receipts, unless tax has been paid measured by the purchase price of the vehicles. However, if the rental receipts are less than 1/60th of the dealer's purchase price of the vehicle for each month of the rental, the transaction will not be considered a bona fide rental, and tax will be measured by 1/60th of the purchase price for each month of such use. For the application of tax to rentals of pickup trucks and other mobile transportation equipment, see Regulation 1661.

(11) SUBSEQUENT RETAIL SALES. The taxability of retail sales of vehicles is not affected by the fact that tax has been paid previously on the purchase price, rental receipts, or fair rental value because of the use or rental of the vehicles.

(12) SALES TO SALES PERSONS FOR DEMONSTRATION. Tax applies to sales by dealers to their sales persons of vehicles to be used for demonstration and personal use.

(13) PRESUMPTIONS. Any presumption established by this regulation may be rebutted only by clear and convincing evidence to the contrary. However, declarations after the fact are of little value as evidence because of their self-serving nature, and will be given little weight.

Regulation 1669.5. (Contd.)

(b) NEW AND USED VEHICLE DEALERS AND LESSORS—SPECIFIC APPLICATIONS. The following provisions apply with respect to vehicles which are registered in the name of the dealer or lessor, and vehicles which are not registered. If vehicles are registered in the name of a person other than the dealer or lessor, see (a)(8) above.

(1) TYPES OF VEHICLES NOT ORDINARILY SOLD. If a vehicle dealer or lessor purchases under a resale certificate a new vehicle of a type which he or she is not franchised to sell, or does not ordinarily sell or lease as a new vehicle, and uses the vehicle for any purpose other than, or in addition to, demonstration or display, it will be presumed that the vehicle is not being held for sale in the regular course of business and that tax is due measured by the purchase price of such vehicle.

(2) VEHICLES ASSIGNED TO VEHICLE SALES PERSONNEL. When a vehicle dealer or lessor assigns a vehicle as a demonstrator to vehicle sales personnel for a period not exceeding 12 months, it will be presumed that such vehicles are frequently demonstrated or displayed, and that they are also used partly for other purposes. Under these circumstances, the measure of tax is the fair rental value of the vehicle for the periods of personal or business use which are interspersed with the demonstration or display. It will be further presumed that the fair rental value for such business and personal use is 1/60th of the purchase price of the vehicle for each month of combined demonstration or display and use. As used here, the term ''sales personnel'' is limited to vehicle sales persons and vehicle sales managers, and to sole proprietors, partners, or corporate officers who directly participate in negotiating sales.

(3) VEHICLES ASSIGNED TO OTHERS.

(A) When a vehicle dealer or lessor assigns a vehicle for a period not exceeding 12 months to employees or officers other than vehicle sales personnel, it will be presumed that such vehicles are frequently demonstrated or displayed, but less frequently than those assigned to vehicle sales personnel, and that they are also used for other purposes to a greater extent than those assigned to vehicle sales personnel. Under these circumstances, the measure of tax is the fair rental value of the vehicle for the periods of personal or business use which are interspersed with demonstration or display. It will be further presumed that the fair rental value for such business and personal use is 1/40th of the purchase price of the vehicle for each month of combined demonstration or display and use.

(B) When a vehicle dealer or lessor assigns a vehicle to persons other than employees or officers, such as relatives or business associates, it will be presumed that the vehicle is not frequently demonstrated or displayed. Tax must be paid measured by the purchase price of such vehicles.

(4) VEHICLES ASSIGNED FOR EXTENSIVE PERIODS OF TIME. It will be presumed that any vehicle assigned for more than 12 months to one or a series of persons for business or personal use in addition to demonstration or display is not held for sale in the regular course of business. Tax must be paid measured by the purchase price of such vehicles. If at the time the vehicle is assigned for such combined use the duration of the combined use is not known, the dealer or lessor

Regulation 1669.5. (Contd.)

may use either the 1/40th or 1/60th formula, as appropriate, to report use tax liability until the period of combined use exceeds 12 months. At that time he or she must report and pay tax on the difference between the purchase price of the vehicle and the measure of tax previously reported with respect to the vehicle under the formula.

(5) UNASSIGNED DEMONSTRATORS. If no use is made of vehicles purchased under a resale certificate, other than demonstration or display while holding them for sale in the regular course of business, no tax liability arises. Such vehicles generally are not assigned to any individual. However, if such vehicles are registered in the name of the dealer, it will be presumed that they are used for other purposes in addition to demonstration or display. Under these circumstances, the measure of tax is the fair rental value of the vehicle for the periods of personal or business use which are interspersed with the demonstration or display. It will be further presumed that the fair rental value for such other use is 1/40th of the purchase price of the vehicle for each month of combined demonstration or display and use.

(6) CUSTOMER LOAN VEHICLES. If the use of a vehicle purchased under a resale certificate is limited to the loan, but not the rental, of the vehicle to customers while they are awaiting delivery of vehicles purchased or leased from the dealer, or while their vehicles are being repaired by the dealer, the measure of tax is the fair rental value of the vehicle for the duration of each loan so made. The fair rental value is the amount for which the dealer rents similar vehicles for similar periods to persons who are not customers awaiting delivery of vehicles purchased or leased from the dealer or being repaired by the dealer. If the dealer does not rent vehicles under such circumstances, the fair rental value is the amount for which other dealers in the area rent similar vehicles for similar periods to persons who are not customers awaiting delivery of vehicles purchased or leased from the other dealers or being repaired by the other dealers.

If a lessor loans a vehicle to a lessee while the lessee is awaiting delivery of the leased vehicle, or while the leased vehicle is being repaired, and the regular lease payments continue to accrue during the period of the loan, the regular lease payments will be considered to cover the use of the substitute loan vehicle. No additional tax beyond the tax measured by the regular lease payments will be due as a result of the loan.

(7) OTHER LOANS OF VEHICLES. If a vehicle dealer or lessor removes a vehicle from resale inventory and loans it to persons other than those specified in (b)(6) above, and the vehicle is not frequently demonstrated or displayed, tax must be paid measured by the purchase price of the vehicle, unless the loan is of such short duration as to constitute only incidental use. If the loan constitutes only incidental use, preceded and followed by frequent demonstration or display, the measure of tax is the fair rental value of the vehicle for the period of such use as fair rental value is defined in (b)(6) above. A loan for a period of 30 days or less will be considered incidental use. Periods during which a vehicle is leased, pursuant to leases which constitute continuing sales, will be regarded as periods equivalent to periods of demonstration and display.

Regulation 1669.5. (Contd.)

(c) VEHICLE MANUFACTURERS AND DISTRIBUTORS—SPECIFIC APPLICATIONS.

(1) VEHICLES ASSIGNED FOR EXTENSIVE PERIODS OF TIME. It will be presumed that any vehicle assigned for more than 12 months to one or a series of persons for business or personal use in addition to demonstration or display, or assigned for more than 12 months to ''pool service'', is not held for sale in the regular course of business. Tax must be paid by manufacturers measured by the purchase price of tangible personal property used to manufacture the vehicle, and tax must be paid by distributors measured by their purchase price of the vehicle.

(2) VEHICLES ASSIGNED FOR LIMITED PERIODS OF TIME. It will be presumed that any vehicle assigned to one or a series of employees or other persons for a period of time not exceeding 12 months in the aggregate is frequently demonstrated or displayed and that it is also used partly for other purposes. This same presumption will be made with respect to any vehicle registered in the name of the manufacturer or distributor, and any vehicle placed for a period of time not exceeding 12 months in a ''pool'' from which vehicles are assigned to various employees or loaned for short intervals to television studios, visiting dignitaries, automotive magazine editors, etc. Under these circumstances, the measure of tax is the fair rental value of the vehicle for the periods of personal or business use which are interspersed with the demonstration or display. It will be further presumed that the fair rental value for such personal or business use is 1/40th of the ''net dealer price'' of the vehicle for each month of such combined use. Since manufacturers' and distributors' sales personnel demonstrate vehicles less frequently than dealers' or lessors' sales personnel, no distinction is made in this presumption between sales personnel and others.

''Net dealer price'' is the factory selling price to dealers, including optional extra cost equipment, before any discounts or rebates. It also includes federal excise tax, but it does not include destination, handling, and other charges.

Appendix

In determining 1/40th or 1/60th of the purchase price of vehicles, the following schedule may be used:

Purchase Price of Vehicle	*Median Cost*	*1/40th*	*1/60th*
$ 900 to $1,500	$1,200	$30	$20
1,500 to 2,100	1,800	45	30
2,100 to 2,700	2,400	60	40
2,700 to 3,300	3,000	75	50
3,300 to 3,900	3,600	90	60
3,900 to 4,500	4,200	105	70
4,500 to 5,100	4,800	120	80
5,100 to 5,700	5,400	135	90
5,700 to 6,300	6,000	150	100
6,300 to 6,900	6,600	165	110
6,900 to 7,500	7,200	180	120
7,500 to 8,100	7,800	195	130
8,100 to 8,700	8,400	210	140

History: Adopted June 24, 1976, effective July 30, 1976.

Regulation 1669.5. (Contd.)

Amended August 5, 1983, effective October 6, 1983. In subsection (a)(4)(B) changed ''California State Colleges'' to ''California State Universities''.

Amended May 1, 1991, effective July 19, 1991. Paragraphs (a)(5) through (a)(12) were renumbered to (a)(6) through (a)(13), and new paragraph (a)(5) was added. Reference to provisions of paragraph (a)(5) was added to new paragraph (a)(6). Reference to paragraph (a)(7) in paragraph (b) was corrected to new paragraph number (a)(8). Paragraph (d) was deleted. Paragraphs (a)(9), (a)(10), (a)(12), (b)(1), (b)(2), (b)(4) and (b)(6) were amended to replace the term ''salesmen'' with the term ''sales persons''.

Regulation 1670. GIFTS, MARKETING AIDS, PREMIUMS AND PRIZES.

References: Sections 6007–6009, 6015, Revenue and Taxation Code.
Charitable Organizations, see Regulation 1570.
Exemption Certificates, see Regulation 1667.
''Free'' meals, see Regulation 1603.

(a) GIFTS. Persons who make gifts of property to others are the consumers of the property and the tax applies with respect to the sale of the property to such persons.

(b) MARKETING AIDS. The tax applies to sales of advertising material, display cases, counter display cards, racks, and other similar marketing aids to persons acquiring such property for use in selling other property to customers. A marketing aid is deemed to be ''sold'' if a consideration at least equivalent to 50 percent of the purchase price of the aid is obtained from the customer, either by the making of a separate charge or by increasing the regular sales price of other merchandise sold to the customer and delivered with the marketing aid.

Manufacturers or others who provide marketing aids to persons engaged in selling their products without obtaining reimbursement equivalent to 50 percent of the purchase price of the aid are deemed to be the consumers of the property provided. In such case the sales tax applies to the sale to or the use tax applies to the use by the manufacturer or other person purchasing the aid for distribution whether it is delivered directly to the person engaged in selling its product or is delivered to a distributor, wholesaler, or jobber for redelivery to such person with ''deal merchandise.'' Distributors, wholesalers, or jobbers are the retailers of aids which they ''sell'' to persons engaged in marketing their products.

(c) PREMIUM DELIVERED WITH GOODS SOLD. When a person delivers tangible personal property as a premium together with other merchandise sold, and the obtaining of the premium by the purchaser is certain and not dependent upon chance or skill, the transaction is a sale of both articles. Tax applies to the gross receipts received from the purchaser for the goods and the premium except when the premium is delivered along with a food product for human consumption or other exempt item. In such case tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer, in the

Regulation 1670. (Contd.)

absence of any evidence that the retailer is receiving a larger sum. If there is no such evidence, and if sales tax or use tax has been paid, measured by the sale price of the premiums to the retailer, no further tax is due.

(d) PRIZES. The operator of a game who delivers a prize to each customer is regarded as the retailer of the merchandise delivered as prizes, and the tax applies to the operator's total gross receipts. The awarding of such prizes is not regarded as dependent upon chance or skill, inasmuch as the customer for each game played is certain to receive a prize. Similarly, the tax applies to the entire receipts from operators of "grab bag" concessions by which the customer always receives some tangible personal property. If the prize consists of a food product, the tax does not apply.

An operator who delivers both food items and nonfood items as prizes may take a deduction of that percentage of his total receipts which equals the percentage of the cost to him of the food items to the total cost to him of all merchandise purchased for delivery as prizes.

The operator of a game who awards property as a prize the winning of which depends upon chance or skill is the consumer of the property and tax applies with respect to the sale to or the use of the property by the operator.

History: Effective August 1, 1933.
Replacing Ruling No. 72, adopted as of January 1, 1945.
Amended January 8, 1947.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended December 7, 1978, effective January 28, 1979. Amends subsection (c) to provide that no tax is due on premiums sold with a taxable commodity if sales or use tax has been paid measured by the sales price of the premiums; amends subsection (e) to delete the paragraph pertaining to sales tax reimbursement and excess tax reimbursement collected from customers on free meals.
Amended November 14, 1979, effective January 5, 1980. Added (b); changed former (b) to (c) and relettered remaining subsections.
Amended November 16, 1988, effective January 28, 1989. Paragraph (b), "Donations of Original Works of Art," has been deleted from Regulation 1670 and moved to Regulation 1586, "Public Works of Art."

Regulation 1671. TRADING STAMPS AND RELATED PROMOTIONAL PLANS.

References: Sections 6006, 6011, 6012, Revenue and Taxation Code.

(a) INTRODUCTION. A variety of sales promotion plans involving premiums are in use by retailers. Common to these plans are some indicia furnished by the retailer to his customers based on the amount of purchases. Examples of such indicia are trading stamps, coupons, tickets and cash register tapes. Given quantities of indicia are surrendered by the customer in exchange for the premium.

Regulation 1671. (Contd.)

(b) DESCRIPTION OF PLANS. For the purposes of this regulation, these plans may be divided into three types, as follows:

(1) At or near the time of making the sale the retailer incurs expense with relation to the premium by paying a third party, which third party assumes the obligation to furnish the premium to the retailer's customer. The retailer's payment to the third party is not dependent on his customers' subsequently surrendering the indicia in exchange for the premium.

(2) The retailer incurs no expense with relation to the premium until such time as the customer obtains the premium. The retailer purchases the premium and delivers it to his customer in exchange for the required quantity of indicia.

(3) The retailer incurs no expense with relation to the premium until about the time the customer obtains the premium. A third party delivers the premium to the customer in exchange for the required quantity of indicia. The retailer pays the third party on an agreed basis related to premium merchandise delivered to the customer by the third party.

The typical trading stamp plan falls under (1) above. The typical cash register tape plan falls under (2) or (3) above.

(c) CASH DISCOUNTS GENERALLY. Cash discounts allowed and taken on taxable retail sales may be excluded from the measure of the tax. The promotion plans described above constitute cash discounts. The cash discount is allowed by the retailer and taken by the customer at the time the retailer incurs the expense with relation to the premium.

(d) PLAN DESCRIBED IN (b)(1).

(1) CASH DISCOUNT. The retailer is entitled to a cash discount deduction at the time he pays the third party who undertakes to redeem the indicia used in the plan. The amount of the cash discount shall be computed on the basis of the amount the retailer pays to the third party for the indicia. See Paragraph (g) below for proration of cash discount where retailer's sales are not all taxable.

(2) SALE OF PREMIUM. The delivery of premium merchandise in exchange for a prescribed number of units of indicia used in this type of plan constitutes a taxable retail sale of the premium merchandise by the person delivering the merchandise (assuming that the premium merchandise is of a kind the retail sale of which is subject to tax). The selling price is the average amount paid to the third party by its customers for the indicia surrendered in exchange for the premiums.

(e) PLAN DESCRIBED IN (b) (2).

(1) CASH DISCOUNT. The retailer incurs the expense with relation to the premium at the time he delivers the premium to his customer. The retailer is entitled to a cash discount deduction at the time he delivers the premium to his customer. The amount of the cash discount deduction shall be the selling price of the premium as determined by Paragraph (e) (2) below. Since the cash discount relates to the previous sales on which indicia of some kind were issued to customers and which

Regulation 1671. (Contd.)

indicia are surrendered in exchange for the premium, the retailer is not entitled to the full cash discount deduction unless the previous sales on which indicia were issued were all taxable retail sales. Where some, but less than all, of such previous sales were taxable retail sales the retailer shall be allowed a portion of the cash discount as a deduction. See Paragraph (g) below.

(2) SALE OF PREMIUM. The delivery of premium merchandise by the retailer to his customer in exchange for a prescribed number of units of indicia constitutes a taxable retail sale of the premium merchandise (assuming that the premium merchandise is of a kind the retail sale of which is subject to tax). The selling price is the sales price to the retailer of the premium merchandise.

(f) PLAN DESCRIBED IN (b) (3).

(1) CASH DISCOUNT. If a third party delivers the premium to the customer and the retailer pays such third party on an agreed basis related to premium merchandise delivered to the customer by the third party, the retailer is entitled to a cash discount deduction for the reporting period in which he pays the third party. The amount of the cash discount is the amount of the payment to the third party.

If the retailer's sales are not all taxable retail sales, there must be a proration of the cash discount. See Paragraph (g) below.

(2) SALE OF PREMIUM. The delivery of premium merchandise by a third party to a retailer's customer in exchange for a prescribed number of units of indicia is a taxable retail sale (assuming the premium merchandise is of a kind the retail sale of which is subject to tax). The selling price is the amount received by the third party.

(g) PRORATION OF CASH DISCOUNT BETWEEN TAXABLE AND EXEMPT TRANSACTIONS. If the retailer makes taxable sales and also engages in exempt transactions (for example, sales of food or services such as dry cleaning), and issues indicia on both taxable and exempt transactions, the cash discount must be prorated between taxable and exempt transactions and the cash discount deduction on his sales tax return may be taken only for cash discounts on taxable sales. In making tax returns, the retailer may use the following formula to determine the proration of cash discounts to taxable sales:

Taxable sales of the current reporting period on which indicia are issued divided by all transactions of the current reporting period on which indicia are issued.

If upon audit this formula is shown to produce an incorrect proration, an appropriate determination or refund will be made.

History: Adopted February 8, 1961.
Amended and renumbered August 5, 1969, effective September 6, 1969.
Amended December 7, 1978, effective February 18, 1979. Amends subsection (d)(2), (e)(2), and (f)(2) to delete language on excess tax reimbursement.

Regulation 1684. COLLECTION OF USE TAX BY RETAILERS.

References: Sections 6203, 6204, 6226 and 7051.3, Revenue and Taxation Code.
Section 513(d)(3)(A), Internal Revenue Code (26 USC).

(a) RETAILERS ENGAGED IN BUSINESS IN STATE. Retailers engaged in business in this state as defined in Section 6203 of the Revenue and Taxation Code and making sales of tangible personal property, the storage, use, or other consumption of which is subject to the tax must register with the Board and, at the time of making the sales, or, if the storage, use or other consumption of the tangible personal property is not then taxable, at the time it becomes taxable, collect the tax from the purchaser and give the purchaser a receipt therefor.

Any retailer deriving rentals from a lease of tangible personal property situated in this state is a ''retailer engaged in business in this state'' and is required to collect the tax at the time rentals are paid by his lessee.

