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SALES AND USE TAX LAW

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FEDERAL LAWS RELATING TO STATE TAXATION

PROVISIONS RELATING TO SALES, USE AND INCOME TAXES IN FEDERAL AREAS

(4 U. S. C. A., Sections 105–110; 1 Stat. 641, as amended by 68 Stat. 1227.)

§ 105. **State, etc., taxation affecting federal areas; sales or use tax.** (a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any state, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a federal area; and such state or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any federal area within such state to the same extent and with the same effect as though such area was not a federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940.

§ 106. **Same; income tax.** (a) No person shall be relieved from liability for any income tax levied by any state, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a federal area or receiving income from transactions occurring or services performed in such area; and such state or taxing authority shall have full jurisdiction and power to levy and collect such tax in any federal area within such state to the same extent and with the same effect as though such area was not a federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

§ 107. **Same; exception of United States, its instrumentalities, and authorized purchases therefrom.** (a) The provisions of Sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental secretary having jurisdiction over such branch.

§ 108. **Same; jurisdiction of United States over federal areas unaffected.** The provisions of Sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United

States of exclusive jurisdiction over any federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any federal area.

§ 109. **Same; exception of Indians.** Nothing in Sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

§ 110. **Same; definitions.** As used in Sections § 105–109 of this title—

(a) The term ''person'' shall have the meaning assigned to it in section 3797 of title 26.

(b) The term ''sales or use tax'' means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of Section 104 of this title are applicable.

(c) The term ''income tax'' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term ''state'' includes any territory or possession of the United States.

(e) The term ''federal area'' means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any federal area, or any part thereof, which is located within the exterior boundaries of any state, shall be deemed to be a federal area located within such state.

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ANALYSIS OF THE CALIFORNIA SALES AND USE TAX LAW

Nature and rate of sales and use taxes. The sales tax is imposed on retailers for the privilege of selling tangible personal property at retail. The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from a retailer. The use tax, except as to leases, is not imposed on gross receipts from the sale of property which were included in the measure of the sales tax. The use tax rather than the sales tax applies to purchases shipped from an out-of-state point to a California consumer. The obligation to pay use tax is on the consumer. However, if an out-of-state retailer is engaged in business in this state, it is required to collect the use tax from the consumer at the time of making the sale.

The sales tax is measured by gross receipts from retail sales. The use tax is measured by the sales price of the property. The state tax rate is the same for both taxes, and is currently 6%. ''Gross receipts'' and ''sales price'' mean the total amount of the sale or lease, including all receipts, cash, credits and property of any kind or nature but not including the amount of any tax (except manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales and not including the amount of any tax imposed by the state upon diesel fuel, or the amount of any transactions or sales tax or use tax imposed by any city, county or city and county or special taxing district within this state. ''Gross receipts'' and ''sales price'' also do not 1) include amounts charged for the value of intangible personal property in certain technology transfer agreements, 2) certain charges for transporting landfill, and 3) amounts equal to the sales or use tax on the federal manufacturers' or importers' excise tax imposed on specified fuel purchases under certain conditions.

The granting of possession of tangible personal property by a lessor to a lessee is a continuing sale in this state, and the possession of such property by a lessee is a continuing purchase for use in this state. The tax is collected by the lessor at the time of each payment pursuant to the lease. Leases are not sales if the property involved consists of motion picture and television films or tapes, certain linen supplies and similar articles, certain household furnishings and certain mobile transportation equipment with the exception of chemical toilet units and videocassettes, videotapes, and videodiscs for private use, and leases of property in substantially the same form as acquired by the lessor on which the lessor has paid use tax or sales tax reimbursement are not subject to tax. ''Lease'' 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.

''Sale'' and ''purchase'' do not include:

(a) Certain transfers of printing materials.

(b) Certain furnishing (without transferring title) of motion picture equipment by a motion picture production partnership to its members.

(c) Certain transfers of title to, and transfers of title and leases by, the California Alternative Energy and Advanced Transportation Financing Authority.

(d) Certain transfers of custom computer programs other than basic operational programs.

(e) Certain transfers of title to, and transfers of title and leases by, the California Pollution Control Financing Authority.

(f) Certain transfers of qualified mass commuting vehicles pursuant to safe harbor leases.

(g) Certain transfers of qualified motion pictures, as defined and the performance of qualified production services as defined.

(h) Certain transfers of title to, or lease of, tangible personal property pursuant to an acquisition sale and leaseback.

(i) Certain trades or exchanges of endangered and threatened animal and plant species.

(j) Certain transfers of original drawings, sketches, illustrations, or paintings by an artist or designer at social gatherings, under specified circumstances.

(k) Certain transfers of animals to individuals for use as pets and any related service charges, when the transfer is made by a nonprofit animal welfare organization or a local government animal shelter.

Under certain circumstances, the retailer may take a deduction for accounts which become worthless. Credit is allowable against the use tax for sales or use tax paid in another state on account of the purchase or use of the property in that state.

Nontaxable transactions. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property except:

1. Sales or purchases of tangible personal property for the purpose of resale, either in the form in which sold or as an ingredient or component part of other tangible personal property. In order to document sales for resale, the seller must secure from the purchaser a resale certificate bearing the purchaser's seller's permit number or have other evidence to show that the sale or purchase was in fact for resale. Sales by manufacturers, jobbers and wholesalers to purchasers for use or consumption are retail sales and not sales for resale.

Every person purchasing tangible personal property for resale who uses it for purposes other than demonstration and display is subject to tax as of the time of first use measured by the sales price of the property to him. If the use is limited to the loan of the property to customers while awaiting delivery of property purchased or leased from the lender or while property is being repaired by the lender or if the property is used frequently for purposes of demonstration or display and partly for other purposes, the measure of tax is the fair rental value.

2. Sales or purchases of the following tangible personal property, covered by specific exemptions.

(a) Property the sale or use of which the state is prohibited from taxing under the Constitution or laws of the United States or the Constitution of this state (Sec. 6352).

(b) Gas, electricity, and water delivered through mains, lines or pipes, liquid petroleum gas for qualified residential and agricultural purposes, bulk household water delivered in areas without water mains, lines or pipes, and exhaust steam, waste steam, heat, or resultant energy produced in connection with cogeneration technology (Sec. 6353).

(c) ''California Gold'' medallions produced and sold in accordance with the Government Code (Sec. 6354).

(d) Bulk, monetized and nonmonetized bullion and numismatic coins substantially equivalent to transactions in securities or commodities through national securities or commodities exchanges (Sec. 6355).

(e) Motor vehicle fuel used in propelling aircraft, except aircraft jet fuel, the distributions of which in this state are subject to the tax imposed by Part 2 of this division and not subject to refund (Sec. 6357).

(f) Drugs and medicines, including oxygen, which are primarily used for the prevention or control of disease that are administered to animal life of a kind the products of which ordinarily constitute food for human consumption (6358).