The use of a computer server on the Internet to create or maintain a World Wide Web page or site by an out-of-state retailer will not be considered a factor in determining whether the retailer has a substantial nexus with California. No Internet Service Provider, On-line Service Provider, internetwork communication service provider, or other Internet access service provider, or World Wide Web hosting services shall be deemed the agent or representative of any out-of-state retailer as a result of the service provider maintaining or taking orders via a web page or site on a computer server that is physically located in this state.

A retailer is not ''engaged in business in this state'' based solely on its use of a representative or independent contractor in this state for purposes of performing warranty or repair services with respect to tangible personal property sold by the retailer, provided that the ultimate ownership of the representative or independent contractor so used and the retailer is not substantially similar. For purposes of this paragraph, ''ultimate owner'' means a stock holder, bond holder, partner, or other person holding an ownership interest.

(b) CONVENTION AND TRADE SHOW ACTIVITIES. For purposes of this subdivision, the term ''convention and trade show activity'' means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

Except as provided in this paragraph, a retailer is not ''engaged in business in this state'' based solely on the retailer's convention and trade show activities provided that:

(1) For the period commencing on January 1, 1998 and ending on December 31, 2000, the retailer, including any of his or her representatives, agents, salespersons,

Regulation 1684. (Contd.)

canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than seven days, in whole or in part, in this state during any 12-month period and did not derive more than ten thousand dollars ($10,000) of gross income from those activities in this state during the prior calendar year;

(2) For the period commencing on January 1, 2001, the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than fifteen days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars ($100,000) of net income from those activities in this state during the prior calendar year.

A retailer coming within the provisions of this subdivision is, however, ''engaged in business in this state,'' and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the retailer's convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(c) RETAILERS NOT ENGAGED IN BUSINESS IN STATE. Retailers who are not engaged in business in this state may apply for a Certificate of Registration—Use Tax. Holders of such certificates are required to collect tax from purchasers, give receipts therefor, and pay the tax to the Board in the same manner as retailers engaged in business in this state. As used in this regulation, the term ''Certificate of Registration—Use Tax'' shall include Certificates of Authority to Collect Use Tax issued prior to September 11, 1957.

(d) USE TAX DIRECT PAYMENT PERMIT EXEMPTION CERTIFICATES. Notwithstanding subdivisions (a) and (b), a retailer who takes a use tax direct payment exemption certificate in good faith from a person holding a use tax direct payment permit is relieved from the duty of collecting use tax from the issuer on the sale for which the certificate is issued. Such certificate must comply with the requirements of Regulation 1699.6, Use Tax Direct Payment Permits.

(e) TAX AS DEBT. The tax required to be collected by the retailer and any amount unreturned to the customer which is not tax but was collected from the customer under the representation that it was tax constitute debts owed by the retailer to the state.

(f) REFUNDS OF EXCESS COLLECTIONS. Whenever the Board ascertains that a retailer has collected use tax from a customer in excess of the amount required to be collected or has collected from a customer an amount which was not tax but was represented by the retailer to the customer as being use tax, no refund of such amount shall be made to the retailer even though the retailer has paid the amounts so collected to the state. Section 6901 of the Revenue and Taxation Code requires that any overpayment of use tax be credited or refunded only to the purchaser who made the overpayment.

Regulation 1684. (Contd.)

History: Adopted August 7, 1957, as restatement of previous ruling, effective September 11, 1957.
Amended August 2, 1965, applicable on and after August 1, 1965.
Amended October 8, 1968.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended July 27, 1988, effective November 11, 1988. In subdivision (a), included reference to Section 6203 of the Revenue and Taxation Code which defines a "retailer engaged in business in this state."
Amended September 10, 1997, effective November 27, 1997. New third and fourth paragraphs added to subdivision (a).
Adopted September 1, 1999, effective October 5, 1999. Added new un-numbered fifth paragraph to subdivision (a) for provisions of section 6203(e) (Statutes of 1997, Chapter 621) concerning trade show and convention activities by out-of-state retailers. Also added new subdivision (c) for provisions of section 7051.3 (Statutes of 1997 Chapter 702 (SB-110)) concerning exemption certificates for use tax direct pay permits. Relettered subdivisions (c) to (d) and (d) to (e).
Amended May 31, 2001, effective August 1, 2001. New subdivision (b) added. Language "For . . . industry." added. Language of former fourth unnumbered paragraph of the regulation incorporated as new subdivision (b)(1) and phrase "For . . . 2000," added. New subdivision (b)(2) added. Ensuing subdivisions redesignated accordingly.

Regulation 1685. PAYMENT OF TAX BY PURCHASERS.

Reference: Sections 6202, 6203, 6367, 6401 and 7051.3, Revenue and Taxation Code.

(a) Purchasers and lessees of tangible personal property, the storage, use, or other consumption of which is subject to the use tax, must pay the tax:

(1) To the person from whom such property is purchased or leased, if such person holds a seller's permit or a Certificate of Registration—Use Tax.

(2) Directly to the board if the person from whom the tangible personal property is purchased or leased does not hold such a permit or certificate.

Purchasers and lessees should not pay the tax to a person who does not hold either a seller's permit or a Certificate of Registration—Use Tax. Purchasers and lessees will be liable for payment of tax to the board unless receipts are obtained from sellers holding a seller's permit or a Certificate of Registration—Use Tax.

(b) PAYMENT BY PERSONS HOLDING USE TAX DIRECT PAYMENT PERMITS. Notwithstanding the provisions of subdivision (a), persons who obtain use tax direct payment permits and issue use tax direct payment exemption certificates in good faith to the persons from whom tangible personal property, the storage, use, or other consumption of which is subject to the use tax is purchased, shall not pay the use tax to such persons but shall self-assess and pay state and local use tax under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and, if applicable, Part 1.6 (commencing with Section 7251) directly

Regulation 1685. (Contd.)

to the Board. Use tax direct payment permits and exemption certificates must comply with the requirements of Regulation 1699.

History: Amended June 23, 1966.
Applicable as amended on and after July 1, 1966.
Amended and renumbered August 5, 1969, effective September 6, 1969.
Amended September 1, 1999, effective October 21, 1999. New subdivision (b) added to include the provisions of section 7051.3 (Statutes of 1997, Chapter 702 (SB 110)) concerning use tax direct payment permits.

Regulation 1686. RECEIPTS FOR TAX PAID TO RETAILERS.

Reference: Section 6202, Revenue and Taxation Code.

(a) IN GENERAL. Each retailer required to collect use tax from purchasers (including lessees) must give a receipt to each purchaser (or lessee) for the amount of the tax collected. The receipt need not be in any particular form but must show the following:

(1) The name and place of business of the retailer.

(2) The serial number of the retailer's permit to engage in business as a seller or the retailer's Certificate of Registration—Use Tax.

(3) The name and address of the purchaser or lessee.

Regulation 1686. (Contd.)

(4) A description identifying the property sold to the purchaser or leased to the lessee.

(5) The date on which the property was sold or leased.

(6) The sale price of the property, or, in the case of rentals, the amount of the rental for the period covered by the invoice.

(7) The amount of tax collected from the purchaser or lessee.

For sales transactions, and rental transactions with respect to which use tax applies, an invoice showing the data required above, together with evidence of payment of such invoice, will constitute a receipt.

(b) NOTICE TO LESSEE. For lease or rental transactions with respect to which use tax does not apply, the inapplicability of the tax must be indicated by a statement on the invoice that the tax does not apply for one of the following reasons:

(1) The property leased is of a kind (specify) the lease of which is excluded from the definition of ''sale'' and ''purchase'' by Sections 6006(g) and 6010(e), respectively, of the Sales and Use Tax Law.

(2) The property is being leased in substantially the same form as acquired by the lessor (or transferor) and the lessor (or transferor) acquired the property in a transaction that was a retail sale with respect to which the retailer reported and paid sales tax or as to which the lessor (or transferor) has paid use tax measured by the purchase price of the property.

(3) The property was acquired by the lessor in an exempt ''occasional sale'' and the lessor has paid, or elects to pay and will pay with his return for the period in which the property is first leased, use tax measured by the purchase price of the property in lieu of his rental charges.

(4) The amount of the rental payments is fixed by lease (or renewal thereof) prior to August 1, 1965, and the lessee does not have the unconditional right to terminate the lease upon notice.

History: Adopted August 7, 1957, as a restatement of previous ruling, effective September 11, 1957.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended December 7, 1978, effective February 18, 1979. Amends subsection (b)(2) which pertains to sales tax reimbursement and notice to lessees.

Regulation 1687. INFORMATION RETURNS.

Reference: Section 7055, Revenue and Taxation Code

Information returns must be filed by all persons who solicit orders for the sale of tangible personal property the storage, use, or other consumption of which is subject to the tax if the seller does not hold a Certificate of Registration—Use Tax, unless the seller is engaged in business in this State and holds a seller's permit under the Sales and Use Tax Law. Such returns shall be for quarters of the calendar year and must be

Regulation 1687. (Contd.)

filed not later than the last day of the month following each three-month period ending in March, June, September and December. Such returns must show:

1. The name and address of each purchaser from whom an order was taken.
2. The description and sales price of the tangible personal property sold or to be sold pursuant to such order.
3. The date upon which the order is taken.
4. The date as nearly as can be determined at which the tangible personal property is to be delivered to the purchaser.

As used in this Regulation, the term ''Certificate of Registration—Use Tax'' shall include Certificates of Authority to Collect Use Tax issued prior to September 11, 1957.

History: Adopted August 7, 1957, as restatement of previous rulings, effective September 11, 1957.
Amended and renumbered August 5, 1969, effective September 6, 1969.

Regulation 1698. RECORDS.

References: Sections 6455, 7053, and 7054, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) ''Database Management System''—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) ''Electronic data interchange'' or ''EDI technology''—the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) ''Hardcopy''—any document, record, report or other data maintained in a paper format.

(4) ''Machine sensible record''—a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) ''Taxpayer''—every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

(b) GENERAL.

(1) A taxpayer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the

Regulation 1698. (Contd.)

correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 7053 and 7054.

(c) MACHINE-SENSIBLE RECORDS.

(1) GENERAL.

(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides

to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) BUSINESS PROCESS INFORMATION.

(A) Upon request of the board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;

2. the internal controls used to ensure accurate and reliable processing, and;

3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

1. record formats or layouts;

2. field definitions (including the meaning of all codes used to represent information);

3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the

Regulation 1698. (Contd.)

location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) ACCESS TO MACHINE-SENSIBLE RECORDS.

(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more the following manners:

(A) The taxpayer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.

(D) The taxpayer and the board may agree on other means of providing access to the machine-sensible records.

(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) HARDCOPY RECORDS.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax

liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) ALTERNATIVE STORAGE MEDIA.

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) RECORD RETENTION—TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

Regulation 1698. (Contd.)

(j) RECORD RETENTION LIMITATION AGREEMENTS.

(1) The board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the board, which may include, but is not limited to, any one or more of the following issues:

a. the conversion of files created on an obsolete computer system;

b. restoration of lost or damaged files and the actions to be taken;

c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 7054 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax

Regulation 1698. (Contd.)

system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) FAILURE TO MAINTAIN RECORDS.

Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

History: Effective July 1, 1939.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended and renumbered January 6, 1970, effective February 7, 1970.
Amended June 2, 1988, effective August 24, 1988. In subdivision (a) and (c), added provisions that provide that books and records may be maintained on microfilm or microfiche under certain conditions.
Amended June 26, 1997, effective October 4, 1997. Former paragraphs (a) through (e) deleted and replaced with new paragraphs (a) through (e). New paragraphs (f) through (j) added. Former paragraph (f) re-designated as (k).

Regulation 1699. PERMITS.

References: Sections 6066–6075, Revenue and Taxation Code.

(a) IN GENERAL—NUMBER OF PERMITS REQUIRED. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A permit is required for a branch sales office at which orders are customarily taken and contracts negotiated, whether or not merchandise is stocked there.

Regulation 1699. (Contd.)

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale.

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one permit for both activities.

(b) PERSONS SELLING IN INTERSTATE COMMERCE OR TO UNITED STATES GOVERNMENT. A permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

(c) PERSONS SELLING FEED. Effective April 1, 1996, a permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

If a seller of hay is also the grower of the hay, this exemption shall apply only if either:

1. The hay is produced for sale only to beef cattle feedlots or dairies, or
2. The hay is sold exclusively through a farmer-owned cooperative.

(d) CONCESSIONAIRES. For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer's own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is *not* operating as a concessionaire are that he or she:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.
- Establishes his or her own selling prices.

Regulation 1699. (Contd.)

- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is not liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

- The permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location)
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Appendix A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owed by the lessee or grantee.

In the event the retailer fails to make a return and remit the amount of tax due with respect to operations of the concessions, the concessionaires must secure permits and file returns together with remittances of the amount of tax due.

Regulation 1699. (Contd.)

(e) AGENTS. If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.

(f) INACTIVE PERMITS. A permit shall be held only by persons actively engaging in or conducting a business as a seller of tangible personal property. Any person not so engaged shall forthwith surrender his or her permit to the Board for cancellation. The Board may revoke the permit of a person found to be not actively engaged in or conducting a business as a seller of tangible personal property.

Upon discontinuing or transferring a business, a permit holder shall promptly notify the Board and deliver his or her permit to the Board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:

(1) Oral or written statement to a Board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the Board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.

(2) Receipt of the transferee or business successor's application for a seller's permit may serve to put the Board on notice of the transferor's cessation of business.

Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the Board.

Unless the permit holder who transfers the business notifies the Board of the transfer, or delivers the permit to the Board for cancellation, he or she will be liable for taxes, interest and penalties (excluding penalties for fraud or intent to evade the tax) incurred by his or her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way; e.g., by displaying the permit in transferee's place of business, issuing any resale certificates showing the number of the permit thereon, or filing returns in the name of the permit holder or his or her business name and under his or her permit number. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor, the liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.

Stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity shall be regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.

(g) DUE DATE OF RETURNS—CLOSEOUT OF ACCOUNT ON YEARLY REPORTING BASIS. Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the

Regulation 1699. (Contd.)

yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

(h) BUYING COMPANIES—GENERAL.

(1) DEFINITION. For the purpose of this regulation, a buying company is a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. It is presumed that the buying company is formed for the operational reasons of the entity which owns or controls it or to which it is otherwise related. A buying company formed, however, for the sole purpose of purchasing tangible personal property ex-tax for resale to the entity which owns or controls it or to which it is otherwise related in order to re-direct local sales tax from the location(s) of the vendor(s) to the location of the buying company shall not be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall not be issued a seller's permit. Sales of tangible personal property to third parties will be regarded as having been made by the entity owning, controlling, or otherwise related to the buying company. A buying company that is not formed for the sole purpose of so re-directing local sales tax shall be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases.

(2) ELEMENTS. A buying company is not formed for the sole purpose of re-directing local sales tax if it has one or more of the following elements:

(A) Adds a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses.

(B) Issues an invoice or otherwise accounts for the transaction.

The absence of any of these elements is not indicative of a sole purpose to redirect local sales tax.

(i) WEB SITES. The location of a computer server on which a web site resides may not be issued a seller's permit for sales tax purposes except when the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit under this regulation.

History: Effective July 1, 1939.
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended August 2, 1965, applicable on and after August 1, 1965.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended May 25, 1977, effective June 24, 1977.
Amended May 1, 1985, effective May 31, 1985. Subdivision (e)(2) has been changed to provide that penalties for intent to evade the tax are excluded from the type of penalty the permit holder would be liable for if the permit holder fails to notify the Board of the transfer of a business.

Regulation 1699. (Contd.)

Amended June 22, 1995, effective July 22, 1995. Amended subdivision (e) as provided in Statutes of 1993, Chapter 1109.

Amended April 25, 1996, effective May 25, 1996. Added new (c) to incorporate provisions of Chapter 696, Statutes of 1995 and renumbered the following subdivisions.

Amended May 30, 2001, effective September 7, 2001. Subdivision (d)—Existing language deleted—Four new unnumbered paragraphs added to define ''concessionaire'' and clarify the relationship between concessionaire and prime retailer. New Appendix A was added to provide a suggested form for the Certification of Permit—Concessionaire.

Amended February 6, 2002, effective June 14, 2002. Subdivisions (h) and (i) added.

Regulation 1699. (Contd.)

Appendix A
CERTIFICATE OF PERMIT—CONCESSIONAIRES

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the Board of Equalization:

Name of retailer on whose premises I operate my business: _____

_____

Location of premises: _____

_____

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier's Signature: _____ Date: _____

Certifier's Printed Name: _____

Certifier's Seller's Permit Number: _____

Certifier's Business Name and Address:* _____

_____

_____

_____

_____

Certifier's Telephone Number: _____

* **Please Note**: The certifier *must* be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1699.5. DIRECT PAYMENT PERMITS.

Reference: Sections 7051.1, 7051.2, Revenue and Taxation Code.

(a) DEFINITION. As used in this regulation, ‘‘Direct payment permit’’ means a permit issued by the board which allows the holder to purchase tangible personal property for use without paying tax or tax reimbursement to the retailer from whom the purchase is made, and which relieves that retailer from liability for tax on the transaction provided that the retailer obtains an exemption certificate as provided herein from the purchaser.

(b) REQUIREMENTS FOR PERMIT. A direct payment permit will be issued only if all of the following conditions are met:

(1) The applicant holds a valid seller’s permit.

(2) The applicant agrees to report and pay directly to the board all tax liabilities which are transferred from retailers to the applicant as a result of exemption certificates issued in accordance with this regulation.

(3) The board determines that issuance of the direct payment permit will facilitate the collection of the tax. This requirement will be met only if the applicant has sufficient information processing resources to accurately and timely account for and report the tax liabilities assumed as a result of the direct payment permit (separately from other tax liabilities) and allocate the local tax portion of such liabilities to all of the cities, counties, redevelopment agencies, and districts involved.

(4) The board determines that issuance of the direct payment permit is to the mutual convenience of the board, the applicant, and the retailers whose tax liability will be reported and paid by the applicant. Issuance of the permit will not be deemed to be to the convenience of the board if the applicant is a government entity or if the applicant has had gross receipts from sales of tangible personal property of less than $75,000,000 and purchases of tangible personal property subject to sales or use tax of less than $75,000,000 in any calendar quarter during the twelve months immediately preceding the application for the permit.

(5) The applicant has a record of timely payment of tax liabilities and is in such financial condition that issuance of the direct payment permit will not result in a tax loss to the state.

(c) (1) **APPLICATION FOR PERMIT.** An application for a direct payment permit must be in writing and provide information which supports the claim that the applicant meets the requirements for a permit. The application must include a certified financial statement and a detailed description of the information processing system which will be used to account for the tax liabilities assumed and allocate the local taxes involved.

(2) Within 30 days of receipt of an application for a direct payment permit the board shall inform the applicant in writing either that the application is complete and has been accepted or that the application is deficient and what additional specific information is required to make the application complete. Within 60 days of

Regulation 1699.5. (Contd.)

acceptance of a complete application the board shall approve or deny the issuance of a direct payment permit and notify the applicant in writing of its decision.

(d) REVOCATION OF PERMIT. Any direct payment permit issued pursuant to this regulation shall be revoked if the board determines that the holder no longer meets the requirements for the permit.