(g) Animal life and feed therefor, including medicated feed and drinking water, seeds, plants, and fertilizer, the products of which are to be used as food for human consumption or sold (Sec. 6358 and 6358.4).

(h) Certain organic products and waste products used for fuel (Sec. 6358.1).

(i) Wood shavings, sawdust, rice hulls, or other products that are used in poultry and egg production and used as fertilizer products (6358.2).

(j) Food products for human consumption (6359).

This exemption does not include certain beverages, medicines, or dietary supplements or adjuncts.

This exemption does not include food sold or consumed under the following circumstances: when sold as a meal provided by a retailer; when consumed at tables, chairs, counters or from utensils provided by the retailer; when usually consumed at parking facilities provided for this purpose even though sold on a ''to go'' basis; when consumed within a place which charges admission (except national and state parks, monuments and marinas); when sold as hot prepared products; when sold in a form suitable for on-site consumption and the ''80-80 rule'' applies (Sec. 6359).

Otherwise exempt sales of food products are taxable when made through a vending machine. A vending machine operator is the consumer of food sold through a vending machine for 15¢ or less. A vending machine operator is also the consumer of food (other than beverages and hot prepared foods), dispensed in bulk from a coin operated machine for 25¢ or less (Sec. 6359.4).

Hot prepared food sold to air carriers engaged in interstate or foreign commerce for consumption by their passengers. This exemption also applies when the hot prepared food is sold to the passengers by the air carrier (Sec. 6359.1).

(k) Hot prepared food products sold to air carriers engaged in interstate or foreign commerce for consumption by carried passengers. This exemption also applies when the hot prepared food is sold to the passengers by the air carrier (Sec. 6359.1).

(*l*) Ice or dry ice used for packing and shipping or transporting food products for human consumption (Sec. 6359.7).

(m) Carbon dioxide and any nonreturnable containers containing carbon dioxide used in packing or shipping fruits or vegetables under specified conditions (6359.8).

(n) Newspapers and periodicals published or purchased by an Internal Revenue Code 501(c)(3) organization if the publication is distributed to the organization's members or contributors in consideration of the fee or contribution. The exemption also applies if the 501(c)(3) organization's publication contains no commercial advertising irrespective of the method of distribution (Sec. 6362.8).

Newspapers or periodicals distributed by a non-profit organization if distribution is to the organization's members in consideration of the fees and if the cost of printing is less than 10 percent of the membership fee attributable to the period for which the publication is distributed (Sec. 6362.8).

Sales of periodicals sold by subscription and delivered by mail or common carrier (Sec. 6362.7).

Newspapers and periodicals distributed without charge (Sec. 6362.7).

(o) Meals and food furnished to students by their school or by certain organizations and individuals. This exemption does not apply to food sold within a place which charges admission (except national and state parks and monuments) (Sec. 6363).

(p) Meals and food furnished or served to a gathering by certain religious organizations if the revenue is used to carry out the organization's functions and activities (Sec. 6363.5).

(q) Used clothing, household items, or other retail items sold by thrift stores operated by a nonprofit organization if the purpose of that thrift store is to obtain revenue for the funding of medical and social services to individuals with HIV or AIDS (Sec. 6363.3).

(r) Meals delivered to homebound elderly or disabled persons by a nonprofit volunteer home delivery meal provider (Sec. 6363.7).

(s) Containers under certain conditions (Sec. 6364 and 6364.5).

(t) Aircraft sold, leased or sold for, leasing for use as a common carrier or for use outside this state. This exemption includes property sold to an aircraft manufacturer and incorporated into aircraft to be leased by it under these

conditions and property becoming a component part of the aircraft in the course of maintenance, repair, overhaul or improvement of that aircraft (Sec. 6366, 6366.1).

(u) Certain property purchased by the San Diego Aero-Space Museum and the California Science Center (Sec. 6366.4).

(v) Property the sale of which is an occasional sale. This exemption includes sales by a person who is not required to hold a sellers permit. It also includes the transfer of all property held by a business entity when there is no change in ownership as a result of the transfer. It also includes certain sales by producers of hay (Secs. 6367 and 6006.5). This exemption is not applicable to sales of vehicles, vessels, and aircraft.

(w) Certain watercraft and component parts of such watercraft for use in transportation for hire in interstate or foreign commerce or for use in certain deep sea fishing operations (Secs. 6368 and 6368.1).

(x) Rail freight cars for use in interstate or foreign commerce (Sec. 6368.5).

(y) Passenger transportation vehicles sold or leased to the Department of Transportation (Sec. 6368.7).

(z) Sale and leaseback of passenger transportation equipment sold or leased to certain agencies, such as transit authorities (Sec. 6368.8).

(aa) Certain medicines for human use (Sec. 6369).

(bb) Property the gross receipts of which are received in the form of food stamp coupons (Sec. 6373).

(cc) Property purchased or leased under certain fixed price contracts are exempt from certain tax increases (Sec. 6376.1).

(dd) Certain property purchased by new businesses for use in manufacturing-related activities (6377).

(ee) Certain property purchased by businesses primarily engaged in teleproduction and post production activities (6378).

(ff) Printed sales messages if they are printed to the special order of the purchaser and delivered by a common carrier to a third party at no cost to the recipient (Sec. 6379.5).

(gg) Mailing lists when the contract restricts the purchaser to a single use of the mailing list (6379.8).

(hh) Space flight property purchased for use in any space flight (6380).

(ii) Property sold to the United States and to any incorporated or unincorporated agency or instrumentality of the United States, and property sold to the American National Red Cross (Sec. 6381—sales tax only).

(jj) Certain leases of property to the United States and instrumentalities of the United States (Sec. 6381.5).

(kk) Certain property sold to a common carrier if it is shipped by the purchaser's facilities to an out-of-state destination for use by the purchaser in the conduct of its business (Sec. 6385).

(*ll*) Property sold to the holder of a seller's permit for use in performing a contract to improve real property located outside this state and which is incorporated into and becomes a part of such real property (Sec. 6386).

(mm) Property purchased solely for use outside this state and delivered to a forwarding agent or export packer and actually delivered to a port outside the United States prior to making any use thereof (Sec. 6387).

(nn) Certain new or remanufactured vehicles purchased from an out-of-state dealer for use outside this state or for use in interstate commerce but delivered to the purchasers in this state under certain conditions (Secs. 6388 and 6388.5).

(oo) Motor vehicles sold by persons other than dealers, manufacturers, remanufacturers, dismantlers, and lessor-retailers, and vessels and aircraft sold by persons who are not required to hold a seller's permit are exempt from sales tax but use tax may be payable by the consumer (Secs. 6282 and 6283).

(pp) Property on which the sales tax has already been paid (Sec. 6401—exemption from use tax only—does not apply to leases).

(qq) Property purchased from any unincorporated agency or instrumentality of the United States except "surplus" property (Sec. 6402—use tax only).

(rr) Property loaned by a retailer to a school district for an education program and the loan of motor vehicles to certain named institutions for driver training programs (Sec. 6404).

(ss) Rentals required to be included in the measure of use tax or when the property is outside this state (Sec. 6390).

(tt) Leases under which the lessor or lessee is obligated to lease the property for an amount fixed by the lease prior to August 1, 1965 (Secs. 6391 and 6407).

(uu) Property becoming a component part of any railroad equipment in the course of repairing, cleaning, altering, or improving that equipment outside this state (Sec. 6411—use tax only).

(vv) Nonprofit, charitable, or education organizations which are vending machine operators are considered consumers of the property sold through vending machines for fifteen cents or less (Sec. 6359.45(a)). Public libraries are consumers of photocopies sold through a coin-operated on-site copy machine (Sec. 6359.45(b)).

(ww) Meals furnished to residents or patients of certain health and community care facilities or of certain residential facilities serving persons 62 years of age or older, or of certain alcohol and drug abuse treatment facilities (Sec. 6363.6).

(xx) Meals and food furnished at or below cost to low-income elderly persons by nonprofit organizations and governmental agencies (Sec. 6374).

(yy) Meals and food products served on a regular basis to certain elderly residents of condominiums (Sec. 6376.5).

(zz) Certain charitable organizations are considered consumers of bracelets designed to commemorate American prisoners of war which are distributed under certain circumstances (Sec. 6360).

(aaa) Hemodialysis products which constitute medicines and which are supplied to a patient on order of a licensed physician and surgeon pursuant to Section 4050.7 or 4227 of the Business and Professions Code (Sec. 6369.1).

(bbb) Certain nonprofit youth organizations are consumers of food products, nonalcoholic beverages or other tangible personal property made or produced by their members which they sell on an irregular basis for the benefit of the organization (Sec. 6361).

(ccc) Certain nonprofit organizations are consumers of certain handcrafted items designed or made by individuals with certain disabilities (Sec. 6361.1).

(ddd) Sales of items at an auction conducted by, or affiliated with, a nonprofit organization when the proceeds are used for purposes of funding homeless shelters, under certain conditions (6363.2).

(eee) Yearbooks and catalogs prepared for or by public or private schools, school districts, or student organizations, and distributed to students (Sec. 6361.5).

(fff) The sale or use of master tapes or master records embodying sound (Sec. 6362.5).

(ggg) Prescription wheelchairs, crutches, canes, quad canes, and walkers (Sec. 6369.2).

(hhh) Original visual works of art purchased by qualifying governmental entities and nonprofit organizations to become part of a permanent collection of certain museums and public places (Sec. 6365).

(iii) New motor vehicles sold to residents of foreign countries who arrange for the purchase through an authorized foreign vehicle dealer under certain circumstances (Sec. 6366.2).

(jjj) Museum pieces purchased by qualifying organizations to replace property destroyed by fire, flood, earthquake or other calamity within three years from date calamity occurred (Sec. 6366.3).

(kkk) Endangered and threatened animal and plant species if both the seller and purchaser are nonprofit zoological societies (Sec. 6366.5).

(*lll*) Items and materials used to modify a vehicle for physically handicapped persons (Sec. 6369.4).

(mmm) Certain parent-teacher and nonprofit library associations and organizations are considered consumers of tangible personal property sold by them if the profits are used in furtherance of the purposes of the organization (Sec. 6370).

(nnn) Medical identification tags sold by qualifying organizations (Sec. 6371).

(ooo) Medical health information purchased by qualifying organizations (Sec. 6408).

(ppp) Health and safety educational materials and insignia sold in connection with health and safety and first aid classes by qualifying organizations (Sec. 6409).

(qqq) The use of trailers moved under a one-trip permit (Sec. 6410—exemption from use tax).

(rrr) The sale and use of certain used mobilehomes which are subject to property tax or floating homes (Sec. 6379).

(sss) Certain medical oxygen systems (Sec. 6369.5).

(ttt) Certain nonprofit associations performing auxiliary services to city and county museums are consumers of tangible personal property they sell at annual rummage sales (Sec. 6370.5).

(uuu) New children's clothing sold to a nonprofit organization for certain distributions (Sec. 6375.5).

(vvv) The sale of "Buddy Poppies" and similar impermanent lapel pins that memorialize U.S. military veterans killed in foreign wars of the U.S. (Sec. 6360.1).

(www) The sale of tangible personal property to eligible entities that, among other things, locate and expand a business in a California county with a high unemployment rate (Sec. 6378.1).

(xxx) The sale and purchase of farm equipment and machinery, and parts thereof, when purchased by qualified persons engaged in the business of farming or by other qualified persons who assist such persons (Sec. 6356.5).

(yyy) The sale and purchase of equipment and machinery designed primarily for off-road use in commercial timber harvesting operations, and the parts thereof, that is purchased for use by a qualified person engaged in commercial timber harvesting (Sec. 6356.6).

(zzz) The sale and purchase of diesel fuel used in transporting farm products to the marketplace and used in food processing operations (Sec. 6357.1).

(aaaa) The sale and purchase of racehorse breeding stock (Sec. 6358.5).

(bbbb) The sale and purchase of meals and food products for human consumption furnished or served by any nonprofit veterans' organization at a social or other gathering conducted by it or under its auspices for fundraising purposes (Sec. 6363.8).

A purchaser who certifies in writing to a seller that property purchased will be used for a purpose entitling the seller to regard the sale as exempt and who uses the property for some other purpose must pay a tax to the state measured by the purchase price of the property. The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.

What is required of sellers (sales tax). (a) Every person, firm, partnership, corporation, etc., engaging in the business of selling 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, must apply to the State

Board of Equalization for a permit on a form prescribed by the board. Wholesalers, as well as retailers, must secure such permit. No permit fee is required.

(b) A separate permit must be secured for each place of business, must be conspicuously displayed at the place for which issued and is valid until suspended or revoked by the board.

(c) Whether a seller 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. If sales tax reimbursement is added to the sales price of tangible personal property sold at retail, the retailer shall use a schedule provided by the Board, or a schedule approved by the Board.

(d) A person holding a seller's permit and not actively engaged in the business of selling tangible personal property is required to surrender such permit for cancellation.

(e) If the estimated measure of tax averages $17,000 or more per month a prepayment is required for each of the first two months of each quarterly period (Sec. 6471).

What is required of retailers engaged in business in this state (use tax). (a) Every retailer engaged in business in this state and making sales of tangible personal property, the storage, use or other consumption of which is subject to the use tax, must register with the board on a form prescribed by the board. No registration fee is required.