(e) RETURNS. On or before the last day of the month following each quarterly period, a holder of a direct payment permit shall file a return with the board in such form as the board may prescribe. The person required to file the return shall deliver it together with a remittance for the amount of tax due to the office of the board. The return shall show the aggregate gross receipts of retailers during the reporting period with respect to which the person filing the return has assumed responsibility for payment of the retailers' tax liabilities, the amount of such liabilities, and such other information as the board may require. This return shall be separate from and in addition to any returns required to be filed by the person to report his or her own sales and use tax liabilities.

(f) PREPAYMENTS. A holder of a direct payment permit shall make prepayments of the tax liabilities assumed in accordance with this regulation as prescribed in Section 6471 of the Revenue and Taxation Code. The prepayments shall be made as prescribed in Section 6472 of the Revenue and Taxation Code, except that the due dates of these prepayments shall be five days earlier than the due dates prescribed in that section. These prepayments shall be made separately from any prepayments of the person's own sales and use tax liabilities.

(g) ALLOCATION OF LOCAL TAX. Every holder of a direct payment permit must include with each direct payment tax return a schedule approved by the board allocating all local sales and use taxes and district transactions and use taxes to the cities, counties, redevelopment agencies, and districts to which the tax would have been allocated if it had been reported and paid by the retailers involved. The allocation shall be based on the place of sale as provided in Regulation 1802 and Regulation 1822. The board may require that the schedule be provided on computer tape in a format prescribed by the Board. If the local and district taxes are misallocated due to negligence or intentional disregard of the law, a penalty of 10 percent of the amount misallocated may be imposed.

Regulation 1699.5. (Contd.)

(h) EXEMPTION CERTIFICATES. A holder of a direct payment permit may issue a direct payment exemption certificate to any retailer. The certificate shall be in substantially the following form and shall be valid only with respect to the calendar year for which it is issued.

DIRECT PAYMENT EXEMPTION CERTIFICATE

_____
(Name of Purchaser)

_____
(Address of Purchaser)

I certify that I hold direct payment permit No._____ issued pursuant to the California Sales and Use Tax Law and that I am authorized to report and pay directly to the State the applicable sales or use tax with respect to the property described herein which I shall purchase from_____ _____ during the calendar year _____ . In the event that I fail to timely report and pay the applicable tax to the State, I understand that in addition to the tax liability, I will be subject to applicable interest and penalties. Description of property to be purchased: _____ _____

Date: _____

_____
(Signature of Purchaser or Agent)

_____
(Title)

(i) (1) **EFFECT OF CERTIFICATE.** A party who issues a direct payment exemption certificate to a retailer shall be liable for the tax with respect to sales made pursuant to the certificate in the same manner as if the party were the retailer making the sale. The liability assumed by issuing the certificate must be included on the return filed for the period in which the sale was made rather than on the return for the period in which the property was used by the purchaser. The party who issued the exemption certificate is liable for the tax on the sale even if the property is lost, destroyed, removed from this state, or otherwise never used or consumed in this state.

(2) A direct payment exemption certificate shall not be substituted for a resale certificate because the tax consequences are different. Resale certificates shall only be issued with respect to property which the purchaser intends to resell and direct payment exemption certificates shall be issued only for property purchased for use or other consumption.

(3) A retailer who timely takes a direct payment exemption certificate in good faith from a person who holds a direct payment permit is relieved from liability for the sales tax and responsibility for collecting the use tax with respect to retail sales to the person who issued the certificate during the period covered by the certificate. A certificate will be considered timely if it is given at any time before the seller bills the purchaser for the property, or at any time within the seller's normal billing and payment cycle, or at any time at or prior to delivery of the property to the purchaser. The invoice or other evidence of sale issued by the retailer must clearly state that the sale was made pursuant to a direct payment exemption certificate in order to support

Regulation 1699.5. (Contd.)

a deduction on the retailer's sales tax return. If a retailer makes sales under both a direct payment exemption certificate and a resale certificate to the same customer, care must be exercised to identify which property is sold pursuant to each certificate. The retailer must segregate in his or her records, and on his or her sales tax return, sales made pursuant to a direct payment exemption certificate from sales for resale.

(j) INTEREST AND PENALTIES. All provisions of the Sales and Use Tax Law relating to interest and penalties apply to tax liabilities incurred under the provisions of this regulation in the same manner as to other sales and use tax liabilities. (See Section 1703 of Title 18 of the California Code of Regulations.)

History: Adopted October 19, 1988, effective January 14, 1989. Adopted Regulation 1699.5 (Direct Payment Permits), which provides the rules under which the Board of Equalization will issue a direct payment permit to a person holding a valid seller's permit. The direct payment permit allows the holder of this permit to purchase tangible personal property from a retailer without paying sales tax reimbursement for the sales or the use tax for the use of the property.

Regulation 1699.6. USE TAX DIRECT PAYMENT PERMITS

Reference: Sections 6007, 6070, and 7051.3, Revenue and Taxation Code.

(a) FOREWORD. "Use tax direct payment permit" means a permit issued by the board that allows a use tax direct payment permit holder to self-assess and pay state, local, and district use taxes under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and, if applicable, Part 1.6 (commencing with Section 7251) directly to the board. The provisions of this regulation apply only to transactions subject to use tax.

(b) (1) **APPLICATION FOR PERMIT.** Persons seeking to pay use taxes directly to the board shall file an application for a use tax direct payment permit. An application for a use tax direct payment permit shall be made on Board of Equalization Form BOE-400-DP (no revision date). The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(2) Within 30 days of receipt of an application for a direct payment permit the board shall inform the applicant in writing either that the application is complete and has been accepted or that the application is deficient and what additional specific information is required to make the application complete. Within 60 days of acceptance of a complete application the board shall approve or deny the issuance of a direct payment permit and notify the applicant in writing of its decision.

(c) REQUIREMENTS FOR PERMIT. Pursuant to an application, a use tax direct payment permit shall be issued to any person who meets all of the following conditions:

Regulation 1699.6. (Contd.)

(1) The applicant agrees to self-assess and pay directly to the board any use tax liability incurred under this regulation.

(2) The applicant certifies to the board either of the following:

(A) The applicant is the purchaser for its own use or is the lessee of tangible personal property subject to the use tax at a cost of five hundred thousand dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit. Tangible personal property purchased for own use includes both property subject to use tax and property exempt from use tax except that it does not include property purchased for resale; or

(B) The applicant is a county, city, city and county, or redevelopment agency.

(d) REPORTING OF LOCAL USE TAX. Any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the board with each return the use taxes due under Division 2, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and, if applicable, Part 1.6 (commencing with Section 7251), for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report the local use tax component to the jurisdiction in which the property is located at the time the state imposed use tax must be reported. Temporary storage for the purpose of reporting local tax shall be disregarded. Any tax so reported may be redistributed in accordance with law.

(e) RETURNS. On or before the last day of the month following each quarterly period, a holder of a direct payment permit shall file a return with the board. The person required to file the return shall deliver it together with a remittance for the amount of tax due to the board. The return shall show the aggregate sales price of tangible personal property purchased during the reporting period with respect to which the person filing the return has issued a use tax direct payment exemption certificate relieving the retailer of liability for reporting and paying use tax, and such other information as the board may require.

(f) EXEMPTION CERTIFICATES. The board shall allow any holder of a use tax direct payment permit to issue a use tax direct payment certificate to any registered retailer or seller subject to all of the following:

(1) The use tax direct payment exemption certificate shall be in a form prescribed by the board, and shall be signed by, and bear the name, address, and permit number of, the holder of the use tax direct payment permit.

(2) Once a use tax direct payment exemption certificate has been issued by a holder of a use tax direct payment permit, it shall remain effective until revised or withdrawn by the holder of the permit or until the retailer or seller has received written notice that the permit has been revoked by the board.

(3) A use tax direct payment certificate relieves a person selling property from the duty of collecting use tax only if taken timely and in good faith from a person who holds a use tax direct payment permit. A certificate will be considered timely if

it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser.

(4) A purchaser who issues a use tax direct payment certificate that is accepted in good faith by a seller or retailer of tangible personal property shall be the sole person liable for any sales tax and related interest and penalties with respect to any transaction that is subsequently determined by the board to be subject to sales tax and not use tax. The local sales tax portion so determined shall be allocated to the city, county, city and county, or redevelopment agency to which the tax would have been allocated if it had been reported and paid by the retailer in accordance with Part 1.5 (commencing with Section 7200). Such allocation shall be based on the place of sale as provided in Regulation 1802 and Regulation 1822.

(5) Any person who holds a use tax direct payment permit and gives a use tax direct payment certificate to a seller or retailer shall, in addition to any applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

(g) RESALE TRANSACTIONS. A use tax direct payment exemption certificate shall not be substituted for a resale certificate, because the tax consequences are different. Resale certificates shall only be issued with respect to property which the purchaser intends to resell, and use tax direct payment exemption certificates shall be issued only for property purchased for use or other consumption. If a retailer makes sales under both a use tax direct payment exemption certificate and a resale certificate to the same customer, an audit trail must be maintained to identify which property is sold pursuant to each certificate.

(h) REVOCATION OF PERMIT. The board may revoke the use tax direct payment permit of any person who fails to purchase tangible personal property for own use of at least $500,000 per year. The permit shall remain valid for all transactions taking place prior to the date the permit is revoked.

(i) SUCCESSOR ENTITIES. A successor entity to a use tax direct payment permit holder shall qualify to obtain a use tax direct payment permit if the predecessor entity so qualified in the calendar year in which the succession occurred but must obtain its own permit.

(j) OPERATIVE DATE. The provisions of this regulation apply only to purchases that occur on or after January 1, 1998.

History: Adopted September 23, 1998, effective July 9, 1999.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1700. REIMBURSEMENT FOR SALES TAX.

References: Section 6901.5, Revenue and Taxation Code; Section 1656.1, Civil Code.
Meals, tips and other charges as tax-included amounts, see Regulation 1603.

(a) REIMBURSEMENT FOR SALES TAX.

(1) ADDITION OF SALES TAX REIMBURSEMENT. Whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale.

(2) PRESUMPTIONS. Certain presumptions concerning the addition of sales tax reimbursements are created by Civil Code Section 1656.1. It shall be presumed that the parties agreed to the addition of sales tax reimbursement to the sales price of tangible personal property sold at retail to a purchaser if:

(A) The agreement of sale expressly provides for such addition of sales tax reimbursement;

(B) Sales tax reimbursement is shown on the sales check or other proof of sale; or

(C) The retailer posts in his or her premises in a location visible to purchasers, or includes on a price tag or in an advertisement or other printed material directed to purchasers, a notice to the effect that reimbursement for sales tax will be added to the sales price of all items or certain items, whichever is applicable.

It shall be presumed that the property, the gross receipts from the sale of which is subject to the sales tax, is sold at a price which includes tax reimbursement if the retailer posts in his or her premises, or includes on a price tag or in an advertisement (whichever is applicable) one of the following notices:

1. ''All prices of taxable items include sales tax reimbursement computed to the nearest mill.''

2. ''The price of this item includes sales tax reimbursement computed to the nearest mill.''

(3) REIMBURSEMENT SCHEDULES. Each retailer who adds to the sales price of tangible personal property sold at retail an amount from a consumer in reimbursement of the sales tax upon gross receipts shall compute the amount of reimbursement by reference to schedules prepared by the board pursuant to Civil Code Section 1656.1 or by mathematical computation as described below. Schedules are available from the local district board offices for the various applicable rates. Reimbursement on sales prices in excess of those shown in the schedules provided by the board may be computed by applying the applicable tax rate to the sales price, rounded off to the nearest cent by eliminating any fraction less than one-half cent and increasing any fraction of one-half cent or over to the next higher cent.

(b) EXCESS TAX REIMBURSEMENT

(1) DEFINITION. When an amount represented by a person to a customer as constituting reimbursement for sales tax is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid is excess tax reimbursement. Excess tax

Regulation 1700. (Contd.)

reimbursement is charged when reimbursement is computed on a transaction which is not subject to tax, when reimbursement is computed on an amount in excess of the amount subject to tax, when reimbursement is computed using a tax rate higher than the rate imposed by law, and when mathematical or clerical errors result in an overstatement of the reimbursement on a billing.

(2) PROCEDURE UPON ASCERTAINMENT OF EXCESS TAX REIMBURSEMENT. Whenever the board ascertains that a person has collected excess tax reimbursement, the person will be afforded an opportunity to refund the excess collections to the customers from whom they were collected. In the event of failure or refusal of the person to make such refunds, the board will make a determination against the person for the amount of the excess tax reimbursement collected and not previously paid to the state, plus applicable interest and penalty.

(3) EVIDENCE SUFFICIENT TO ESTABLISH THAT EXCESS AMOUNTS HAVE BEEN OR WILL BE RETURNED TO CUSTOMER.

(A) If a person already has refunded to each customer amounts collected as reimbursement for tax in excess of the tax due, this may be evidenced by any type of record which can be verified by audit such as:

1. Receipts or cancelled checks.
2. Books of account showing that credit has been allowed the customer as an offset against an existing indebtedness owed by the customer to the person.

(B) If a person has not already made sales tax reimbursement refunds to each customer but desires to do so rather than incur an obligation to the state, the person must:

1. Inform in writing each customer from whom an excess amount was collected that the excess amount collected will be refunded to the customer or that, at the customer's option, the customer will be credited with such amount, and
2. The person must obtain and retain for verification by the board an acknowledgement from the customer that the customer has received notice of the amount of indebtedness of the person to the customer.

(4) OFFSETS. If a person who has collected excess tax reimbursement on a transaction fails or refuses to refund it to the customer from whom it was collected, the excess tax reimbursement shall be offset against any tax liability of the taxpayer on the same transaction. Any excess tax reimbursement remaining after the offset must be refunded to the customer or paid to the state. The offset can be made when returns are filed, when a determination is issued, or when a refund is claimed. Such offsets can be made only on a transaction by transaction basis. Tax reimbursement collected on a specific transaction can be used only to satisfy a tax liability arising from the same transaction. The ''same transaction'' means all activities involved in the acquisition and disposition of the same property. The ''same transaction'' may involve several persons, such as a vendor, a subcontractor, a prime contractor, and the final customer; or a vendor, a lessor, and a series of sublessors. Tax reimbursement can be offset against the tax liability of the taxpayer whether the liability was satisfied by paying sales tax reimbursement to a vendor, paying use tax to a vendor, or paying use tax to the state.

Regulation 1700. (Contd.)

An offset of a taxpayer's own tax liability against tax reimbursement collected from a customer can be made only with respect to transactions in which possession of the property upon which the taxpayer's tax liability is based is transferred, either permanently or temporarily, to the customer, as in the case of construction contracts or leases. A taxpayer such as a repairman or printer who uses shop supplies or printing aids in performing a job for a customer cannot offset the tax liability arising from the use of the supplies or aids against tax reimbursement collected from the customer.

A person who claims that a tax liability on a transaction should be offset against tax reimbursement paid to the state by another person has the burden of proving that tax reimbursement was in fact paid to the state on the same transaction by the other person. In the absence of such proof no offset will be allowed.

The offset allowances explained above are procedural changes mandated by statute and apply to all proceedings pending before the board on and after September 7, 1982.

(5) PARTICULAR APPLICATIONS. (Examples at 6 percent tax rate.)

(A) DISCOUNTS AND TRADING STAMPS.

1. Discounts. A retailer who allows discounts on sales prices but charges customers tax reimbursement computed upon the prices before the discount is deducted is collecting excess reimbursement.

For example, a sale is made for $100 plus $6 as tax reimbursement. Upon payment for the item the purchaser is allowed a discount of 20 percent of the sales price of $100 but the $6 tax reimbursement is excluded from the computation. Since the retailer is deducting the amount of the discount, $20, from taxable gross receipts, the retailer is actually paying a tax of only $4.80, i.e., 6 percent of $80, and has retained excessive tax reimbursement of $1.20.

2. Trading Stamps. A retailer who issues trading stamps or similar evidences of patronage may deduct as cash discounts the cost to the retailer of the stamps or other indicia (hereinafter called "stamps") issued in connection with taxable retail sales. A retailer who deducts the cost of stamps as a cash discount in computing the tax payable to the state, but who charges tax reimbursement on the full sales price of the goods, collects more tax reimbursement than the retailer pays to the state. The following illustration shows why this is true: If a retailer collects sales tax reimbursement of $6 on a $100 sale but gives the customer trading stamps which cost the retailer $2 and then deducts the $2 as a cash discount when reporting taxable receipts, the retailer will pay a tax of only $5.88 (6 percent of $98).

The retailer must follow one of the three following procedures:

a. Adjust the price upon which tax reimbursement is computed so it will correspond to the price upon which the retailer computes the tax paid by the retailer to the state.

Regulation 1700. (Contd.)

b. Consider the price which determines the number of stamps to be given a customer as the total amount paid by the customer, inclusive of that portion charged as reimbursement for sales tax.

c. Take no deduction from gross receipts in computing tax to be paid to the state on account of the cost of stamps given to customers.

(B) CONSTRUCTION CONTRACTORS. (See Regulation 1521 (18 CCR 1521) for application of tax to construction contractors generally.) A contractor furnishes and installs materials under a lump sum construction contract for the improvement of real property and collects tax reimbursement on the total contract price. As the contractor is the consumer of materials furnished and installed in the performance of the lump sum contract, the tax reimbursement collected on the total contract price constitutes excess tax reimbursement. Such excess tax reimbursement must be returned to the customer or paid to the state. However, offsets will be allowed as explained in (b)(4).

Under a lump sum contract to improve real property, a subcontractor furnishes and installs materials which were acquired without the payment of sales or use tax. The prime contractor collects tax reimbursement from the prime contractor's customer on the total contract price and pays all of the tax reimbursement collected to the state. The subcontractor's use tax liability on the materials consumed in performing the contract will be offset against the tax reimbursement paid to the state by the prime contractor, and the subcontractor has no further tax liability on the transaction. The tax reimbursement paid to the state by the prime contractor in excess of the use tax liability of the subcontractor will be refunded to the prime contractor only if it is returned to the customer.

(C) LESSORS OF MOBILE TRANSPORTATION EQUIPMENT. A lessor of mobile transportation equipment purchases such equipment under a resale certificate and collects tax reimbursement on the rental receipts, but pays no tax to the state. The lessor must pay tax on the purchase price of the equipment since a timely election to measure the tax by fair rental value was not made. The tax reimbursement collected on rental receipts is excess tax reimbursement. Such excess tax reimbursement must be returned to the lessee or paid to the state. However, offsets will be allowed as explained in (b)(4). (See Regulation 1661 (18 CCR 1661) for application of tax to leases of mobile transportation equipment.)

(D) OTHER LESSORS OF TANGIBLE PERSONAL PROPERTY. A lessor purchases property and pays sales tax reimbursement to the vendor. The property is leased in the same form as acquired and tax reimbursement is collected on the rental receipts. Tax reimbursement collected on rental receipts must be returned to the lessee or paid to the state to the extent that it exceeds the tax liability measured by the purchase price. (See Regulation 1660 (18 CCR 1660) for application of tax to leases, generally.)

(6) RIGHTS OF CUSTOMERS. The provisions of this regulation with respect to offsets do not necessarily limit the rights of customers to pursue refunds from persons who collected tax reimbursement from them in excess of the amount due.

Regulation 1700. (Contd.)

History: Effective September 15, 1961.
Amended November 7, 1961.
Amended August 8, 1967, applicable on and after August 1, 1967.
Amended October 8, 1968, applicable on and after November 13, 1968.
Amended February 19, 1970, effective March 28, 1970.
Amended and renumbered June 4, 1970, effective July 9, 1970.
Amended May 10, 1972, effective June 18, 1972.
Amended September 14, 1972, effective September 15, 1972.
Amended May 10, 1973, applicable on and after July 1, 1973.
Amended May 21, 1975, effective June 29, 1975. Added revocation of seller's permit for collection of excessive reimbursement.
Amended December 7, 1978, effective January 28, 1979. Incorporates the requirements provided in Civil Code Section 1656.1.
Amended July 7, 1984, effective September 6, 1984. Deleted date reference from title to subdivision (a). In subdivision (a)(3) added language following Section 1656.1 in first sentence. Deleted remainder of regulation. Added new subdivision (b).
Amended effective July 26, 1985. Added Appendix J, 7% reimbursement schedule.
Amended effective January 1, 1991. Added appendices A, B, C, D and E.
Amended November 18, 1994, effective December 17, 1994. Amended subparagraph (a)(2)(C) to delete gender-based language; amended subparagraph (a)(3) to reflect that tax reimbursement schedules are available from district board offices and deleted the second sentence which referred to the reimbursement schedules being attached to the regulation; added a reference to the California Code of Regulations to subparagraphs (b)(5)(B), (C), and (D)(3); and deleted the tax reimbursement schedules attached to the regulation.

Regulation 1701. ''TAX-PAID PURCHASES RESOLD''.

Reference: Section 6012(a), Revenue and Taxation Code.

(a) PROCEDURE IN GENERAL. A retailer who resells tangible personal property before making any use thereof (other than retention, demonstration or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

The deduction under the caption ''Tax-paid purchases resold'' must be taken on the retailer's return in which his sale of the property is included. If the deduction is not taken in the proper quarter, a claim for refund of tax must be filed.

(b) CIRCUMSTANCES WARRANTING USE. This procedure should be used in any of the following circumstances:

(1) The retailer when making the purchase intends to use the property rather than resell it, but later resells it before making any use thereof.

Regulation 1701. (Contd.)

(2) The particular property is of a kind not ordinarily sold or stocked by the retailer, and not customarily covered by resale certificates given to his vendors and is the subject of an unusual sale, such as a sale for the accommodation of a customer, employee, etc.

(3) The particular property is generally for the use of the retailer, but a small portion is incidentally resold.

(4) Through error, sales tax reimbursement or use tax is paid by the retailer with respect to the purchase price of property purchased for resale in the regular course of business.

(c) PARTICULAR APPLICATION. "STANDBY SERVICE." Property purchased "tax-paid" by a retailer and placed in "Standby Service," located at the place of intended use and committed to that use, is considered used sufficiently to preclude a tax-paid purchase deduction when sold, even though never physically used there and ultimately removed and sold.

History: Effective July 1, 1939.
Amended June 29, 1945.
Amended and renumbered August 5, 1969, effective September 6, 1969.
Amended June 22, 1983, effective October 6, 1983. In last paragraph of subsection (a), deleted "should" and inserted "must"; and added last sentence.

Note: See Business Taxes General Bulletin 61-2 following Regulation 1525.

Regulation 1702. SUCCESSOR'S LIABILITY.

Reference: Sections 6701, 6811, 6812, 6813, 6814, Revenue and Taxation Code.

(a) WHEN DUTY TO WITHHOLD PURCHASE PRICE ARISES. The requirement that a successor or purchaser of a business or stock of goods withhold sufficient of the purchase price to cover the tax liability of the seller, arises only in the case of the purchase and sale of a business or stock of goods under a contract, providing for the payment to the seller or person designated by him of a purchase price in money or property or providing for the assumption of liabilities and only to the extent thereof, and does not arise in connection with other transfers of a business such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.

(b) AMOUNTS TO WHICH LIABILITY EXTENDS. The liability of the successor or purchaser of a business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against him or her, which include taxes, interest thereon to the date of payment of the taxes, and penalties including penalties for nonpayment of taxes. Liability also extends to penalties determined and unpaid at the time of sale for negligence or intentional

Regulation 1702. (Contd.)

disregard of the Sales and Use Tax Law or authorized rules and regulations, and fraud or intent to evade the Sales and Use Tax Law or authorized rules and regulations.

(c) RELEASE FROM OBLIGATION. The purchaser of the business or stock of goods will be released from further obligation to withhold the purchase price if he obtains a certificate from the board stating that no taxes, interest, or penalties are due from a predecessor. He will also be released if he makes a written request to the board for a certificate and if the board does not issue the certificate or mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate within 60 days after the latest of the following dates:

(1) The date the board receives a written request from the purchaser for a certificate.

(2) The date of the sale of the business or stock of goods.

(3) The date the former owner's records are made available for audit.

The certificate may be issued after the payment of all amounts due under the Sales and Use Tax Law, according to the records of the board as of the date of the certificate, or after the payment of the amounts, including amounts not yet ascertained, is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 6701 of the Revenue and Taxation Code.

(d) ENFORCEMENT OF OBLIGATION.

(1) The liability is enforced by service of a notice of successor liability not later than three years after the date the board receives written notice of the purchase of the business or stock of goods. The successor may petition the Board for reconsideration of the liability within 30 days after service. The liability becomes final, and the amount due and payable, in the same manner as determinations and redeterminations of other sales and use tax liability.

(2) On or after January 1, 1990, a successor shall be relieved of any penalty originally imposed upon the predecessor included in the notice of successor liability regardless of when the notice was issued where there is no relationship between the successor and predecessor. A relationship exists between the successor and predecessor if there is any common ownership or if the successor was a responsible person as defined in Sales and Use Tax Regulation 1702.5 (b)(1) in the predecessor entity. A successor seeking relief of a penalty must file a written statement with the Board under penalty of perjury stating the facts upon which he or she bases the claim for relief.

(e) SEPARATE BUSINESS LOCATIONS. Where one person operates several business establishments, each at a separate location, each establishment is a separate "business" and has a separate "stock of goods" for purposes of determining the liability of a successor. A purchaser of the business or stock of goods of any such establishment is subject to liability as a successor with respect to that establishment even if he does not purchase the business or stock of goods of all the establishments.

Regulation 1702. (Contd.)

(f) PURCHASE OF A PORTION OF A BUSINESS. A person who purchases a portion of a business or stock of goods may become liable as a successor as, for example, where he purchases substantially all of the business or stock of goods or where the business or stock of goods is purchased by two or more persons. In cases of doubt as to possible liability, the purchaser should obtain a certificate as provided in subdivision (c) above.

History: Amended November 18, 1953.

Amended and renumbered October 8, 1969, effective November 9, 1969.

Amended December 7, 1977, effective January 19, 1978. In (c) added 90 days from date of sale as alternative time period.

Amended December 6, 1978, effective January 28, 1979. Amends subsection (c) to provide for issuance of a sales tax clearance certificate if satisfactory security is posted.

Amended February 6, 1980, effective March 29, 1980. Added reference to 6814, added subsection (d), and relettered remaining sections.

Amended August 19, 1987, effective November 7, 1987. In subdivision (a), corrected a typographical error. In subdivision (c), added time limits to regulation that specify when purchaser of business or stock of goods will be released from tax liability of seller.

Amended July 31, 1990, effective October 13, 1990. Amended paragraph (b) to clarify that the liability of a successor extends to all taxes, penalties and interest incurred by the predecessor. Also added the words ''business or'' in the first sentence. Amended paragraph (d)(1) to provide that a notice of successor liability must be served by the Board not later than three years after the date the Board is notified of the purchase of the business or stock of goods. Paragraph (d)(2) explains that the successor may be relieved by the Board of penalties for failure to withhold sufficient of the purchase price to cover the amount of sales and use taxes owed by the predecessor if such failure is due to reasonable cause and circumstances beyond the successor's control and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect.

Amended July 19, 1999, effective October 27, 1999. In subdivision (c) the phrase ''of the Revenue and Taxation Code'' was added. Letter case errors corrected in titles to subdivisions (d) and (f). In subdivision (d)(2) replaced the word ''may'' in the first sentence with ''shall''; added the phrases ''originally imposed upon the predecessor'' and ''where there is no relationship between the successor and predecessor;'' also added a new second sentence and deleted the phrase ''if it is determined . . . was not willfully negligent.'' In Subdivision (f) the word ''subdivision'' was added.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1702.5. RESPONSIBLE PERSON LIABILITY.

Reference: Section 6829, Revenue and Taxation Code.

(a) GENERAL. Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any taxes due from a domestic or foreign corporation or limited liability company pursuant to Part 1, Division 2, of the Revenue and Taxation Code shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the corporate or limited liability company business.

Personal liability shall apply if the board establishes that while the person was a responsible person, the corporation or limited liability company:

1. sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or

2. consumed tangible personal property and failed to pay the applicable tax to the seller or the board; or

3. issued a receipt for use tax and failed to report and pay the tax.

(b) DEFINITION OF TERMS.

(1) RESPONSIBLE PERSON. As used herein, the term ‘‘responsible person’’ means any officer, member, manager, employee, director, shareholder, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for the corporation or limited liability company in complying with any provision of the Sales and Use Tax Law. The term ‘‘responsible person’’ does not include any person who would otherwise qualify but is serving in that capacity as an unpaid volunteer for a non-profit organization.

(2) WILLFUL. As used herein, the term ‘‘willful’’ means voluntary, conscious and intentional. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or evil motive.

(3) TERMINATION. As used herein, ‘‘termination’’ of a domestic or foreign corporate or limited liability company business includes discontinuance or cessation of business activities.

(c) COLLECTION. The board may issue a Notice of Determination, in the manner provided in Chapter 5 of the Sales and Use Tax Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The board may collect the amounts due from the responsible person in the manner provided by Chapter 6 of the Sales and Use Tax Law for the collection of sales and use taxes.

History: Adopted February 22, 1996, effective February 8, 1997.

Regulation 1702.6. SUSPENDED CORPORATIONS.

Reference: Section 6066, Revenue and Taxation Code

(a) GENERAL. A corporate officer or shareholder with control over operations or management of a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any taxes due from a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended shall be personally liable under the circumstances set forth below for any unpaid sales or use tax liability of that suspended corporation incurred during the period of that suspension. The corporate officer, shareholder, or responsible person shall be liable for the unpaid tax, and interest and penalties on those taxes not so paid, regardless of the basis for the suspension of the corporation's powers, rights, and privileges.

Personal liability under this regulation applies only when the Board establishes that, during the period of suspension, the corporation:

(1) Sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or

(2) Collected use tax and failed to report and pay the tax; or

(3) Consumed tangible personal property and failed to pay the applicable tax to the seller or the Board.

(b) DEFINITION OF TERMS.

(1) RESPONSIBLE PERSON. For the purposes of this regulation, the term "responsible person" means any officer or shareholder who is charged with the responsibility for the filing of returns or the payment of tax or who has a duty to act for the closely held corporation in complying with any provision of the Sales and Use Tax Law, and who derives a direct financial benefit from the failure to pay the tax liability.

(2) CLOSELY HELD. For the purposes of this regulation, the term "closely held" corporation means one in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business.

(3) CONTROL OVER OPERATIONS OR MANAGEMENT. For the purposes of this regulation, the term "control over operations and management" means the power to manage or affect day to day operations of the business. For the purposes of this regulation, it is rebuttably presumed that a corporate officer has control over operations and management of the closely held corporation.

(c) DETERMINATION AND COLLECTION. The Board shall determine and collect the liability established under this regulation in the manner provided in Chapter 5 (commencing with section 6451) and Chapter 6 (commencing with section 6701) of Part 1, Division 2, of the Revenue and Taxation Code.

Return to Business Taxes Law Guide Main Table of Contents

Regulation 1702.6. (Contd.)

(d) LIABILITY OF THE CORPORATION. A suspended corporation shall remain liable for the unpaid tax, interest, and penalties incurred during the period in which its corporate powers, rights, and privileges were suspended without regard to any personal liability determined under subdivision (a) of this regulation. Payments made pursuant to subdivision (a) shall be applied to the liability of the corporation.

History: Adopted July 26, 2000, effective October 18, 2000.

Regulation 1703. INTEREST AND PENALTIES.

References: Revenue and Taxation Code Sections listed below in paragraph (a).

(a) STATUTORY PROVISIONS. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

	Sections	
Subject	*Interest*	*Penalties*
Failure to pay tax within required time (except determinations)	6480.4, 6480.8 6480.19, 6591	6476, 6477, 6478, 6479.3, 6480.4, 6480.8, 6480.19, 6591, 7051.2
Failure to file a timely return		6479.3, 6591
Deficiency determinations	6482	6484 (negligence) 6485 (fraud) 7051.2
Determination—failure to make return	6513	6511, 7051.2 6514 (fraud)
Jeopardy determinations	6537	6537, 7051.2
Extensions of time	6459	
Determinations—Nonpayment of		6565, 7051.2
Offsets	6512	6512
Refunds and credits	6901, 6907, 6908	6901 6901
Suits for refund	6936	
Disposition of interest and penalties	7101	7101
Criminal Penalties		6073, 6094.5, 6422.1 7152, 7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291–6294	6291–6294
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455

Regulation 1703. (Contd.)

Improper use of resale certificates	6072	6072, 6094.5
Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permitholder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	

(b) INTEREST.

(1) INTEREST RATES.

(A) In General. Interest is computed at the modified adjusted rate per month, or fraction thereof. ''Modified adjusted rate per month, or fraction thereof'' means the modified adjusted rate per annum divided by 12.

(B) Underpayments. ''Modified adjusted rate per annum'' for underpayments of tax is the rate for underpayments determined in accordance with the provisions of Section 6621 of the Internal Revenue Code plus three percentage points. Such rate is subject to semiannual modification pursuant to the provisions of subparagraph (c) of Section 6591.5 of the Revenue and Taxation Code.

(C) Overpayments. Except as provided below, ''modified adjusted rate per annum'' for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of Section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the nearest full percent (or to the next highest full percent if .50%).

(D) Managed Audit Program. Upon completion of the managed audit and verification by the board, interest shall be computed at one-half the rate that would otherwise be imposed for liabilities covered by the audit period.

(E) Error or Delay by Employee of Board or Department of Motor Vehicles. For tax liabilities that arise during taxable periods commencing on or after July 1, 1999, the Board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 6480.4, 6480.8, 6513, 6591, and 6592.5 of the Revenue and Taxation Code under either of the following circumstances:

1. Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the Board acting in his or her official capacity.

Regulation 1703. (Contd.)

2. Where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by the Department of Motor Vehicles in calculating the use tax.

For the purposes of this subdivision, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

Any person seeking relief under this subdivision shall file with the Board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the Board may require.

(F) Erroneous Refund. Operative for any action for recovery under Revenue and Taxation Code Section 6961 on or after July 1, 1999, no interest shall be imposed on the amount of an erroneous refund by the Board until 30 days after the date on which the Board mails a notice of determination for repayment of the erroneous refund if the Board finds that neither the person liable for payment of tax nor any party related to that person had in any way caused an erroneous refund for which an action for recovery is provided under Section 6961 of the Revenue and Taxation Code. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(2) LATE PAYMENTS GENERALLY. Interest applies to the amount of all taxes, except prepayments of amounts of tax due and payable pursuant to Section 6471 of the Revenue and Taxation Code, not paid within the time required by law from the date on which the amount of tax became due and payable until the date of payment.

Interest applies to amounts due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment of tax required pursuant to Sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

Operative January 1, 1992, interest applies to amounts due but not paid by any producer, importer, or jobber of fuel as defined in Section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment of tax required pursuant to Sections 6480.16 and 6480.18 of the Revenue and Taxation Code.

(3) DETERMINATIONS. Interest applies to all determinations from the date on which the amount of tax becomes due and payable until the date of payment.

(4) EXTENSIONS OF TIME. In cases in which an extension of time for the filing of a return and the payment of tax has been granted, interest applies from the date on which the tax would have been due and payable had the extension not been granted until the date of payment. In cases in which an extension of time has been granted for making a prepayment of tax pursuant to Section 6471 of the Revenue and Taxation Code, interest applies to the unpaid amount of the required prepayment at the same rate.

Regulation 1703. (Contd.)

(5) REFUNDS AND CREDITS.

(A) In General. If an overpayment is credited on amounts due from any person or is refunded, interest will be computed on the overpayment from the first day of the calendar month following the month during which the overpayment was made. A refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited. Interest will be paid in the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the refund is approved by the board, whichever date is the earlier; and in the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(B) Intentional or Careless Overpayments. Credit interest will be allowed on all overpayments, except when statutorily prohibited or in cases of intentional overpayment, fraud, negligence, or carelessness. Carelessness occurs if a taxpayer makes an overpayment which: 1) is the result of a computational error on the return or on its supporting schedules or the result of a clerical error such as including receipts for periods other than that for which the return is intended, failing to take allowable deductions, or using an incorrect tax rate; and 2) is made after the taxpayer has been notified in writing by the Board of the same or similar errors on one or more previous returns.

(C) Waiver of Interest as Condition of Deferring Action on Claim. If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action.

(6) IMPROPER USE OF RESALE CERTIFICATE. Interest applies to the taxes imposed upon any person who knowingly issues a resale certificate for personal gain or to evade the payment of taxes while not actively engaged in business as a seller. The interest is computed from the last day of the month following the quarterly period for which a return should have been filed and the amount of tax or any portion thereof should have been paid.

(7) UNTIMELINESS CAUSED BY DISASTER. A person may be relieved of the interest imposed by Sections 6459, 6480.4, 6480.8, 6513, and 6591 of the Revenue and Taxation Code if the board finds that the person's failure to make a timely return or payment was occasioned by a disaster and was neither negligent nor willful. Such person shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

For purposes of this section "disaster" means fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes.

(c) PENALTIES.

(1) LATE PAYMENTS GENERALLY.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period

Regulation 1703. (Contd.)

in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in Section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. If the failure to make a prepayment as described in (c) (1) (A) 1 above is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, the penalty shall be 10 percent instead of 6 percent.

3. Any person required to make a prepayment who fails to make a timely prepayment, but who makes such prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due, shall pay a penalty of 6 percent of the amount of the prepayment.

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of Sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. A penalty of 25% shall apply to the amount of prepayment due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment as required pursuant to Sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

6. Operative January 1, 1992, a penalty of 10 percent shall apply to the amount of prepayment due but not paid by any producer, importer, or jobber of fuel as defined in Section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment as required pursuant to Sections 6480.16 and 6480.18 of the Revenue and Taxation Code. This penalty shall be 25 percent if the producer, importer, or jobber knowingly or intentionally fails to make a timely remittance.

(B) Other Late Payments. A penalty of 10 percent of the amount of all unpaid tax shall be added to any tax not paid in whole or in part within the time required by law.

(C) Vehicles, Vessels and Aircraft. A purchaser of a vehicle, vessel or aircraft who registers it outside this state for the purpose of evading the payment of sales or use taxes shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vehicle, vessel or aircraft.