(b) At the time of making any sales of tangible personal property, the storage, use or other consumption of which is subject to the use tax, the retailer must collect the tax from the purchasers and give to the purchasers a receipt therefor in a form and manner prescribed by the board.

(c) Any retailer deriving rentals from a lease of tangible personal property situated in this state is a retailer engaged in business in this state with respect to the leased property.

What is required of consumers purchasing tangible personal property subject to use tax. (a) When purchasing from retailers engaged in business in this state or authorized by the board to collect the tax:

(1) The consumer must at the time of the sale or making of lease payments pay the tax to the retailer and obtain a receipt therefor, which receipt should be retained by the consumer.

(2) If the consumer neglects or refuses to pay the tax imposed by the act to such retailer, a determination of the amount of tax due may be levied against the consumer and a 10-percent penalty added thereto.

(b) When purchasing or leasing from retailers not engaged in business in this state or not authorized by the board to collect the tax: returns must be filed with the board on or before the last day of the month following each quarterly period during which tangible personal property, the storage, use or

other consumption of which is taxable, is purchased or leased, except that the board may require, in some cases, filing of returns for other than quarterly periods.

(c) All sellers of certain mobilehomes, vehicles, vessels, and aircraft are retailers unless another person is the retailer as provided under Sec. 6275(b). Consumers purchasing vehicles from persons or firms other than manufacturers, remanufacturers, dealers, dismantlers or lessor-retailers certificated and licensed under the Vehicle Code may be liable for use tax unless the transaction comes within some exemption provided in the law. If the tax is due, it will be collected by the Department of Motor Vehicles at the time the taxpayer registers his vehicle in California.

(d) Consumers purchasing a vessel or aircraft, unless exempt or purchased from a retailer to whom tax was paid and a receipt obtained, are liable for use tax measured by the purchase price of the vessel or aircraft. The Department of Motor Vehicles collects the use tax on sales of undocumented vessels required to be registered under the Vehicle Code.

What is required of solicitors. ''Information Returns'' must be filed quarterly 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 use tax and the sellers of which do not hold seller's permits or certificates of registration—use tax. Such returns must identify the purchasers and transactions in accordance with the regulations of the board.

Returns and payments. If a retailer's estimated measure of tax averages $17,000 or more per month, he shall, after notification by the board, make specified prepayments of the state and local tax (6 percent) and district transactions (sales) and use tax, where applicable. The prepayments are credited against the taxes due for the quarterly period in which the prepayments became due.

All sellers must file quarterly returns with the board on or before the last day of the month following each quarterly period, except that the board may require, in some cases, filing of returns for other than quarterly periods. Returns are to be made on forms prescribed by the board and must be accompanied by a remittance of the amount shown thereon to be due, payable to the State Board of Equalization.

Failure to pay any tax or determination within the time required by the code will result in the imposition of a 10-percent penalty. Failure to make a prepayment will result in a 6-percent penalty.

If a return is not filed, a determination of the amount of tax due will be made and 10-percent penalty added thereto.

Records. Sellers and consumers must keep complete records of all business transactions, including sales, receipts, purchases and other expenditures and must retain the records for examination by the state.

Concessionaires. Persons holding seller's permits are responsible for the payment of taxes, penalties and interest under the Sales and Use Tax Law

arising out of any sales made by any concessionaire who may operate in the premises of the permittee unless the concessionaire has first obtained in his own name a permit to engage in business as a seller.

Disposition of proceeds. All collections are deposited in the State Treasury to the credit of the Retail Sales Tax Fund. After allowance of refunds for any erroneous collections and payments, certain revenues are transferred to the State Transportation Fund, the Local Revenue Fund, and the Local Public Safety Fund. The balance is transferred to the General Fund to be expended for the support of the state government and the public school system.

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SALES AND USE TAX LAW

(Part 1, Division 2, Revenue and Taxation Code *)

Enacted Statutes 1941, Chapter 36; amended Statutes 1941, Chapters 247, 681, 767; Statutes 1943, Chapters 699, 781, 822, 889, 1004; Statutes 1945, Chapters 416, 500, 646, 926, 1050, 1094; Statutes 1947, Chapters 24, 139, 567, 659, 780, 854, 855, 941; Statutes 1948, Chapter 12; Statutes 1949, Chapters 309, 667, 668, 669, 727, 728, 1204; Statutes 1951, Chapters 798, 870, 1007, 1171; Statutes 1953, Chapters 359, 691, 972, 1201, 1202, 1656; Statutes 1954, Chapter 5; Statutes 1955, Chapters 70, 126, 794, 795, 833, 1106, 1505; Statutes 1956, Chapter 13; Statutes 1957, Chapters 155, 372, 592, 733, 807, 1482, 1483; Statutes 1959, Chapters 416, 1070, 1180, 1311, 1738, 1840, 1968; Statutes 1960, Chapter 10; Statutes 1961, Chapters 17, 149, 493, 866, 869, 872, 2193; Statutes 1962, Chapters 3, 7; Statutes 1963, Chapters 612, 613, 716, 749, 1005, 1134, 1264, 1325, 1527, 1824, 1858, 1951, 1968, 1985; Statutes First Extra Session 1964, Chapters 56 and 88; Statutes 1965, Chapters 342, 369, 667, 671, 679, 830, 863, 864, 1188, 1257, 1292, 1480, 1920, 1960; Statutes First Extra Session 1965, Chapter 2; Statutes 1966, Chapters 2, 5, 7; Statutes 1967, Chapters 321, 556, 693, Y32, 881, 925, 963, 964, 1086, 1209, 1632; Statutes 1968, Chapters 279, 408, 501, 540, 940, 1005, 1034, 1061, 1299, 1336, 1365; Statutes First Extra Session 1968, Chapter 1; Statutes 1969, Chapters 24, 180, 368, 447, 676, 710, 915, 1153, 1533, 1587; Statutes 1970, Chapters 547, 548, 826, 935, 1135, 1215, 1457, 1507, 1511, 1546, 1624; Statutes 1971, Chapters 284, 1400, 1634, 1741, 1777, 1816; Statutes First Extra Session 1971, Chapters 1 and 2; Statutes 1972, Chapters 19, 44, 103, 402, 640, 877, 973, 1002, 1176, 1273, 1336, 1351, 1406, 1408; Statutes 1973, Chapters 67, 296, 458, 746, 1019, 1206, 1207, 1212; Statutes 1974, Chapters 156, 259, 610, 687, 709, 827, 1010, 1108, 1406, 1421, 1516; Statutes 1975, Chapters 661, 711, 1116, 1130; Statutes 1976, Chapters 1079, 1284; Statutes 1977, Chapters 329, 481, 607, 921, 1245, 1252; Statutes 1978, Chapters 26, 39, 229, 827, 878, 959, 1010, 1019, 1117, 1182, 1211, 1383; Statutes 1979, Chapters 125, 161, 260, 322, 400, 765, 863, 1048, 1150, 1160, 1161, 1180; Statutes 1980, Chapters 91, 285, 546, 600, 645, 849, 908, 994, 1068, 1077, 1149, 1194, 1246, 1248, 1290, 1326, 1348, 1352; Statutes 1981, Chapters 35, 337, 541, 714, 781, 947, 975; Statutes 1982, Chapters 5 (First Extra Session), 301, 327, 406, 454, 664, 665, 708, 951, 1168, 1223, 1274, 1423, 1589, 1591; Statutes 1983, Chapters 10 (First Extra Session), 143, 184, 323, 337, 377, 605, 844, 1050, 1059, 1092, 1102, 1158, 1286, 1321.