(2) LATE RETURN FORMS GENERALLY.

(A) Any person who fails to file a return in accordance with the due date set forth in Section 6451 of the Revenue and Taxation Code or the due date established by the board in accordance with Section 6455 of the Revenue and Taxation Code, shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

Regulation 1703. (Contd.)

(B) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(3) DETERMINATIONS.

(A) Negligence or Intentional Disregard. A penalty of 10 percent of the amount of the tax specified in the determination shall be added to deficiency determinations if any part of the deficiency for which the determination is imposed is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations.

(B) Failure to Make Return. A penalty of 10 percent of the amount of tax specified in the determination shall be added to all determinations made on account of the failure of any person to make a return as required by law.

(C) Fraud or Intent to Evade. A penalty of 25 percent of the amount of the tax specified in a deficiency determination shall be added thereto if any part of the deficiency for which the determination is made is due to fraud or intent to evade the Sales and Use Tax Law or authorized regulations. In the case of a determination for failure to file a return, if such failure is due to fraud or an intent to evade the Sales and Use Tax Law or authorized regulations, a penalty of 25 percent of the amount required to be paid, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty for failure to file a return.

A penalty of 50 percent applies to the taxes imposed upon any person who, for the purpose of evading the payment of taxes, knowingly fails to obtain a valid permit prior to the date in which the first tax return is due. The 50 percent penalty applies to the taxes determined to be due for the period during which the person engaged in business in this state as a seller without a valid permit and may be added in addition to the 10 percent penalty for failure to file a return. However, the 50 percent penalty shall not apply if the measure of tax liability over the period during which the person was engaged in business without a valid permit averaged $1,000 or less per month. Also, the 50 percent penalty shall not apply to the amount of taxes due on the sale or use of a vehicle, vessel, or aircraft, if the amount is subject to the penalty imposed by Section 6485.1 or 6514.1 of the Revenue and Taxation Code.

(D) Nonpayment of Determinations. A penalty of 10 percent of the amount of the tax specified in the determination shall be added to any determination not paid within the time required by law.

(4) IMPROPER USE OF RESALE CERTIFICATE. A penalty of 10 percent applies to the taxes imposed upon any person who knowingly issues a resale certificate for personal gain or to evade the payment of taxes while not actively engaged in business as a seller.

The penalty is 10 percent of the amount of tax or $500, whichever is greater, if the purchase is made for personal gain or to evade payment of taxes.

Regulation 1703. (Contd.)

(5) DIRECT PAYMENT PERMITS. Every holder of a direct payment permit who gives an exemption certificate to a retailer for the purpose of paying that retailer's tax liability directly to the board must make a proper allocation of that retailer's local sales and use tax liability and also its district transactions and use tax liability if applicable. Such allocation must be made to the cities, counties, city and county, redevelopment agencies, and district to which the taxes would have been allocated if they had been reported by that retailer. Allocations must be submitted to the board in conjunction with the direct payment permitholder's tax return on which the taxes are reported. If the local and district taxes are misallocated due to negligence or intentional disregard of the law, a penalty of 10 percent of the amount misallocated shall be imposed.

(6) FAILURE TO OBTAIN EVIDENCE THAT OPERATOR OF CATERING TRUCK HOLDS VALID SELLER'S PERMIT. Any person making sales to an operator of a catering truck who has been required by the Board pursuant to Section 6074 of the Revenue and Taxation Code to obtain evidence that the operator is the holder of a valid seller's permit issued pursuant to Section 6067 of the Revenue and Taxation Code and who fails to comply with that requirement shall be liable for a penalty of five hundred dollars for each such failure to comply.

(7) FAILURE OF RETAIL FLORIST TO OBTAIN PERMIT. Any retail florist (including a mobile retail florist) who fails to obtain a seller's permit before engaging in or conducting business as a seller shall, in addition to any other applicable penalty, pay a penalty of five hundred dollars ($500). For purposes of this regulation, ''mobile retail florist'' means any retail florist who does not sell from a structure or retail shop, including, but not limited to, a florist who sells from a vehicle, pushcart, wagon, or other portable method, or who sells at a swap meet, flea market, or similar transient location. ''Retail florist'' does not include any flower or ornamental plant grower who sells his or her own products.

(8) RELIEF FROM PENALTY FOR REASONABLE CAUSE. If the board finds that a person's failure to make a timely return, payment, or prepayment, or failure to comply with the provisions of Section 6074 of the Revenue and Taxation Code is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 6074, 6476, 6477, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2 of the Revenue and Taxation Code for such failure.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based. Section 6592 of the Revenue and Taxation Code, providing for the relief of certain penalties does not apply to the 10 percent penalty imposed for failure to make a timely prepayment under Section 6478 of the Revenue and Taxation Code.

History: Amended September 18, 1963.
Amended August 2, 1965, applicable on and after August 1, 1965.
Amended June 23, 1966, applicable as amended on and after July 1, 1966.
Amended November 7, 1967, applicable on and after November 8, 1967.

Regulation 1703. (Contd.)

Amended October 8, 1968.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended December 17, 1975, effective January 1, 1976. Changed ½% interest to 1% per month.

Amended June 25, 1981, effective November 1, 1981. Added references. In (a) added Section 6072, improper use of resale certificates and Section 6593, leases to the U.S. Government. Added (b)(5) improper use of resale certificate. Added (b)(6) untimeliness caused by natural disaster. Added (b)(7) leases to the U.S. Government. In (c)(2) added (E) improper use of resale certificate. In (c) added (4) leases to the U.S. Government.

Amended February 3, 1983, effective July 3, 1983. In subdivision (a), deleted reference to Section 6053 and added the last line. In subdivision (b)(1), deleted reference to the rate of interest and added second paragraph. In subdivision (b)(2), (3) and (4), deleted reference to rate of interest. In subdivision (b)(5), deleted reference to rate of interest and added last sentence. In subdivision (b)(6), deleted reference to "NATURAL" and added reference to relief from interest and definition of "disaster".

Amended October 9, 1985, effective February 9, 1986. In Subdivision (a), added reference to Revenue and Taxation Code Sections 6291–6294, and 6591.5 under "Interest" with short explanation under "subject;" and Sections 6291–6292, 6985.1, and 6514.1 (intent to evade) under "Penalties" with short explanation under "subject." In Subdivision (b)(4), obsolete language is stricken and subheadings are added. In Subdivision (b)(5), deleted language concerning when interest is computed in last sentence and added language beginning "last day of the month . . . ". In Subdivision (b)(7), deleted reference to interest with respect to leases to the United States Government. In Subdivision (c), deleted obsolete provisions and updated text to show when penalties apply to prepayments and purchases of vehicles, vessels, or aircraft when registered outside the state for purpose of evading the payment of sales or use tax.

Amended August 20, 1987, effective November 15, 1987. In subdivision (a), added references to Sections 6073, 6074 and 7051.2. In subdivision (c)(2)(C), added second paragraph pertaining to 50% penalty for fraud. Added subdivision (c)(4) pertaining to the penalties associated with a direct payment permit holder's improper allocation of a retailer's local tax liability due to the direct payment permit holder's negligence or intentional disregard of the law. Added subdivision (c)(5) pertaining to the penalty associated with the failure to obtain evidence that an operator of a catering truck holds a valid seller's permit. In subdivision (c)(6), added Sections 6074 and 7051.2 to the list of penalty provisions for which the Board may grant relief for reasonable cause.

Amended July 27, 1988, effective November 11, 1988. In subdivision (a), added provisions that pertain to the interest and penalty provisions found in Revenue and Taxation Code Section 7153.5 (Chapter 1064, Statutes of 1987).

Amended August 26, 1992, effective January 20, 1993. Paragraph (a) updated the list of Sales and Use Tax Law sections prescribing interest and penalties. Paragraph (b)(1) added explanation of procedures for computing interest on overpayments and under payments. Paragraphs (b)(2) and (c)(1)(A)6 added explanation of application of interest and penalties to amounts due but not paid on sale of fuel as provided in Sections 6480.16, Revenue and Taxation Code.

Regulation 1703. (Contd.)

Amended May 19, 1997, effective June 18, 1997. Added new subdivision (c)(6) to incorporate provisions of Chapter 1130, Statutes of 1996, and renumbered the following subdivision.

Amended September 2, 1998, effective October 2, 1998. In subdivision (a), added references to Sections 6479.3, 6591, and 7076.5. Added new subdivision (b)(1)(D) to incorporate provisions of Chapter 686, Statutes of 1997. Added subdivision (c)(2) to incorporate provisions of Chapter 1294, Statutes of 1992 and Chapter 1087, Statutes of 1996, and renumbered following subdivisions.

Amended March 18, 1999, effective April 17, 1999. Reference to Section 6479.3 added to subdivision (a) to correct clerical omission in previous amendment. Added cross references in subdivision (a) to Sections 6593.5 & 6964 and added subdivision (b)(1)(E) & (F) to incorporate provisions of Assembly Bill 821, Statutes 1998, Chapter 612. Clerical amendments made to un-numbered paragraph in subdivision (c)(1)(A)4. Phrase ''of the Revenue and Taxation Code'' added to section numbers throughout; references to ''Sales and Use Tax Law'' deleted from subdivisions (c)(6) and (c)(8).

Amended October 6, 1999, effective January 8, 2000. Subdivision (b)(5)(B) ''Intentional and Careless Overpayments,'' old language deleted; new language concerning when credit interest will be allowed on overpayments added.

Regulation 1704. WHOLE DOLLAR REPORTING—COMPUTATIONS ON RETURNS OR OTHER DOCUMENTS.

Reference: Sections 6452, 6453, 6471, 7055, Revenue and Taxation Code.

(a) GENERAL. Any amount required to be reported or shown on any form filed with the board, including any return, statement, supporting schedule, or other document, may be entered at the nearest whole dollar amount. For the purpose of the computation to the nearest whole dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar ($0.50) or more, in which case the amount shall be increased to the next whole dollar.

(b) ELECTION TO USE WHOLE DOLLAR AMOUNTS. The election to report using whole dollar amounts must be made at the time of filing the return statement or other document. The election is irrevocable as to that return, statement or other document. However, a new election may be made on the return, statement, or other document filed for a subsequent reporting period.

(c) COMPUTATION OF AMOUNT TO BE REPORTED OR SHOWN. The provisions of paragraph (a) of this regulation apply only to cumulative amounts required to be reported or shown on a return, statement, or other document. The total amount to be reported at the nearest whole dollar must be computed from the aggregate sum of the individual items which include cents.

(d) COMPUTATION OF INTEREST AND PENALTIES. If a return, statement, or other document is not filed, or the tax due is not paid, within the time required by law, the computation of any interest and penalty due shall be made from

Regulation 1704. (Contd.)

the amount of tax due, computed as provided in this regulation. If the interest and penalty is entered on the return, statement or other document, it may be entered at the nearest whole dollar amount. If the interest and penalty is computed and billed by the board, the billing will be issued showing the full amount due, including cents.

History: Adopted August 19, 1987, effective November 8, 1987.

Regulation 1705. RELIEF FROM LIABILITY.

Reference: Section 6596, Revenue and Taxation Code.

(a) IN GENERAL. A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term ‘‘prior audit’’ means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term ‘‘written advice’’ includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term ‘‘written advice’’ includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

Regulation 1705. (Contd.)

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

(A) The defined population of the purchases that will be included in the reporting method;

(B) The percentage of purchases of the defined population that is subject to tax;

(C) The length of time the writing shall remain in effect;

(D) The definition of a significant or material change that will require rescinding the approved reporting method; and

(E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered ''written advice from the Board'' for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

Regulation 1705. (Contd.)

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

History: Adopted August 1, 1997, effective November 9, 1997.

Amended October 6, 1999, effective January 7, 2000. New subdivision (a)(2) added, old subdivision (2) renumbered to (3). New subdivision (d) added detailing when annotations or legal rulings of counsel constitute written advice. Also new subdivision (e) added concerning the request for written advice made by trade or industry associations on behalf of its members.

Amended February 15, 2001, effective June 22, 2001. Language of current subdivision (b) renumbered (b)(1). New subdivision (b)(2) added.

Regulation 1705.1. INNOCENT SPOUSE RELIEF FROM LIABILITY.

References: Sections 6066, 6067, 6456, and 6901–6908, Revenue and Taxation Code.

(a) IN GENERAL. A spouse claiming relief from liability for any sales or use tax, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(1) A liability is incurred under the Sales and Use Tax Law;

(2) The liability is attributable to the nonclaiming spouse;

(3) The spouse claiming relief establishes that he or she did not know of, and that a reasonably prudent person in the claiming spouse's circumstances would not have had reason to know of, the liability; and

(4) It would be inequitable to hold the claiming spouse liable for the liability, taking into account whether the claiming spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 1705.1. (Contd.)

(b) "BENEFITED." Whether a claiming spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The claiming spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the claiming spouse, or lavish or luxury purchases made by either spouse may be evidence that the claiming spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a claiming spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the claiming spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the claiming spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) ATTRIBUTION. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A claim may be filed if, at the time relief is requested, the claiming spouse is no longer married to or is legally separated from the nonclaiming spouse, or the claiming spouse is no longer a member of the same household as the nonclaiming spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) WRITTEN REQUEST FOR RELIEF. To seek relief under these provisions, a claiming spouse may submit a written request for relief setting forth the seller's permit number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) STATUTE OF LIMITATIONS. These provisions shall apply to all calendar quarters for claims made no later than one year after the board's first contact with the spouse making the claim.

Claims made after one year from the board's first contact with the spouse making the claim shall not apply to any calendar quarter that is more than

five years from the return due date for nonpayment on a return, or

five years from the finality date on the board-issued determination,

whichever is later.

Regulation 1705.1. (Contd.)

No calendar quarters shall be eligible for relief under this regulation that have been closed by res judicata.

(f) REFUNDS. A refund of any amounts under these provisions shall be subject to the requirements as set forth in Revenue and Taxation Code sections 6901 through 6908, inclusive.

(g) This regulation shall apply retroactively to liabilities arising prior to January 1, 1994.

(h) Effective January 1, 2001, a spouse may be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the Board.

(1) CRITERIA FOR EQUITABLE RELIEF.

(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:

1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.
2. The claiming spouse would suffer economic hardship if relief is not granted.
3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.
4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.
5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will *not* be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)
6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.

(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:

1. The claiming spouse will not suffer economic hardship if relief is not granted.
2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.

Regulation 1705.1. (Contd.)

3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.

4. The claiming spouse has not made a good faith effort to comply with the Board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.

5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.

6. The tax for which relief is being requested is attributable to the claiming spouse.

(2) CONDITIONS FOR RELIEF. The following conditions apply to claims for equitable relief:

(A) The statutes of limitations provided for innocent spouse claims in subdivisions 1705.1(e) and (f) also apply to requests for equitable relief.

(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2001, including liabilities incurred prior to January 1, 1994, as provided in subdivision (g).

(i) The Board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

History: Adopted July 31, 1997, effective December 5, 1997.
Amended June 20, 2001, effective October 20, 2001. Subdivision (c)—Existing language from second sentence on designated as new subdivision (c)(2). New subdivision (c)(1) added. New subdivisions (h) and (i) added.

Regulation 1706. DROP SHIPMENTS.

Reference: Sections 6007, 6091, and 6203 Revenue and Taxation Code.

(a) DEFINITIONS. For purposes of this regulation:

(1) "Retailer engaged in business in this state" means and includes any person who would be so defined by Revenue and Taxation Code section 6203 if the person were a retailer.

(2) "True retailer" means and includes a retailer who is not a retailer engaged in business in this state and who makes a sale of tangible personal property to a consumer in California.

(3) "Drop shipment" means and includes a delivery of tangible personal property by an owner or former owner thereof, or factor or agent of that owner or former owner, to a California consumer pursuant to the instructions of a true retailer.

(4) "Drop shipper" means and includes an owner or former owner thereof, or factor or agent of that owner or former owner, who makes a drop shipment of tangible personal property.

Regulation 1706. (Contd.)

(b) GENERAL. A drop shipment generally involves two separate sales. The true retailer contracts to sell tangible personal property to a consumer. The true retailer then contracts to purchase that property from a supplier and instructs that supplier to ship the property directly to the consumer. The supplier is a drop shipper. A drop shipper that is a retailer engaged in business in this state is reclassified as the retailer and is liable for tax as provided in this regulation. When more than two separate sales are involved, the person liable for the applicable tax as the drop shipper is the first person who is a retailer engaged in business in this state in the series of transactions beginning with the purchase by the true retailer.

(c) APPLICATION OF TAX.

(1) Unless the sale to the California consumer and the use by the California consumer are exempt from sales and use tax as otherwise provided in the Sales and Use Tax Law, a drop shipper must report and pay tax measured by the retail selling price of the property paid by the California consumer to the true retailer.

(2) Except as provided in subdivision (c)(3) of this regulation, for reporting periods commencing on or after January 1, 2001, a drop shipper may calculate the retail selling price of its drop shipments of property based on its selling price of the property to the true retailer plus a mark-up of 10 percent (10%). A drop shipper may use a mark-up percentage lower than 10 percent if the drop shipper can document that the lower mark-up percentage accurately reflects the retail selling price charged by the true retailer to the California consumer.

If a mark-up percentage lower than 10 percent is developed in an audit of the drop shipper, the drop shipper may use that percentage for the subsequent reporting periods provided the drop shipper has not had a significant change in business operations. Provided there is no significant change in business operations, if a later audit develops a higher percentage, the Board would not assess additional tax based on that newly computed mark-up percentage. However, for subsequent reporting periods, the lower mark-up from the previous audit cannot be used, and the drop shipper must instead use the higher percentage developed in the most recent audit or 10 percent, whichever is lower.

(3) The procedures set forth in subdivision (c)(2) of this regulation do not apply to drop shipments of vehicles, vessels, and aircraft (also known as ‘‘courtesy deliveries’’). For purposes of this regulation, ‘‘vehicle,’’ ‘‘vessel,’’ and ‘‘aircraft’’ are defined in Sections 6272, 6273, and 6274 of the Revenue and Taxation Code, respectively.

(d) EXAMPLES.

(1) ABC Co. is not a retailer engaged in business in this state. It contracts to sell tangible personal property to a California consumer. ABC Co. then contracts with XYZ Inc. to purchase the tangible personal property. ABC Co. instructs XYZ Inc. to ship the property directly to the California consumer. XYZ Inc. is a retailer engaged in business in this state. XYZ Inc. is the drop shipper liable for the applicable tax as the retailer.

Regulation 1706. (Contd.)

(2) ABC Co. is not a retailer engaged in business in this state. It contracts to sell tangible personal property to a California consumer. ABC Co. then contracts with XYZ Inc. to purchase the tangible personal property. ABC Co. instructs XYZ Inc. to ship the property directly to the California consumer. XYZ Inc. is a retailer engaged in business in California. XYZ Inc. then contracts with Supplies Corp. to purchase the tangible personal property, and instructs Supplies Corp. to ship the property directly to the California consumer. Whether or not Supplies Corp. is a retailer engaged in business in this state, XYZ Inc. is the drop shipper liable for the applicable tax as the retailer.

(3) ABC Co. is not a retailer engaged in business in this state. It contracts to sell tangible personal property to a California consumer. ABC Co. then contracts with XYZ Inc. to purchase the tangible personal property. ABC Co. instructs XYZ Inc. to ship the property directly to the California consumer. XYZ Inc. is not a retailer engaged in business in this state. XYZ Inc. then contracts with Supplies Corp. to purchase the tangible personal property, and instructs Supplies Corp. to ship the property directly to the California consumer. Supplies Corp. is a retailer engaged in business in this state. Supplies Corp. is the drop shipper liable for the applicable tax as the retailer.

(4) Dropshipper Company is a drop shipper of tangible personal property to California consumers on behalf of retailers who are not retailers engaged in business in this state. During its last audit, the Board developed and applied a mark-up of 8½ percent. During the current audit, the Board develops a mark-up of 11 percent. The Board will apply a mark-up of 8½ percent in the current audit provided there was no significant change in Dropshipper Company's business operations between the prior audit period and the current audit period. If there was a significant change in business operations, the Board will apply a mark-up percentage of 10 percent in the current audit. For periods after the current audit period, Dropshipper Company must use a 10 percent mark-up percentage.

(5) In the previous example, Dropshipper Company sold only computer hardware during the period covered by the prior audit, but in the period covered by the current audit, it also made considerable sales of computer software. Since there was a significant change in Dropshipper Company's business operations after the prior audit period, the mark-up of 8½ percent developed during that audit does not apply. The Board will apply a mark-up of 10 percent (because it is lower than the 11 percent mark-up developed during the audit).

(e) BURDEN OF PROOF.

(1) An owner or former owner of tangible personal property, or a factor or agent of that owner or former owner, who, upon the instructions of that person's customer, delivers property to a California consumer is presumed to be a drop shipper liable for the applicable tax as the retailer. A person may overcome this presumption by accepting a timely resale certificate from that person's customer that includes a valid California seller's permit number. The acceptance of a resale certificate that does not include a valid California seller's permit number will not overcome the presumption.

(2) A person otherwise qualifying as a drop shipper under this regulation can overcome the presumption that the delivery is to a consumer by accepting a timely and valid resale certificate in good faith from the person in California to whom the property is delivered.

History: Adopted September 13, 2000, effective December 28, 2000.

Return to Business Taxes Law Guide Main Table of Contents

INDEX

A

Addressing, Defined . . . 1504

Admission
Definitions . . . 1603
Places where admission is charged . . . 1603
Taxable sales of food products . . . 1603

Advertising Agencies, Commercial Artist and Designers . . . 1540
Agency Fee or Commission . . . 1540
Copy Writing . . . 1540
Electronic or Digital Artwork . . . 1540
Finished Art . . . 1540
Preliminary Art . . . 1540
Purchase Agent . . . 1540
Purchased Items by Agency or Artist or Designer . . . 1540
Retouching . . . 1540
Services . . . 1540
Typography charges . . . 1540
Websites . . . 1540

Agency,

United States, Incorporated . . . 1614
United States, Unincorporated . . . 1614

Agency Fee, Advertising Agencies . . . 1540

Agents, Permits . . . 1699

Aids, Manufacturing . . . 1525(STGB 50-24)

Aids, Marketing . . . 1670

Aircraft . . . 1593
Common Carriers . . . 1593
Dealers, Demonstration, Display and Use of Property Held for Resale . . . 1669
Defined . . . 1593, 1610
Delivered to Agencies of the United States . . . 1620
Financed . . . 1593
Fuel, Exemption Certificate . . . 1598
Included in Transfer of Substantially All Property Used in Business Activity . . . 1595
Leases of Mobile Transportation Equipment . . . 1661
Modification, Repair, or Replacement . . . 1593
Non-revenue Operations . . . 1593
Payment of Tax by Purchaser . . . 1610
Personnel Training . . . 1593
Special Provisions Affecting Aircraft . . . 1610
Test Flights . . . 1593

Air Force Exchange Services . . . 1614

Alcoholic Beverages, Federal Areas . . . 1616

Alterations, New Clothing . . . 1524

Alterers, Fur . . . 1549

American National Red Cross . . . 1614

Animal, Lease of . . . 1660

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

A (Contd.)

Animal Life and Feed . . . 1587
Animal Life . . . 1587
Exemption Certificates . . . 1587
Feeds . . . 1587
Invoices Related to Exemption Certificates . . . 1587

Architects . . . 1506

Armed Forces, Property Mailed to Persons in . . . 1620

Army and Air Force Exchange Services . . . 1614

Assignment, Leases . . . 1660

Auctioneers . . . 1565

Automated Data Processing, Records Prepared by . . . 1698

Automatic Data Processing Services and Equipment
(See Computers, Programs, and Data Processing)

Automobile Dealers and Salesmen . . . 1566
Credit Sales and Repossessions Generally . . . 1641
Dealer Aid to Salesmen . . . 1566
Demonstration, Display, and Use of Property Held for Resale—Vehicles . . . 1669.5
Leased Vehicles . . . 1610
Rental Value as a Measure of Tax . . . 1669.5
Leases of Tangible Personal Property, In General . . . 1660
Leases of Mobile Transportation Equipment . . . 1661
Out-of-State Purchases of Vehicles, 90 Day Test . . . 1566
Resale Certificates Generally . . . 1668
Resale Certificates from Non-Dealer Retailers . . . 1566
Sales of Vehicles by Other Retailers . . . 1610
Sales to Members of the Armed Services . . . 1566
Special Provisions Affecting Vehicles . . . 1610

B

Bad Debts . . . 1642
Amount Subject to Deduction . . . 1642
Construction Contractors . . . 1642
Definition . . . 1642
Example of Computing Allowable Loss . . . 1642 Appendix 1
Records . . . 1642
Reporting . . . 1642
Repossessions, Computing Loss on . . . 1642
Example of Computing Bad Debt Deduction . . . 1642 Appendix 2
Special Situations . . . 1642
Worthless Accounts Subsequently Collected . . . 1642

Bankruptcy, Receivers and Trustees in . . . 1573

Banks and Insurance Companies . . . 1567

Barbers . . . 1506

Barter, Exchange, "Trade-ins" . . . 1654
Barter and Exchange . . . 1654
Discount and Trade-in Allowance on Same Transaction . . . 1654

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

B (Contd.)

Exchange in Connection with Repairs . . . 1546
Occasional Sales, Sale of a Business . . . 1595
Reimbursement for Tax, Effect of Collecting . . . 1700
Trade-ins . . . 1654

Beauty Shop Operators . . . 1506

Beer, Wine and Liquor Dealers . . . 1568

Billboards, TV . . . 1529

Blind Vendors, Students' Meals . . . 1603

Boarding Houses, Taxable Sales of Food Products . . . 1603

Bookbinders . . . 1553

Bootblacks . . . 1506

Buildings and Other Property Affixed to Realty . . . 1596
Buildings and Minerals . . . 1596
Fixtures, Machinery and Equipment, Affixed to Real Property . . . 1596
Leased Property Affixed to Realty as Tangible Personal Property When Lessor Has Right to Remove . . . 1660
Prefabricated Buildings . . . 1521
Timber . . . 1596

Bullion, Coins and . . . 1599
Application of Tax . . . 1599
General . . . 1599
Purchase of, as Investment . . . 1599

Business
Reorganization of . . . 1595
Sale of . . . 1595

Buyout Fees . . . 1529

By-Products, Manufacturers . . . 1525(BTGB 67-7)

C

Cabinets, Prefabricated . . . 1521

Carrier, Transportation by . . . 1628

Cars, Rail Freight . . . 1620

Cash Discounts, Proration of Between Taxable and Exempt Transactions, Trading Stamps and Related Promotional Plans . . . 1671

Caterers . . . 1603

Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices . . . 1585

Cemeteries, Constructing Foundations for Memorials . . . 1572

Certificates, Exemptions
(See Exemption Certificates)

Charges, Laboratory . . . 1503

Charges, Service, Sales of Food Products . . . 1603

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

C (Contd.)

Charitable Organizations . . . 1570
Exemption Certificates . . . 1570
Medical Identification Tags . . . 1570
Prisoners of War Bracelets . . . 1597
Sales by . . . 1570
Sales to . . . 1570
Sellers Permits . . . 1570, 1699

Chemical Toilets, Leases . . . 1660

Chemicals, Fur Dressers
Used in Mordanting . . . 1531
Used in Pickling and Tanning . . . 1531

Circulating Libraries . . . 1506

Civilian Welfare Funds, Armed Services . . . 1614

Cleaners and Launderers . . . 1506

Clothing, New, Alterations . . . 1524

Clubs, Officers and Non-Commissioned Clubs and Messes, Alcoholic Beverages 1616

Clubs, Social . . . 1603

Coast Guard Exchanges . . . 1614

C.O.D. Fees . . . 1632

Coins and Bullion . . . 1599
Application of Tax . . . 1599
General . . . 1599
Purchase of, as Investment . . . 1599

Collection of Use Tax By Retailers . . . 1684
Application of Tax to Leases . . . 1660
Mobile Transportation Equipment . . . 1661
Penalty for Failure to Collect . . . 1703
Receipts for Tax Paid to Retailer . . . 1686
Refunds of Excess Collections . . . 1684
Retailers Engaged in Business in State . . . 1684
Retailers not Engaged in Business in State . . . 1684
Sales Tax Reimbursement, Excess Collections . . . 1700
Tax as Debt . . . 1684
Vehicles, Vessels and Aircraft, Special Provisions Concerning . . . 1610

Collections, Excess, Refunds of Use Tax Collected by Retailers . . . 1684

Commercial Artists and Designers . . . 1540

Commission, Advertising Agencies, Commercial Artists and Designers . . . 1540

Common Carriers, Sales to . . . 1621
Use of Aircraft . . . 1593

Company and Other Unit Funds, Armed Services . . . 1614

Composed Type, Leases of . . . 1660

Computers, Programs, and Data Processing . . . 1502

INDEX (Contd.)

C (Contd.)

Addressing (Including Labels) for Mailing . . . 1502
Basic Applications of Tax . . . 1502
Definitions of Terms . . . 1502
Keypunching and Keystroke Verifying . . . 1502
Microfilming and Photorecording . . . 1502
Mailing Services . . . 1504
Manipulation of Customer-Furnished Information . . . 1502
Pick-up and Delivery Charges . . . 1502
Processing of Customer-Furnished Information . . . 1502
Programs . . . 1502
Rental of Equipment . . . 1502

Computing Tax Reimbursement Upon Aggregate of Sales Prices in Single Transaction . . . 1700

Concessionaires, Permits . . . 1699

Consignees and Lienors of Tangible Personal Property for Sale . . . 1569
Sales by Court Appointed Officers . . . 1573

Construction Contract Defined . . . 1521

Construction Contractors . . . 1521
Application of Tax . . . 1521
Construction contractors . . . 1521
Cost Plus a Fee Contracts . . . 1521
Fixtures . . . 1521
Machinery and Equipment . . . 1521
Materials . . . 1521
Exemption Certificates . . . 1521
Deductions for Tax-Paid Purchases Resold . . . 1521
Exemption Certificates for Out-of-State Use . . . 1521
Resale Certificates . . . 1521
Miscellaneous Sales by Contractors . . . 1521
Permits . . . 1521
Supplies and Tools for Self Use . . . 1521
United States Construction Contractors . . . 1521
Machinery and Equipment . . . 1521
Materials and Fixtures . . . 1521
Bad Debts . . . 1642
Deep-Well Agricultural Pumps . . . 1521
Definitions . . . 1521
Construction Contract . . . 1521
Construction Contractor . . . 1521
Fixtures . . . 1521
Lump Sum Contract . . . 1521
Machinery and Equipment . . . 1521
Materials . . . 1521
Time and Material Contract . . . 1521
United States Construction Contractor . . . 1521
Draperies and Drapery Hardware . . . 1521
Elevator Installations . . . 1521
Excess Reimbursement . . . 1521

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

C (Contd.)

Factory-Built School Buildings . . . 1521
Mobilehomes Installed for Occupancy as Residences . . . 1521
Prefabricated Buildings . . . 1521
Prefabricated Cabinets . . . 1521
Remote Control Garage Door Openers . . . 1521
Repair Contracts . . . 1521
Telephone Switchboards and Instruments . . . 1521
Typical Items Regarded as:
Fixtures . . . 1521 (App. B)
Materials . . . 1521 (App. A)
Machinery and Equipment . . . 1521 (App. C)
Not Machinery and Equipment . . . 1521 (App. C)
U. S. Government Supply Contracts . . . 1618

Consumers
Morticians as . . . 1505
Persons Engaged in the Business of Providing Mailing Services as . . . 1504
Persons Engaged in the Business of Rendering Service as . . . 1501
Producing, Fabricating and Processing Property Furnished by . . . 1526

Containers and Labels . . . 1589
Containers . . . 1589
Defined . . . 1589
Feed Analysis Tags . . . 1589
Feed Bags . . . 1589
Gift Wrapping . . . 1589
Labels . . . 1589
Price Tags . . . 1589

Containers, Property Used As, By Packers, Loaders and Shippers . . . 1630

Contract
Construction, Defined . . . 1521
Employer Medical, Prescription Medicines . . . 1591
Lump Sum Maintenance . . . 1546

Contractors, Construction . . . 1521

Contractors, United States . . . 1521

Copy Writing . . . 1540

Corporation, Contribution to Commencing . . . 1595

County, Schedules Showing Allocation by Vending Machine Operators . . . 1574

Court Ordered Sales, Foreclosures and Repossessions . . . 1573
Foreclosure Sales . . . 1573
Repossessions . . . 1573
Sales Ordered by State Courts . . . 1573

Creative Art Services . . . 1529

Credit Sales and Repossessions . . . 1641
Bad Debts . . . 1642
Contracts Designated as Leases . . . 1641

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

C (Contd.)

Due Date of Tax . . . 1641
Personal Property Leases, Generally . . . 1660
Repossessions . . . 1641
Returns, Defects, Replacements . . . 1655

D

Damaged Goods, Damaged in Transit . . . 1629

Data Processing
(See Computers, Programs, and Data Processing)

Dealer Aid to Salesmen—Automobile . . . 1566

Dealers, Beer, Wine and Liquor . . . 1568

Dealers, Memorial . . . 1572

Debts, Bad . . . 1642

Debit Card Fees . . . 1643

Deduction, Bad Debts, Amount Subject to . . . 1642

Deep-Well Agricultural Pumps . . . 1521

Defects . . . 1655

Definition of Terms
Addressing . . . 1504
Aircraft . . . 1593, 1610
Automatic Data Processing Services and Equipment . . . 1502
Bad Debts . . . 1642
Common Carrier . . . 1621
Construction Contract . . . 1521
Construction Contractor . . . 1521
Containers . . . 1589
Food Products . . . 1602
Homes for the Care of Persons . . . 1503
Hospitals . . . 1503, 1591
Institutions for the Care of Persons . . . 1503
Lease . . . 1660
Mailing List . . . 1504
Manufacturing Equipment, Partial Exemption . . . 1525.2
Medicines . . . 1591
Mobile Transportation Equipment, Leases of . . . 1661
Motion Pictures . . . 1529
Newspapers . . . 1590
Newspapers and Periodicals, Ingredient or Component Part of . . . 1590
Packers, Loaders and Shippers . . . 1630
Periodicals . . . 1590
Place Subject to an Admission Charge . . . 1603
Prescription . . . 1591
Prescription, Eyeglasses and Other Ophthalmic Materials . . . 1592
Publishers . . . 1543
Registered Pharmacist . . . 1591

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)
D (Contd.)

Vehicle . . . 1610
Vessel . . . 1610
U.S. Government Supply Contracts . . . 1618

Delivery Charges, Pick-up and . . . 1502

Demonstration, Display and Use of Property Held for Resale—General . . . 1669
Aircraft Dealers . . . 1669
Fair Rental Value . . . 1669
Fair Rental Value, Automobiles . . . 1669
Leases and Rentals in General . . . 1660
Loans to Schools for Educational or Training Program . . . 1669
Mobile Transportation Equipment Leased . . . 1669
Property Used Both for Demonstration and Other Purposes . . . 1669
Rental to Salesmen for Demonstration . . . 1669
Salesmen, Sale to for Demonstration . . . 1669
Use of Rental Value as Measure of Tax . . . 1669

Demonstration, Display, and Use of Property Held for Resale—Vehicles . . . 1669.5
New and Used Vehicle Dealers and Lessors—Specific Applications . . . 1669.5
Vehicle Dealers, Lessors, Manufacturers, and Distributors—In General . . . 1669.5
Vehicle Manufacturers and Distributors—Specific Applications . . . 1669.5

Dental Laboratories . . . 1506

Dentists . . . 1506

Dentists, Prescription Medicines . . . 1591

Designers . . . 1540

Determination, Nonpayment, Penalty . . . 1703

Dietary Adjuncts . . . 1602

Dietary Supplements . . . 1602

Direct Payment permits . . . 1699.5

Discount, Cash, Proration Between Taxable and Exempt Transactions, Trading Stamps and Related Promotional Plans . . . 1671

Discounts, Reimbursement for Sales Tax . . . 1700

Display of Property Held for Resale
General . . . 1669
Vehicles . . . 1669.5

Disregard, Intentional, Penalties for . . . 1703

Draperies and Drapery Hardware . . . 1521

Dressers, Fur . . . 1531

"Drive-Ins", Taxable Sales of Food Product . . . 1603

Drop Shipments . . . 1706

Due Date of Returns . . . 1699

Dyers, Dressers, Fur . . . 1531

Dyes, Fur Dressers . . . 1531

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)
E

Effect of . . . 1667
Feed . . . 1587
Form of . . . 1667
General . . . 1667
Hot Prepared Food Products Sold to Air Carriers . . . 1603(App. A)
Issuance of . . . 1667
Issuance Where Not Appropriate . . . 1667
Property Becoming an Ingredient or Component Part of Newspapers or Periodicals . . . 1590
Resale . . . 1668
Sales to United States, Supporting Documents . . . 1614
Watercraft . . . 1594

Electrical Transcriptions
(See Sound Recording)

Electronic Data Processing
(See Automated Data Processing)

Elevators, Installations . . . 1521

Employees' Meals . . . 1603

Employer Medical Contracts, Prescription Medicines . . . 1591

Equipment, Affixed to Real Property . . . 1596

Equipment, Automated Data Processing
Defined . . . 1502
Rental of . . . 1502
Title, Transfer of . . . 1502

Equipment (see Construction Contractor)

Equipment, Manufacturing . . . 1525.2, 1525.3

Evasion, Intent, Penalty . . . 1703

Excessive Reimbursement . . . 1521

Exchange . . . 1654

Exchange of Used for Reconditioned Similar Property . . . 1546

Exchanges, Army and Air Force, Navy, Coast Guard . . . 1614

Executors and Administrators . . . 1573

Exemption Cards . . . 1619

Exemption Certificates . . . 1667
Aircraft Fuel . . . 1598
Charitable Organizations . . . 1570
Common Carrier . . . 1621
Construction Contractor . . . 1521
Manufacturing Equipment . . . 1525.2

Exports . . . 1620

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

E (Contd.)