Chapter 1. General Provisions and Definitions. §§ 6001–6024.
1.5. Streamlined Sales Tax Project. §§ 6025–6031.
2. The Sales Tax. §§ 6051–6095.
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Chapter 1. General Provisions and Definitions

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6001. **Title.** This part is known and may be cited as the "Sales and Use Tax Law."

6002. **Construction.** Except where the context otherwise requires the definitions given in this chapter govern the construction of this part.

6003. **"Sales Tax."** "Sales tax" means the tax imposed by Chapter 2 of this part.

6004. **"Use Tax."** "Use tax" means the tax imposed by Chapter 3 of this part.

6005. **"Person."** "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal

organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

History.—Stats. 1945, p. 1722, operative July 1, 1945, added "trustee," and "the United States," substituted "joint venture," for "joint adventure," and "of the State" for "thereof." Stats. 1951, p. 2389, operative July 1, 1951, added "assignee for the benefit of creditors" and "trustee in bankruptcy." Stats. 1994, Ch. 1200, in effect September 30, 1994, substituted "partnership" for "copartnership" after "firm", added "limited liability company" after "venture", and substituted "state" for "State" after "this" and after "of the".

School districts.—A school district is a ''person'' as that term is used in the Sales and Use Tax Law, *Los Angeles City High School District* v. *State Board of Equalization* (1945) 71 Cal.App.2d 486.

Trustee in bankruptcy.—The amendment of this section in 1945 did not have the effect of imposing the sales tax on sales by a trustee in bankruptcy in liquidation of the bankrupt estate pursuant to court order. *California State Board of Equalization* v. *Goggin* (19514) 191 F.2d 726, cert. den. (1952) 342 U.S. 909. But see *Debtor Reorganizers, Inc.* v. *State Board of Equalization* (1976) 58 Cal.App.3d 691, summary following Section 6201.

Liquidation sales by trustees in bankruptcy.—A nondiscriminatory tax on a bankruptcy liquidation sale is not barred by the now discredited intergovernmental tax immunity doctrine, and there is no longer any constitutional impediment to imposition of a sales tax or a use tax on a bankruptcy liquidation sale. The sales and use tax does not discriminate against a bankruptcy trustee or those that they deal with, and the bankruptcy trustee is not so closely connected to the federal government that the two cannot be viewed as separate entities. *California State Board of Equalization* v. *Sierra Summit, Inc.* (1989) 490 U.S. 844.

6006. **"Sale."** ''Sale'' means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. ''Transfer of possession'' includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) The 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.

(c) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(d) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.

(e) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(f) 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, or of any publication.

(g) Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of:

(1) Motion pictures or animated motion pictures, including television, films, and tapes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.

(5) 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 transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property. For purposes of this paragraph, ''transferor'' shall mean the following:

(A) A person from whom the lessor acquired the property in a transaction described in subdivision (b) of Section 6006.5.

(B) A decedent from whom the lessor acquired the property by will or the laws of succession.

(6) A mobilehome, as defined in Sections 18008 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.

(7) Paragraphs (1) and (5) and Section 6094.1 shall not apply to rentals or leases of video cassettes, video tapes, and video discs 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, video tape, or video disc.

History.—Stats. 1945, p. 1722, operative July 1, 1945, rearranged wording for clarification. Stats. 1953, p. 3384, in effect September 9, 1953, deleted former (b) relating to a withdrawal for delivery to a point in this state and relettered remaining subdivisions. Stats. 1965, p. 5444 (First Extra Session) operative August 1, 1965, added "or" and deleted "lease or rental" from the first sentence and " 'lease' or 'rental' " from the second sentence, and added (g). Stats. 1966, p. 190, in effect April 26, 1966, operative as to all transactions occurring after July 1, 1965 (except that retroactive operation shall not affect the state's right to any tax which vested prior to the effective date), added "or leased in substantially the same form as acquired by a transferor," "or transferor", and the definition of transferor to (g) (4). Stats. 1967, p. 2720, in effect November 8, 1967, renumbered former (g) (4) as (g) (5) and added new (g) (4). Stats. 1970, p. 2132, in effect November 23, 1970, reworded (g) (4). Stats. 1971, p. 590, in effect July 7, 1971 operative October 1, 1971, added the phrase commencing with "except when such food, meals, or drinks . . ." to (d). Stats. 1971, p. 3832 in effect December 16, 1971 operative January 1, 1972 amended the former section as follows: Deleted the words "for hire" following "equipment for use in", made reference to section 6023 and deleted examples of mobile transportation equipment under (g) (4). Stats. 1971, p. 5142 (First Extra Session), operative January 1, 1972, repealed and re-enacted the section. Section 53(d) of that act provided that it is the intent of the Legislature in enacting sections 19 and 20 of the act [appliable to section 6006] that the provisions of Stats. 1971, Ch. 284, and Stats. 1971, Ch. 1777, of the regular session both be given effect as they amended section 6006 of the Revenue and Taxation Code. Stats. 1974, Ch. 709, effective September 6, 1974, deleted a provision in (d) relating to certain mentally retarded persons. Stats. 1978, Ch. 1211, effective January 1, 1979, in subdivision (g) (5) deleted "or transferor has paid sales tax reimbursement pursuant to Section 6052 or" following "as to which the lessor" and substituted "establishes to the satisfaction of the board that the lessor or his transferor acquired the property in a transaction that was a retail sale with respect to which the retailer has reported and paid the sales tax to the board or as to which the lessor or the transferor". Stats. 1980, Ch. 285, operative July 1, 1980, added (g) (6). Stats. 1980, Ch. 1068, effective September 26, 1980, deleted "establishes to the satisfaction of the board that the lessor" following "transferor, as to which the lessor" and substituted "lessor or transferor has paid the sales tax" for "retailer has reported and paid the sales tax to the board" following "with respect to which the" in (g) (5). Stats. 1982, Ch. 1589, in effect January 1, 1983, substituted "transferor has paid sales tax reimbursement" for "his transferor . . . the transferor" before "has paid use tax" in subsection (5) of subdivision (g). Stats. 1983, Ch. 323, in effect July 21, 1983, operative September 1, 1983, added subsection (7) to subdivision (g). Stats. 1983, Ch. 1102, in effect September 27, 1983, added the balance of the first sentence after "videodiscs" to subdivision (g)(7). Stats. 1987, Ch. 915, in effect September 21, 1987, in subdivision (a), deleted comma after "Transfer of possession"; in subdivision (g)(1), deleted "picture" following "Motion" and substituted "pictures or animated motion pictures"; in subdivision (g)(5), deleted "hereof, transferor" following "For purposes" and substituted "of this paragraph, 'transferor' "; and in subdivision (g)(7), inserted spaces after "video".