Eyeglasses and Other Ophthalmic Materials . . . 1592
Dispensing Opticians . . . 1592
Physicians and Surgeons and Optometrists . . . 1592
Prescription, Defined . . . 1592

F

Fabricating and Processing Property Furnished by Consumers . . . 1526

Factory-built Housing . . . 1521.4
Application of Tax . . . 1521.4
Definitions . . . 1521.4
Exclusion Certificate . . . 1521.4

Factory-built School Buildings
Application of Tax . . . 1521
Definitions . . . 1521
Exclusion certificate . . . 1521

Federal Areas . . . 1616
Alcoholic Beverages . . . 1616
Sales Through Vending Machines . . . 1616
Vending Machines, Sales Generally . . . 1574

Federal Taxes . . . 1617
Manufacturers or Importers Excise . . . 1617
Refunds of . . . 1617
Repeal or Reduction of . . . 1617
Retailers' Excise Taxes . . . 1617

Fees, C.O.D. . . . 1632

Fertilizer . . . 1588

Fertilizer, Defined . . . 1588

Finishing, Painting, Polishing . . . 1524

Fixtures
(See Construction Contractor)

Fixtures Affixed to Real Property . . . 1596

Flags, Prisoners of War Bracelets and Food or Beverages Transferred by Certain Nonprofit Organizations . . . 1597
Flags . . . 1597
Food Products and Nonalcoholic Beverages . . . 1597
Prisoners of War Bracelets . . . 1597
Resale Certificates . . . 1597
Tangible Personal Property . . . 1597

Florists . . . 1571

Food Products . . . 1602
Complimentary Food and Beverages . . . 1603
Defined . . . 1602
Dietary Supplements or Adjuncts . . . 1602
Grocers—Reporting Methods . . . 1602.5
Hospitals . . . 1503

INDEX (Contd.)

F (Contd.)

Institutions . . . 1503
Places Where Admission is Charged . . . 1603
Programs for Low-Income Elderly Persons . . . 1603
Reporting Methods for Grocers . . . 1602.5
Sales of Combination Packages . . . 1602
Served with Facilities . . . 1603
Taxable Items Sold by Grocers . . . 1602.5
Taxable Sales of Food Product . . . 1603
Transferred by Nonprofit Youth Sports Organizations . . . 1597, 1603
Vending Machine Operators . . . 1574

Foreclosures . . . 1573

Foreign Consuls . . . 1619
Application of Tax . . . 1619
Records of Retailers . . . 1619
Tax Exemption Cards . . . 1619

Foreign Government, use of Aircraft . . . 1593

Foreword . . . 1500

Foundries . . . 1530

Fraternal Organizations . . . 1603

Fraud, Penalty . . . 1703

Fuel, Motor Vehicle and Aircraft . . . 1598

Fuel, Sold to Common Carriers . . . 1621

Funds, Civilian Welfare, Armed Services . . . 1614

Funds, Company and Other Unit, Armed Services . . . 1614

Fur Dressers and Dyers . . . 1531
Altering, Repairing and Remodeling Furs . . . 1549
Application of Tax Under Specific Circumstances . . . 1549
Chemicals Used in Mordanting . . . 1531
Chemicals Used in Pickling and Tanning . . . 1531
Dyes . . . 1531
Fabrication Labor . . . 1549
Intermediates . . . 1531
Processing Oils . . . 1531

Fur Repairers, Alterers and Remodelers . . . 1549
Fur Dressers and Dyers . . . 1531

Furniture Reupholsterers . . . 1550

G

Gift Wrapping . . . 1589

Gifts, Marketing Aids, Premiums and Prizes . . . 1670
Excess Tax Reimbursement . . . 1700
“Free” Meals . . . 1670
Gifts . . . 1670
Marketing Aids . . . 1670

INDEX (Contd.)

G (Contd.)

Premiums . . . 1670
Prizes . . . 1670

Gold Bullion, Sales of . . . 1599

Good Faith, Resale Certificates . . . 1668

Goods Damaged in Transit . . . 1629

Grocers, Reporting Methods . . . 1602.5

Gun Clubs . . . 1506

H

Homes, Hospitals, Institutions for the Care of Persons, Defined . . . 1503

Hospitals, Defined . . . 1503, 1591

Hospitals, Institutions and Homes for the Care of Persons . . . 1503
Defined . . . 1503
Laboratory Charges . . . 1503
Sales by Institutions . . . 1503
Sales to Institutions . . . 1503

Hot Prepared Food Products . . . 1603

Hotels, Taxable Sales of Food Products . . . 1603

I

Impressed Mats, Leases of . . . 1660

Indian Reservations . . . 1616
Definitions . . . 1616
Sales by Off-Reservation Retailers . . . 1616
Sales by On-Reservation Retailers . . . 1616

Information, Processing of Customer-Furnished . . . 1502

Information Returns . . . 1687

Installation, Generally . . . 1546

Installing, Repairing, Reconditioning in General . . . 1546
Exchange of Used for Reconditioned Similar Property . . . 1546
Installation . . . 1546
Lump Sum Maintenance Contracts . . . 1546
Repair Jobs Covered by Insurance . . . 1546
Repairmen . . . 1546
Returns, Defects, and Replacements . . . 1655
Tire Retreading and Recapping . . . 1548
Vehicle Engine Exchanges . . . 1547

Institutions . . . 1503
Laboratory Charges . . . 1503
Sales by . . . 1503
Sales of Food Products . . . 1603
Sales to . . . 1503
Veterans, Loans of Property to for Educational or Training Program . . . 1669

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

I (Contd.)

Instrumentality, United States . . . 1614
Incorporated . . . 1614
Unincorporated . . . 1614

Insulin, Prescription Medicines . . . 1591

Insurance
Companies . . . 1567
Medical, Prescription Medicines . . . 1591
Repair Jobs Covered by . . . 1546

Interest and Penalties . . . 1703
Interest . . . 1703
Penalties . . . 1703

Intermediates, Fur Dressers and Dyers . . . 1531

Interstate and Foreign Commerce . . . 1620
Airplanes Delivered to Agencies of the United States . . . 1620
Coins and Bullion . . . 1599
Documentary Evidence . . . 1620
Persons Selling Exclusively in, Permits . . . 1699
Property for Defense Purposes Delivered to Officers of the United States . . . 1620
Property Mailed to Persons in Armed Forces . . . 1620
Rail Freight Cars . . . 1620
Repairers . . . 1620
Sales by Morticians in . . . 1505
Sales Tax . . . 1620
Exports . . . 1620
Sales Following Movement of Property Into State . . . 1620
Sales Preceding Movement of Goods From Within State to Points Outside State . . . 1620
Use Tax . . . 1620
Exemptions . . . 1620
Imports . . . 1620
Purchase for use in this State . . . 1620
“Storage” and “Use”, Exclusions . . . 1620

J

Joint Ventures . . . 1595

L

Labels . . . 1502, 1589

Laboratory Charges . . . 1503

Launderers and Cleaners . . . 1506

Leases, Contracts Designated as, Credit Sales and Repossessions . . . 1641

Leases of Manufacturing Equipment . . . 1525.2, 1525.3

Leases of Mobile Transportation Equipment . . . 1661
Leases Generally . . . 1660
Mobile Transportation Equipment Defined . . . 1661

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

L (Contd.)

Leases of Mobilehomes . . . 1660

Leases of Tangible Personal Property, In General . . . 1660
Aircraft, Leases of . . . 1593
Assignment of Leases . . . 1660
Chemical Toilets . . . 1660
Composed Type, Reproduction Proofs, Impressed Mats . . . 1660
Computer Leases . . . 1502
Dealers Leasing to Salesmen for Demonstration . . . 1669
Defined . . . 1660
Delivery Charges When Sale is by Lease . . . 1628
Grant of Privilege to Use Which is Not a Lease . . . 1660
Lease of Animal . . . 1660
Leases as Sales or Purchases . . . 1660
Manufacturing Equipment . . . 1525.2, 1525.3
Measure of Tax . . . 1660
Mobile Transportation Equipment . . . 1661
Nature of Tax . . . 1660
Neon Signs . . . 1660
Notice to Lessee When Rental Receipts Not Subject to Tax . . . 1686
Option to Purchase . . . 1660
Particular Application . . . 1660
Property Acquired in Exempt Transactions . . . 1660
Property Affixed to Realty . . . 1660
Property Leased in Form Acquired . . . 1660
Property Purchased Tax Paid . . . 1660
Property Subleased . . . 1660
Rental to Salesmen for Demonstration . . . 1669
Repair Parts . . . 1660
Sales Transactions Designated as Leases to Secure Payment of Price or to Avoid Tax . . . 1641
Tax Paid to Another State . . . 1660
Use of Property by Lessor . . . 1660
Vehicles, Registration and Name of Lessee . . . 1610

Leases, Vehicles . . . 1610

Leases, Vehicles, Mobile Transportation Equipment . . . 1661

Lessee, Notice to, Inapplicability of Tax . . . 1686

Lessor, Use of Property By, Leases . . . 1660

Liability, Responsible Person . . . 1702.5

Liability, Successors . . . 1702

Libraries, Circulating . . . 1506

Library Producers . . . 1527

Licensed Hearing Aid Dispensers . . . 1506

Licensed Veterinarians . . . 1506

Lienors of Tangible Personal Property . . . 1569

Limited Liability Company . . . 1595

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

L (Contd.)

Liquor Dealers . . . 1568

Loaders . . . 1630

Lubricating Oil, Sales to Common Carriers . . . 1621

M

Machinery, Affixed to Real Property . . . 1596

Machinery and Equipment
(See Construction Contractors)

Magnetic Tapes, Mailing Lists . . . 1504

Mailing Lists and Services . . . 1504
Addressing, Defined . . . 1504
Automatic Data Processing Services . . . 1502
Defined . . . 1504
Magnetic Tapes . . . 1504
Printing and Related Arts . . . 1541
Printing Related to Mailing . . . 1504

Mailing, Printing and Related Arts . . . 1541

Manufacturers of Personal Property . . . 1524
Alterations to New Clothing . . . 1524
Bad Debts . . . 1642
By-Products . . . 1525 (BTGB 67-7)
Painting, Polishing, Finishing . . . 1524
Retail Sales of Tangible Personal Property . . . 1595
Tax Paid Purchases Resold . . . 1701

Manufacturing Equipment . . . 1525.2, 1525.3

Manufacturing Equipment, Partial Exemption . . . 1525.2, 1525.3

Manufacturing, Property Used in . . . 1525
Manufacturing Aids . . . 1525 (STGB 50-24)
Salt in Food Processing . . . 1525 (BTGB 61-2)

Marketing Aids . . . 1670

Materials
(See Construction Contract)

Mats, Impressed
Leases of . . . 1660
Printing and Related Arts . . . 1541

Meal Programs for Low-Income Elderly Persons . . . 1603

Meals . . . 1603
Employees . . . 1603
Hospitals . . . 1503
Institutions . . . 1503
Programs for Low-Income Elderly Persons . . . 1603
Served to Condominium Residents . . . 1603
Served with Facilities . . . 1603
Students, Blind Vendors . . . 1603

INDEX (Contd.)
M (Contd.)

Medical Identification Tags . . . 1570

Medical Insurance, Prescription Medicines . . . 1591

Medicare Program . . . 1614

Medicines, Prescriptions . . . 1591
Medical Devices, Applications, and Related Supplies . . . 1591, 1591.1
Wheelchairs, Crutches, Canes, and Walkers . . . 1591.2
Vehicles for Physically Handicapped Persons . . . 1591.3
Medical Oxygen Delivery Systems . . . 1591.4

Member of the Armed Services, Sales to by Automobile Dealers . . . 1566

Membership Fees . . . 1584

Memorial Dealers . . . 1572
Cemeteries Constructing Foundations . . . 1572

Merchandise, Returned . . . 1655

Merger, Statutory . . . 1595

Messes . . . 1614

Microfilm, Records Stored on . . . 1698

Microfilming . . . 1502

Minerals Affixed to Land, Transfer of . . . 1596

Minerals, Food Supplements . . . 1602

Miscellaneous Repair Operations . . . 1553
Bookbinders . . . 1553
Motor and Transformer Rewinding . . . 1553
Shoe Repairmen . . . 1553
Tennis Racket Restringing and Repairing . . . 1553
Watch and Jewelry Repairmen . . . 1553

Miscellaneous Service Enterprises . . . 1506
Barbers . . . 1506
Beauty Shop Operators . . . 1506
Bootblacks . . . 1506
Circulating Libraries . . . 1506
Cleaners . . . 1506
Dentists and Dental Laboratories . . . 1506
Gun Clubs . . . 1506
Launderers . . . 1506
Licensed Hearing Aid Dispensers . . . 1506
Meals, Schools and Educational Institutions . . . 1603
Mixing, Motion Pictures . . . 1529
Prescription Medicines . . . 1591
Rentals Generally . . . 1660
Summer Camps . . . 1506
Taxidermists . . . 1506
X-Rays . . . 1528

Mobile Transportation Equipment Leased While Being Held for Resale . . . 1669

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

M (Contd.)

Mobile Transportation Equipment, Leases of . . . 1661

Mobilehome . . . 1610.2
Certificate of Exemption . . . 1610.2
Installed for Occupancy as Residences . . . 1521
Leases of . . . 1660
Special Application of Tax to Mobilehome . . . 1610

Mobilehomes Installed for Occupancy as Residences . . . 1521

Modification, Repair, or Replacement, Aircraft . . . 1593

Modular Systems Furniture . . . 1583

Mordanting Chemicals Used by Fur Dressers . . . 1531

Morticians . . . 1505
Sales in Interstate or Foreign Commerce . . . 1505
Sales to the United States . . . 1505

Motion Pictures . . . 1529
Application of Tax . . . 1529
Definitions . . . 1529
General . . . 1529
Miscellaneous . . . 1529
Operative Date . . . 1529

Motor and Transformer Rewinding . . . 1553

Motor Vehicle and Aircraft Fuels . . . 1598
Application of Sales or Use Tax to Fuel Furnished with Leased Vehicles or Aircraft . . . 1598
Exemption Certificate, Aircraft Fuel . . . 1598
Refunds, Withholding or Payment of by Controller . . . 1598
Sales of Motor Vehicle Fuel on Sales Tax-Included Basis . . . 1598

N

Navy Exchanges . . . 1614

Negligence, Penalties for . . . 1703

Neon Signs, Leases . . . 1660

Newspapers and Periodicals . . . 1590
Definitions . . . 1590
Exemption Certificates . . . 1590
Ingredient or Component Part Defined . . . 1590
Printing and Related Arts . . . 1541
School Catalogs and Yearbooks . . . 1590

Nonprofit
Parent-Teacher Association . . . 1603
Organization Providing Services to Developmentally Disabled—Sales of Handcrafted Property by . . . 1597
Youth Sports Organizations Food & Nonalcoholic Beverages Transferred by . . . 1597, 1603

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

N (Contd.)

Nonprofit Youth Sports Organizations Food and Nonalcoholic Beverages Transferred by . . . 1597, 1603

Nonresidents, Use of Common Carrier . . . 1593

Nonrevenue Operations, Use of Aircraft . . . 1593

O

Occasional Sales, Sale of a Business, Business Reorganization . . . 1595
- Aircraft . . . 1595
- Consolidation . . . 1595
- Contribution to Commencing Corporation or Partnership . . . 1595
- Manufacturers and Wholesalers . . . 1595
- Sale or Reorganization of All or Part of a Business . . . 1595
- Service Enterprises . . . 1595
- Statutory Merger . . . 1595
- Transfers of Substantially All Property Without Substantial Change in Ownership . . . 1595
- Vehicles . . . 1595
- Vessels . . . 1595

Oil, Lubricating, Sold to Common Carriers . . . 1621

Oils Processing, Fur Dressers . . . 1531

Operations, Non-Revenue, Aircraft . . . 1593

Opticians, Dispensing, Eyeglasses and Other Ophthalmic Materials . . . 1592

Optometrists, Eyeglasses and Other Ophthalmic Materials . . . 1592

Organizations, Fraternal . . . 1603

Organizations, Religious, Sales of Meals and Food Products . . . 1603

Out-of-State Purchases of Vehicles—90 Day Test . . . 1566, 1610

P

Packers, Loaders and Shippers . . . 1630
- Containers Generally . . . 1589
- Defined . . . 1630
- Property Used as Containers . . . 1630, 1630
- Property Used to Condition Goods for Shipment . . . 1630, 1630

Painting, Polishing, Finishing . . . 1524

Paintings . . . 1501

Parent-Teacher Associations or Equivalent Organizations . . . 1603

Partial Exemption—Manufacturing Equipment . . . 1525.2

Parts, Repair, Leases . . . 1660

Parts, Replacement, Warranties . . . 1655

Partnership, Contribution to Commencing . . . 1595

Payment of Tax by Purchasers . . . 1685

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)
P (Contd.)

Penalties
Determinations . . . 1703
Failure to Make Return . . . 1703
Fraud or Intend to Evade . . . 1703
Intentional Disregard . . . 1703
Late Payments . . . 1703
Negligence . . . 1703
Nonpayment of Determinations . . . 1703
Returns, Relief From for Reasonable Cause . . . 1703

Periodicals . . . 1590

Permits . . . 1699
Agents . . . 1699
Charitable Organizations, Permits for . . . 1570
Concessionaires . . . 1699
Construction Contractors . . . 1521
Direct Payment Permits . . . 1699.5
Inactive . . . 1699
Number Required . . . 1699
Penalty for Operating Without . . . 1703
Persons Selling Exclusively in Interstate Commerce . . . 1699
Persons Selling Exclusively to United States Government . . . 1699
Use Tax Direct Payment Permits . . . 1699.6
Vending Machine Operators . . . 1574

Personal Property, Manufacturers of . . . 1524

Personnel Training, Use of Aircraft . . . 1593

Persons, Low-Income Elderly, Meal Programs for . . . 1603

Pharmacist, Registered, Defined . . . 1591

Photo Finishers . . . 1528
Coloring & Tinting . . . 1528
Film Processing . . . 1528
Prints & Enlargements . . . 1528

Photographers, Photocopiers, Photo Finishers and X-Ray Laboratories . . . 1528
Photo Finishers . . . 1528
Photocopiers of Records . . . 1528
Photographers and Photocopiers . . . 1528
X-Ray Laboratories . . . 1528

Photorecording . . . 1502

Photocopiers . . . 1528

Physician and Surgeon, Dentist or Podiatrist . . . 1591

Physicians and Surgeons, Eyeglasses and Other Ophthalmic Materials . . . 1592

Pickling and Tanning, Fur Dressers Chemicals . . . 1531

Pictures, Motion . . . 1529

Plants . . . 1588

Podiatrist, Prescription Medicines . . . 1591

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)
P (Contd.)