Note.—Stats. 1976, Ch. 1384, operative September 30, 1976, provides in part: ''Sale'' and ''purchase'', for the purposes of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, do not include any transfer of title of tangible personal property constituting any project or pollution control facility to the California Pollution Control Financing Authority by any participating party, nor any lease or transfer of title of tangible personal property constituting any project or pollution control facility by the authority to any participating party, when the transfer or lease is made pursuant to Division 27 (commencing with Section 44500) of the Health and Safety Code. The terms ''project'', ''pollution control facility'', and ''participating party'' as used in this section have the meanings ascribed to them in Sections 44506 and 44508 of the Health and Safety Code.

Dyeing of fabrics.—The dyeing of new fabrics furnished to the dyer by the consumer is a ''processing'' within the meaning of (b) of this section, and the sales tax therefore applies to the gross receipts from such dyeing. *Banken* v. *State Board of Equalization* (1947) 79 Cal.App.2d 572.

Processing of radiographs by lay laboratory.—The taking and processing of radiographs for the use of doctors and dentists results in a sale within the meaning of this section despite the fact that the radiographs, after being used, are returned to and stored by the laboratory. *Maranville* v. *State Board of Equalization* (1950) 99 Cal.App.2d 841. See, however, Section 6020 under which producers of X-ray films are consumers on and after June 1, 1951.

Fixture.—The fabrication and installation by a contractor of a 521-ton turbine generator unit is a sale of tangible personal property although it becomes a part of the real property of the purchaser. *General Electric Co.* v. *State Board of Equalization* (1951) 111 Cal.App.2d 180.

The furnishing of fixtures by a contractor in the course of fabricating and installing an elevator system are retail sales of tangible personal property even though the property in the hands of the purchaser becomes a part of the real property. The distinctions made by the Board between materials and fixtures incorporated into elevator systems must be upheld in the absence of a showing that the action of the Board is arbitrary or unreasonable. *Coast Elevator Company* v. *State Board of Equalization* (1975) 44 Cal.App.3d 576.

Elevators are properly classified by the Board as fixtures pursuant to Regulation 1521, the manufacture and installation of which is a taxable sale. *Oliver and Williams Elevator Corp.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 890.

The classification of air conditioning control devices by the Board as fixtures is neither arbitrary nor unreasonble. The installation of the devices by the manufacturer under a lump sum contract does not prevent an allocation of a part of that sum to the fixtures that are subject to tax. *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 897.

Oil well drilling tools.—The use by the board of the ''substantial consumption'' test in determining whether a lease or rental is in lieu of a sale is reasonable and valid. Under that test, the rental to an oil well driller of a ''rock bit'' having an effective life of but one rental is a transaction in lieu of a transfer of title within the meaning of (a)of this section. *Universal Engineering Co., Ltd.* v. *State Board of Equalization* (1953) 118 Cal.App.2d 36.

X-ray technicians—prior law.—The furnishing of films to physicians by an X-ray technician for diagnostic purposes only, prior to June 1, 1951, was a sale under paragraph (f) of this section. *People* v. *Grazer* (1956) 138 Cal.App.2d 274. But see Section 6020.

Aircraft wings exchange.—Where the taxpayer modified aircraft wings, installed them on the customer's aircraft, and took the aircraft's original wings in exchange as trade-ins, the court held that since the wings were the taxpayer's property at all times prior to installation on the customer's aircraft, the exchange was a retail sale and not repair. *Aircraft Tank Service, Inc.* v. *State Board of Equalization* (1964) 224 Cal.App.2d 582.

Sale of sand and gravel.—Where a supplier agreed to furnish sand and gravel to a highway contractor ''f.o.b. job site,'' title did not pass until the goods reached the place agreed upon and the providing of asphaltic material by the supplier from its pit was a sale of tangible personal property and not a transfer of an interest in real property. *Santa Clara Sand and Gravel Co.* v. *State Board of Equalization* (1964) 225 Cal.App.2d 676.

Draftsman's drawings.—Since the true object of transactions, in which a draftsman makes detailed drawings based upon specifications furnished by the person placing the order, are the drawings and not the designs or specifications pictured therein, such transactions are sales of tangible personal property under subdivision (f). *Albers* v. *State Board of Equalization* (1965) 237 Cal.App.2d 494, cert. den. (1966) 383 U.S. 960.

Certain deep well agricultural pumps are not fixtures.—A pump company which sells and installs such pumps is not a construction contractor furnishing and installing fixtures, but is a retailer of machinery and equipment, with respect to the pumps which do not become an integral part of an irrigation system, have a useful life of only a few years, and are not affixed to the land in a permanent fashion but are set in open spaces, usually on timbers, held in place by gravity and are often moved from one well to another. *City of San Joaquin* v. *State Board of Equalization* (1970) 9 Cal.App.3d 365.

Electrical Power Transmission Lines.—See Section 6016.5.

Revenue and Taxation Code Section 6006(g)(5) Not Discriminatory.—On August 1, 1965, the definition of ''sale'' in the Sales and Use Tax Law was extended to include the lease of property rented in a form substantially different from that acquired by the lessor [Rev. & Tax. Code Sec. 6006(g)(5)]. Taxpayer thereafter paid a ''use'' tax measured by his receipts from the rental of powered houseboats constructed prior to August 1 of materials on which he had previously paid sales or use tax. Taxpayer sought a refund of the amounts paid by him subsequent to August 1, 1965, contending, on appeal, that Section 6006(g)(5) discriminated upon lessees who leased property in a different form from that in which it was acquired by the lessor. The court, in holding that there was a rational basis for the distinction drawn by the challenged section, stated that since the labor cost would not otherwise be includable within the measure of sales and use tax, the Legislature could properly conclude that the rental to the lessee, and not the cost of tangible items to the lessor, was the amount most likely to result in a measure of tax equitable with that paid by others under the statutory scheme. *Ladd* v. *State Board of Equalization* (1973) 31 Cal.App.3d 35.

Regulation 1521 is valid.—Regulation 1521 treating construction contractors as consumers of materials and as retailers of fixtures furnished and installed by them, is valid. *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 907.

Timeliness of Reporting Tax on Purchase Price of Property Leased.—The Board may validly require a lessor of tangible personal property which is leased in substantially the same form as acquired by the lessor to pay tax measured by rental receipts if he does not, at the time the property is first placed in rental service, pay tax or tax reimbursement measured by the purchase price of the property. *Action Trailer Sales, Inc.* v. *State Board of Equalization* (1975) 54 Cal.App.3d 125.

Transactions between related entities.—Where a corporation's sole function was to fabricate devices designed by its corporate parent using materials furnished by its corporate grandparent which retained title to all ideas, materials, and completed devices, and where the corporation served only as a conduit for the payment of salaries and acted solely on orders from the corporate grandparent, with a long-time employee of the corporate grandparent supervising the day-to-day operations, the transactions between the related entities did not constitute sales within the meaning of (b) of this section so as to justify imposition of sales tax. *Mapo, Inc.* v. *State Board of Equalization* (1975) 53 Cal.App.3d 245.

Lease Renewals.—Tax applies to leases executed before August 1, 1965, if such leases are extended or modified, either through action or inaction, subsequent to that date. *International Business Machines* v. *State Board of Equalization* (1980) 26 Cal.3d 923.

Materials Consumed by Construction Contractor.—Where a contractor supervises and directs the installation of the materials that he furnishes on a construction job and is responsible for necessary corrections, he is the consumer rather than the seller of such materials under Regulation 1521, even though the employees supervised and directed are employed by the general contractor or by a subcontractor of the general contractors. *Western Concrete Structures, Inc.* v. *State Board of Equalization* (1977) 66 Cal.App.3d 543.

Sale Occurs When Security for Goods Retained by Seller.—A taxable sale takes place notwithstanding the fact that a contract provides for retention of legal titles to tooling by the seller as security for the purchase price of the parts sold, when provisions of the sale agreement give the buyer substantially absolute control over the use and disposition of the tooling including an irrevocable power of attorney from the seller to execute in its name any documents appropriate to transfer of the tooling. *Northrop Corporation* v. *State Board of Equalization* (1980) 110 Cal.App.3d 132.

Fabrication of keypunch cards.—Computer service bureau's transfer of data by keypunch cards is taxable fabrication of property to special order of customer, and is not a service, despite minimal cost of blank cards. *Intellidata, Inc.* v. *State Board of Equalization* (1983) 139 Cal.App.3d 594.

Mobile transportation equipment purchased.—Leasing companies purchased mobile transportation equipment, not just existing leases of the equipment, when all indicia of ownership were transferred. *Newco Leasing, Inc.* v. *State Board of Equalization* (1983) 143 Cal.App.3d 120.

Alterations of new clothing.—Where taxpayer altered new clothing for customers who purchased the clothing elsewhere, alteration charges were taxable under section 6006(b) as a step in fabricating a product. Transfer of title to tangible property is not necessary to constitute a taxable sale. Fabrication labor is taxable even though customer does not furnish all the material necessary to fabricate a product. Board regulation using words "new clothing" not unconstitutionally vague. *Duffy* v. *State Board of Equalization* (1984) 152 Cal.App.3d 1156.

Transfer to Partnership—Assumption of Indebtedness.—A general partner in a commencing partnership made a taxable sale when it transferred equipment to the partnership. The taxable measure was the partnership's assumption of indebtedness on the equipment. *Cal-Metal Corp.* v. *State Board of Equalization* (1984) 161 Cal.App.3d 759.

Regeneration of water purification tanks.—The replacement of depleted tanks with regenerated tanks constitutes a taxable "sale" as defined under 6006. A taxable sale includes the reconditioning of tangible personal property by delivery to the customer of reconditioned property which has been commingled with the same kind of property as the customer originally delivered to the reconditioner. *Continental Water Conditioning Company of the Bay Area, Inc.* v. *State Board of Equalization* (1989) 207 Cal.App.3d 783.

Assumption of liabilities by a commencing partnership.—A taxable sale occurs when a commencing partnership assumes the liabilities of its partners in exchange for tangible personal property. *Industrial Asphalt, Inc.* v. *State Board of Equalization* (1992) 5 Cal.App.4th 1237.

Sales and Leasebacks—Financing Transactions.—No taxable sale occurred, despite transfer of title to equipment, where the object of transactions between equipment owner and leasing companies was to obtain financing for the purchase of the equipment, not to make sales and leasebacks. *Cedars-Sinai Medical Center* v. *State Board of Equalization* (1984) 162 Cal.App.3d 1182.

Marketing aids not sold if no consideration is received.—Board regulation 1670(c) was valid in requiring evidence that supplier received consideration of at least 50% of purchase price of marketing aids from its customers, in order to prove sales of marketing aids occurred. *Wallace Berrie & Co.* v. *State Board of Equalization* (1985) 40 Cal.3d 60.

Cranes affixed to buyer's real property was a sale.—In the hands of seller, cranes were personal property, and transfer to buyer was a sale, even though sale occurred after affixation of cranes to buyer's real property. *U. S. Lines, Inc.* v. *State Board of Equalization* (1986) 182 Cal.App.3d 529.

Promotional displays used as marketing aids.—Where seller packaged displays with merchandise and sold both for a single price, seller was the consumer of the marketing aids since there was no clear evidence of a sale. *Parfums-Corday, Inc.* v. *State Board of Equalization* (1986) 187 Cal.App.3d 630.

Unpaid rental receipts included in sales price.—When buyer wanted to own equipment outright rather than lease it for the remainder of the lease term, the resulting sale terminated the original lease and brought about a redetermination of the value of the equipment. The sales price included the unpaid rental receipts balance paid by buyer for the transfer of title. *Framingham Acceptance Corp.* v. *State Board of Equalization* (1987) 191 Cal.App.3d 461.

Assumption of indebtedness—joint liability.—Where taxpayer transferred assets and liabilities of its divisions to existing subsidiaries, but remained jointly liable for those liabilities, there was no consideration and thus no sale. *Macrodyne Industries, Inc.* v. *State Board of Equalization* (1987) 192 Cal.App.3d 579 [disapproved in *Beatrice Co.* v. *State Board of Equalization* (1993) 6 Cal.4th 767].

Identical but different property.—Leases of duplicates of master tapes and acetate tapes are not tax exempt as property leased in substantially the same form as acquired. The court agreed with the Board that the Sec. 6006(g)(5) exemption does not include identical but different property. *A & M Records, Inc.* v. *State Board of Equalization* (1988) 204 Cal.App.3d 358.

Power system is a taxable fixture.—Taxpayer, an electrical contractor, furnished and installed an emergency standby uninterruptible power system for the military. The court rejected the taxpayer's contention that the equipment it purchased should be classified as machinery or equipment for which no tax need be paid holding that a system so essential and integral to the operation of the facility must be classified as a taxable fixture. *Overhead Electric Co.* v. *State Board of Equalization* (1991) 227 Cal.App.3d 1230.