Polishing, Painting, Finishing . . . 1524

Posters, Signs and Showcards . . . 1541

Preliminary Art, Advertising Agencies, Commercial Artists and Designers . . . 1540

Premiums . . . 1670

Prescription, Eyeglasses and Other Ophthalmic Materials, Defined . . . 1592

Prescription Medicines . . . 1591
Employer Medical Contracts . . . 1591
Exclusions . . . 1591
Health Facilities, Defined . . . 1591
Hospitals, Institutions and Homes for the Care of Persons . . . 1503
Insulin . . . 1591
Mammary Prostheses and Ostomy Appliances and Supplies. . . . 1591
Medical Insurance . . . 1591
Medicines Defined . . . 1591
Miscellaneous Service Enterprises . . . 1506
Modifications to Vehicles, used by Physically Handicapped Persons . . . 1591
Orthotic and Prosthetic Devices . . . 1591
Physician and Surgeon, Dentist or Podiatrist . . . 1591
Prescription, Defined . . . 1591
Records . . . 1591, 1698
Registered Pharmacist, Defined . . . 1591
Wheelchairs, Crutches, Canes, Quad Canes and Walkers . . . 1591

Printing and Related Arts . . . 1541
Advertising Agencies . . . 1540
Charges of Separate Statements . . . 1504
Composed Type . . . 1541
Impressed Mats . . . 1541
Mailing . . . 1541
Mailing Services . . . 1504
Publications, Exemption of . . . 1590
Services . . . 1541
Signs, Showcards, and Posters . . . 1541
Typewriters, Duplication by . . . 1541

Printing, Related to Mailing Services . . . 1504

Prizes . . . 1670

Processing Oils, Dressers . . . 1531

Processing Property Furnished by Consumers . . . 1526

Processors, Electrical Transcriptions . . . 1527

Producing, Fabricating and Processing Property Furnished by Consumers, General Rules . . . 1526
Alterations of Men's New Garments . . . 1524
Printing and Imprinting . . . 1541
Repairing and Reconditioning Generally . . . 1546

INDEX (Contd.)
P (Contd.)

Programs, Custom . . . 1502

Programs, Prewritten (Canned) . . . 1502

Promotional Plans . . . 1671

Property Acquired in Exempt Transactions, Lease of . . . 1660

Property Affixed to Realty, Lease of . . . 1660

Property Leased in Form Acquired . . . 1660

Property Purchased Tax Paid, Lease of . . . 1525.3, 1660

Property Purchased for Use in Manufacturing Process . . . 1525.2, 1525.3

Property, Real, Fixtures and Machinery and Equipment Affixed to . . . 1596

Property, Sales to Common Carriers . . . 1621

Property Subleased . . . 1660

Property, Tangible Personal, Through Vending Machines . . . 1574

Property, Transportation of by Retailers' Facilities . . . 1628

Property, Transportation of Property Sold for Delivered Price . . . 1628

Property Used in Manufacturing . . . 1525
Equipment, Partial Exemption . . . 1525.2, 1525.3
Manufacturing Aids . . . 1525(STGB 50-24)
Salt in Food Processing . . . 1525(BTGB 61-2)
Special Tooling, Contracts With U.S. . . . 1525(STGB 57-22)

Proteins . . . 1602

Prototypes . . . 1501.1

Publications, Exemption of Certain . . . 1590

Publishers . . . 1543
Application of Tax . . . 1543
Examples of, . . . 1543
Definitions . . . 1543

Pumps, Deep Well Agricultural . . . 1521

Purchase Agent Fees . . . 1540
Purchase Items by Agency or Artist or Designers . . . 1540

Purchase, Option to, Leases . . . 1660

Purchase Price, Duty to Withhold, Successor . . . 1702

Purchaser
Business or Stock of Goods, Successor's Liability . . . 1702
Partial Exemption, Manufacturing Equipment . . . 1525.2, 1525.3
Payment of Tax by, Aircraft . . . 1610
Payment of Tax by, Vehicles . . . 1610
Payment of Tax by, Vessels . . . 1610
Payment of Use Tax by . . . 1685

Purchases, Leases as . . . 1660

Purchases, Tax Paid, Resold . . . 1701

INDEX (Contd.)

P (Contd.)

Purchases, Tax Paid Resold, Construction Contractors . . . 1521

R

Rail Freight Cars . . . 1620

Realty, Property Affixed to, Leases of . . . 1660

Receipts for Tax Paid to Retailers . . . 1686
Notice to Lessee . . . 1686

Reconditioned Property, Exchange of Used for Similar . . . 1546

Reconditioning, Repairing . . . 1546

Recording Studios . . . 1527

Records . . . 1698
Bad Debts . . . 1642
Examination of . . . 1698
Failure to Maintain . . . 1698
Microfilm . . . 1698
Penalties Generally . . . 1703
Prepared by Automated Data Processing System . . . 1698
Prescription Medicine Exemption, Records in Support of . . . 1591
Retention . . . 1698
Vending Machine Operators . . . 1574

Refinishing . . . 1551

Refunds, Excess Tax Reimbursement to Customer, Evidence to Establish . . . 1700

Refunds, Excess Tax Reimbursement to Customer, Procedures Upon Disclosure of . . . 1700
Use Tax Collected by Retailers . . . 1684

Refunds, Withholding or Payment of by Controller (Tax on Motor Vehicle and Aircraft Fuels) . . . 1598

Reimbursement for Sales Tax . . . 1700
Discounts and Trading Stamps . . . 1700
Excess, Evidence to Establish Refund to Customer . . . 1700
Excess Reimbursement, Construction Contractor . . . 1521
Leases . . . 1660
Meals, Tips and Other Charges as Tax Included Amount . . . 1603
Motor Vehicle Fuel Sold at Tax Included Prices . . . 1598
Reimbursement Schedules . . . 1700
Trading Stamps Generally . . . 1671
Trade-ins Generally . . . 1654

Relief from Liability 1705, 1705.1

Relief from Penalties, Returns, for Reasonable Cause . . . 1703

Religious Organizations, Sales of Meals and Food Products . . . 1603

Remodelers, Fur . . . 1549

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)
R (Contd.)

Rental . . . 1660
Equipment, Automatic Data Processing . . . 1502, 1502
Launderers and Cleaners . . . 1506
Salesmen for Demonstration . . . 1669

Repainting and Refinishing . . . 1551
Painters, Polishers and Finishers . . . 1524
Resale Certificates . . . 1668

Repair, Aircraft . . . 1593
Repair, Construction Contractor . . . 1521
Repair or Warranty Service . . . 1593

Repair, Jobs Covered by Insurance . . . 1546

Repair, Miscellaneous Operations . . . 1553

Repair Parts, Leases . . . 1660

Repairers, Alterers, and Remodelers—Fur . . . 1549

Repairers, Shipments in Foreign Commerce . . . 1620

Repairing, Reconditioning . . . 1546

Repairing—Tennis Racket . . . 1553

Repairmen . . . 1546
Shoe . . . 1553
Watch and Jewelry . . . 1553

Replacements . . . 1655
Replacement Parts, Warranties . . . 1655

Repossessions . . . 1641
Computing Loss on . . . 1642
Court Ordered Sales, Foreclosures and Repossessions . . . 1573
Example of Computing Allowable Bad Debt Deduction for Repossessed Merchandise . . . 1642 Appendix 2

Reproduction Proofs, Leases of . . . 1660

Re-Recording, Motion Pictures . . . 1529

Resale Certificates . . . 1668
Automobile Dealers, Effect of Accepting from Nondealer Retailer . . . 1566
Construction Contractors . . . 1521
Demonstration and Display, Use of Property Purchased Under Resale Certificates for . . . 1669
Drapery Hardware Installers Accepting . . . 1521
Effect of . . . 1668
Flags and Prisoners of War Bracelets . . . 1597
Form of . . . 1668
Good Faith . . . 1668
Improper Use of . . . 1668
Newspapers and Periodicals for Component Parts of . . . 1590
Non-Dealer Automobile Retailers . . . 1566
Operators Not Furnishing to Vending Machine Operators . . . 1574
Other Evidence to Rebut Presumption of Taxability . . . 1668

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

R (Contd.)

Salt in Food Processing . . . 1525 (BTGB 61-2)
Salt Used in Food Processing . . . 1525 (BTGB 61-2)
Vending Machine Operators Furnishing . . . 1574

Research and Development . . . 1501.1, 1525.2

Restaurants, Taxable Sales of Food Products . . . 1603

Restringing—Tennis Racket . . . 1553

Retailers, Collection of Use Tax by . . . 1684

Retailers, Morticians as . . . 1505

Retailers, Receipts for Use Tax Paid to . . . 1686

Retouching, Advertising Agencies, Commercial Artists and Designers . . . 1540

Retreading and Recapping Tires . . . 1548

Return, Failure to Make, Penalty . . . 1703

Returned Merchandise, Defective Merchandise and Warranties . . . 1655
Auction Sales, Agreement Not to Deliver Property or to Return Amount Paid . . . 1565
Barter, Exchange, Trade-ins . . . 1654
Replacement Parts, Warranties . . . 1655
Returned Merchandise . . . 1655

Returns, Information . . . 1687

Reupholsterers, Furniture . . . 1550

Rewinding—Motor and Transformer . . . 1553

S

Sale, Place of, Transportation Charges . . . 1628
When Sale Occurs . . . 1628

Sales, Leases as . . . 1660

Salesmen
Automobile Dealer . . . 1566
Dealer Aid to Automobile . . . 1566
Rental to for Demonstration . . . 1669
Sale of Property to for Demonstration . . . 1669

Sales to Common Carriers . . . 1621
Bill of Lading . . . 1621
Certificates A, B, C & D . . . 1621
Common Carrier Defined . . . 1621
Effect of Exemption Documents . . . 1621
Exemption Certificates . . . 1621
Foreign Air Carrier . . . 1621
Fuel, Lubricating Oil, and Other Property Placed in Use Prior to Reaching Destination . . . 1621
Liability of Purchaser . . . 1621
Supporting Certificate . . . 1621
Tangible Personal Property . . . 1621

Sales to the United States and Its Instrumentalities . . . 1614
American National Red Cross . . . 1614

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

S (Contd.)

Army and Air Force Exchange Services, Navy Exchanges, Coast Guard Exchanges, Open Messes, and Officers Messes . . . 1614
Company and Other Unit Funds . . . 1614
Construction Contractors . . . 1521
Incorporated Agencies . . . 1614
Incorporated Instrumentalities . . . 1614
Leases and Rentals in General . . . 1660
Leases Mobile Transportation Equipment . . . 1661
Medicare Program . . . 1614
Selective Service System . . . 1614
Supporting Documents . . . 1614
Unincorporated Agencies . . . 1614
United States Contractors . . . 1521

Sandwiches . . . 1603

Schedules, Reimbursement . . . 1700

Schools, Loans of Tangible Personal Property to for Educational or Training Programs . . . 1669

Sculptures . . . 1501

Seeds, Plants and Fertilizer . . . 1588

Selective Service System, Sales to . . . 1614

Service Charges . . . 1603

Service Enterprises Generally . . . 1501
Advertising Agencies . . . 1540
Commercial Artists . . . 1540
Designers . . . 1540
Installers . . . 1546
Manipulation of Customer-Furnished Information . . . 1502
Occasional Sale Exemption, Application to Service Enterprises . . . 1595
Persons Engaged in the Business of Rendering Service . . . 1501
Reconditioners . . . 1546
Repairers . . . 1546
Sale of Equipment Used in . . . 1595
Tax-Paid Purchases Resold . . . 1701
True Object of the Contract . . . 1501
X-Ray Laboratories . . . 1528

Services, Automatic Data Processing, Defined . . . 1502

Services, Printing and Related Arts . . . 1541

Sheriffs, Commissioners, and Other Court Appointed Officers . . . 1573

Shipment, Property Used to Condition Goods for . . . 1630

Shippers . . . 1630

Shoe Repairmen . . . 1553

Showcards, Signs and Posters . . . 1541

Signs, Neon, Leases . . . 1660

INDEX (Contd.)

S (Contd.)

Signs, Showcards, and Posters . . . 1541

Silver Bullion, Sales of . . . 1599

Social Clubs . . . 1603

Soda Fountains, Taxable Sales of Food Products . . . 1603

Sound Recording . . . 1527
Library Producers . . . 1527
Processors . . . 1527
Recording Studios . . . 1527

Special Tooling, Contracts with U.S. . . . 1525(STGB 57-22)

"Storage" and "Use", Exclusions, Use Tax . . . 1620

Students, Sales of Food Products in Places Where Admission is Charged . . . 1603

Studios, Recording . . . 1527

Successor's Liability . . . 1702
Amount of . . . 1702
Duty to Withhold Purchase Price . . . 1702
Purchaser of Business or Stock of Goods . . . 1702
Release from Obligation as Successor . . . 1702

Summer Camps . . . 1506

Supplements, Dietary . . . 1602

Supplies and Tools for Self Use, Construction Contractors . . . 1521

Supporting Documents . . . 1614

Suspended Corporations . . . 1702.6

T

Tags, Feed Analysis . . . 1589

Tags, Price . . . 1589

Tangible Personal Property
Sale of, True Object of Contract . . . 1501
Sales to Common Carriers . . . 1621
Through Vending Machines for 15 cents or Less . . . 1574
Transferred by Nonprofit Parent Teacher Association . . . 1597
Transferred by Nonprofit Associations known as Friends of Library . . . 1597

Tanning, Fur Dressers, Chemicals . . . 1531

Tapes, Magnetic, Mailing Lists . . . 1504

Tax, as Debt, Collection of Use Tax by Retailers . . . 1684

Tax, Due Date, Credit Sales . . . 1641

Taxable Sales of Food Products . . . 1603
Alcoholic Beverages, Tax Reimbursement When Served With . . . 1700
Boarding Houses . . . 1603
Caterers . . . 1603
Drive-ins . . . 1603
Employees' Meals . . . 1603

INDEX (Contd.)
T (Contd.)

Food for Consumption at Facilities Provided by the Retailer . . . 1603
Food Products Generally . . . 1602
"Free" Meals With Purchased Meals . . . 1603
Hot Prepared Food Products . . . 1603
Hotels . . . 1603
Meal Programs for Low-Income Elderly Persons . . . 1603
Meals Served to Patients and Inmates of an Institution . . . 1503
Places Where Admission is Charged . . . 1603
Presumption . . . 1603
Religious Organizations . . . 1603
Restaurants . . . 1603
Sales by Parent-Teacher Associations or Equivalent Organization . . . 1603
Sales to Students . . . 1603
Social Clubs and Fraternal Organizations . . . 1603
Soda Fountains . . . 1603
Student Meals, Blind Vendors . . . 1603
Tips and Service Charges . . . 1603
Transferred by Nonprofit Youth Sports Organizations . . . 1597, 1603
Vending Machines, When Considered Selling Meals . . . 1574

Taxes Federal . . . 1617
Importers . . . 1617
Manufacturers . . . 1617
Refunds of . . . 1617
Repeal of Reduction of . . . 1617

Taxes, Federal, Retailers Excise . . . 1617

Taxes, Sales, Interstate and Foreign Commerce . . . 1620

Taxes, Use, Interstate and Foreign Commerce . . . 1620

Taxidermists . . . 1506

Tax, Measure of, Leases of Tangible Personal Property . . . 1660

Tax Paid to Another State, Leases . . . 1660

Tax Paid Purchases Resold . . . 1701

Tax, Use of Rental Value, Demonstration, Display and Use of Property Held for Resale . . . 1669

Tax, Use, Paid to Retailers, Receipts for . . . 1686

Tax, Use, Payment by Purchasers . . . 1685

Teleproduction or Other Postproduction Service Equipment . . . 1532

Television Commercials and Billboards . . . 1529

Tennis Racket Restringing and Repairing . . . 1553

Terms, Use of . . . 1500

Test Flights, Aircraft . . . 1593

INDEX (Contd.)

T (Contd.)

Timber, Transfer of Timber to be Severed . . . 1596

Tips . . . 1603

Tires, Retreading and Recapping . . . 1548

Toilets, Chemical, Leases . . . 1660

Tools, Supplies for Self Use, Construction Contractors . . . 1521

"Trade-Ins" . . . 1654

Trading Stamps and Related Promotional Plans . . . 1671
Cash Discount . . . 1671
Description of Plans . . . 1671
Proration of Cash Discount Between Taxable and Exempt Transactions . . . 1671
Tax Reimbursement, Effect of Collecting on Discounts . . . 1700
Trading Stamps . . . 1700

Training, Personnel, Aircraft . . . 1593

Transformer Rewinding . . . 1553

Transportation Charges . . . 1628
Examples . . . 1628(Appendix)
Place of Sale . . . 1628
Property Sold for Delivered Price . . . 1628
Retailers' Facilities . . . 1628
Transportation by Carrier . . . 1628
Transportation by Retailers' Facilities . . . 1628
When Sale Occurs . . . 1628

Type, Composed, Printing and Related Arts . . . 1541

Typewriters, Duplication by . . . 1541

U

United States and Its Instrumentalities . . . 1614

United States, Airplanes Delivered to Agencies of . . . 1620

United States Contractors
(See Construction Contractors)

United States, Persons Selling Exclusively to, Permits . . . 1699

United States, Sales to by Morticians . . . 1505

"Use", Exclusions, Use Tax . . . 1620

Use of Aircraft . . . 1593
Common Carrier . . . 1593
Financed Aircraft . . . 1593
Foreign Governments . . . 1593
Nonresidents . . . 1593
Nonrevenue Operations . . . 1593
Personal Training . . . 1593
Repair and Warranty Service . . . 1593

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

U (Contd.)

Use Tax . . . 1620
Collection by Retailers . . . 1684
Imports . . . 1620

V

Vehicles, Vessels and Aircraft . . . 1610
Aircraft, Exemption . . . 1593
Defined . . . 1610
Demonstration, Display, and Use of Property Held for Resale—Vehicles . . . 1669.5
Included in Transfer of Substantially All Property Used in Business Activity . . . 1595
Lease of Vehicles . . . 1610
Leases of Mobile Transportation Equipment . . . 1661
Mobile Transportation Equipment . . . 1661
Mobilehome . . . 1610
Out-of-State Purchases, Vehicles, 90-day Test . . . 1566, 1610
Payment of Tax by Purchaser . . . 1610
Vehicles . . . 1610
Vessels and Aircraft . . . 1610
Transfer of Vehicle to a Lessee by a Lessor—Presumption . . . 1610
Watercraft, Exemption . . . 1594

Vending Machine Operators . . . 1574
As Consumers . . . 1574
Dispensing Tangible Personal Property Through Vending Machines for 15¢ or Less . . . 1574
Food Products . . . 1574
Permits . . . 1574
Records . . . 1574
Sales to Operators Not Furnishing Resale Certificates . . . 1574
Schedules Showing Allocation by County . . . 1574

Vending Machines, Sales Through, Federal Areas . . . 1616

Vendors, Blind, Students' Meals . . . 1603

Vessels . . . 1610
Defined . . . 1610
Included in Transfer of Substantially All Property Used in Business Activity . . . 1595
Payment of Tax by Purchaser . . . 1610

Veterans Organizations, Nonprofit, Flags . . . 1597

Vitamins . . . 1602

Violations . . . 1500

W

"War Materiel" Contractors . . . 1618

Warranties
Replacement Parts . . . 1655

Watch and Jewelry Repairmen . . . 1553

Return to Business Taxes Law Guide Main Table of Contents

INDEX (Contd.)

W (Contd.)

Watercraft . . . 1594
Component Parts of . . . 1594
Exemption Certificate . . . 1594
Leases of Mobile Transportation Equipment . . . 1661
Special Provisions Affecting . . . 1610

Wholesalers, Retail Sales of Tangible Personal Property . . . 1595

Wine Dealers . . . 1568

Written Request for Relief of Liability . . . 1705, 1705.1

X

X-Ray Laboratories . . . 1528