Telephone paging services.—Taxpayer, who provided paging service, was the consumer, and not the seller, of paging devices provided as part of the service where there was no separate charge for the devices and taxpayer maintained ownership and responsibility for maintenance, because the devices were provided only incidentally to the paging service. *MCI Airsignal, Inc.* v. *State Board of Equalization* (1991) 1 Cal.App.4th 1527.

Assumption of liabilities is consideration.—The assumption of liabilities by a subsidiary was consideration as between the transferor (the plaintiff) and the transferee (the subsidiary) even if the plaintiff remained primarily and jointly liable for debts and obligations assumed by its subsidiary. Since the transfer was for consideration, it was a sale subject to sales tax. *Beatrice Co.* v. *State Board of Equalization* (1993) 6 Cal.4th 767.

Transfer of drawings and designs.—Taxpayer sold drawings and designs embodying technology as well as manuals and procedures for use as technical guides. A sale does not become nontaxable simply because its principal purpose is to transfer intellectual content of a physical object. Here, there was a taxable sale because the transfer was not incidental to the providing of a service and the purchaser acquired the physical items for their own sake and not only for their intangible value. *Navistar Internat. Transportation Corp.* v. *State Board of Equalization* (1994) 8 Cal.4th 868.

Supplies consumed in repairs.—Sales of supplies to repair shops were taxable retail sales even when the repair shops made a separate charge itemized as "paints and materials" for the purpose of recovering their costs of supplies consumed during the repairs. The repair shops did not furnish the supplies to their customers but consumed them in making the repairs and thus did not purchase the supplies for resale. *Modern Paint & Body Supply, Inc.* v. *State Board of Equalization* (2001) 87 Cal.App.4th 703.

Fixtures.—The Board properly applied Regulation 1521 in determining that the signs at issue were fixtures. *Richard Boyd Industries, Inc.* v. *State Board of Equalization* (2001) 89 Cal.App.4th 706.

6006.1. **Continuing sale.** The granting of possession of tangible personal property by a lessor to a lessee, or to another person at the direction of the lessee, is a continuing sale in this state by the lessor for the duration of the lease 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 person.

History.—Added by Stats. 1965, p. 5445, operative August 1, 1965.

6006.3. **"Lease."** "Lease" includes rental, hire and license. "Lease" 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. 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 the completion of the required payment or has the option at that time to purchase the property for a nominal amount, the contract shall be regarded as a sale under a security agreement from its inception and not as a lease. In the case of a contract designated as a lease with any state or local governmental body, or any agency or instrumentality thereof, the lessee shall be treated as bound for a fixed term notwithstanding any right of the lessee to terminate the contract in the event that sufficient funds are not appropriated to pay amounts due under the contract.

History.—Added by Stats. 1965, p. 5445, operative August 1, 1965. Stats. 1967, p. 2257, in effect November 8, 1967, deleted former subdivision (b). Stats. 1969, p. 1390, in effect November 10, 1969, added the second sentence. Stats. 1978, Ch. 1383, operative January 1, 1979, substituted "twenty dollars ($20)" for "ten dollars ($10)" in the third sentence. Stats. 1986, Ch. 825, in effect September 15, 1986, added the third and fourth sentences.

Note.—Stats. 1986, Ch. 825, Section 1.5, as amended by Stats. 1987, Ch. 38, Section 11 specified that if a transaction entered into prior to January 1, 1987 has been treated by the seller as a lease, the full term of which has not expired or has not been earlier terminated, then that transaction shall be classified as a sale on January 1, 1987, and shall be classified as a lease for all earlier periods. Any sales or use tax previously paid on a transaction described in the preceding sentence, but not interest on that sales or use tax previously paid, shall be credited against any sales or use tax due on that transaction.

Furnishing of Water Conditioning "Exchange Units."—The furnishing for a periodic charge of water conditioning "exchange units" which are replaced periodically is a lease of tangible personal property and subject to tax rather than a nontaxable service of softening water for the customer. *Culligan Water Conditioning* v. *State Board of Equalization* (1976) 17 Cal.3d 86.

Furnishing of Beverage Dispensers.—The furnishing of beverage dispensers together with maintenance and repairs for a monthly charge is a taxable lease of tangible personal property rather than a tax-exempt service, regardless of the fact that the charge was unreasonable if viewed from the standpoint of the cost of the dispensers only. *Bar Master, Inc.* v. *State Board of Equalization* (1976) 65 Cal.App.3d 408.

License fees—master sound tapes.—Licenses are taxable leases of master tapes when recordings are reproduced from master; taxpayer did not transfer or acquire solely intangible rights in the licenses. *Capitol Records, Inc.* v. *State Board of Equalization* (1984) 158 Cal.App.3d 582.

6006.5. **"Occasional sale."** "Occasional sale" includes all of the following:

(a) A sale of property not held or used by a seller in the course of activities for which he or she 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 the sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity for which he or she 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.

(b) Any transfer of all or substantially all the property held or used by a person in the course of those activities when after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer. For the purposes of this section, stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.

(c) A sale of property, other than hay, by a producer of 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.

History.—Added by Stats. 1947, p. 2030, in effect June 19, 1947. Stats. 1969, p. 998, in effect November 10, 1969, substituted "activities" for "an activity" in (a) and (b) and added "or permits or would be required to hold a seller's permit or permits if the activities were conducted in this state" and "or would be required to hold a seller's permit if the activity were conducted in this state" to (a). Stats. 1985, Ch. 1083, effective October 1, 1985, added "or she" after "he" and substituted "that the" for "such" in subdivision (a), substituted "the" and "those" for "such" throughout subdivision (b), and added subdivision (c). Stats. 1994, Ch. 903, in effect January 1, 1995, added ", other than hay," after "property" and deleted ", other than hay," after "producer of hay," in subdivision (c).

Liquidation sale.—Where there were a number of plant equipment sales prior to the termination of a business, a sale of plant equipment thereafter is one of the same series of sales and not an occasional sale. *Sutter Packing Co.* v. *State Board of Equalization* (1956) 139 Cal.App.2d 889.

Division of business.—An exchange of assets between two affiliated corporations to effect a territorial division of a business is a retail sale, and such sale and 19 other sales of similar kinds of used equipment to other persons are a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit. *Pacific Pipeline Construction Co.* v. *State Board of Equalization* (1958) 49 Cal.2d 729.

Sale of a business not an occasional sale.—A manufacturer who customarily made sales at retail and held a seller's permit, is subject to the retail sales tax on the sale of all capital assets used in operating the business. Sale of the business assets in such a case is not an occasional sale. Each sale in question was one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit. *U.S. Industries, Inc.* v. *State Board of Equalization* (1962) 198 Cal.App.2d 775.

Sale of a business—occasional sale.—A manufacturer who had made sales for resale but no retail sales and whose product was not suitable for retail sale was not a ''seller'' and the sale of the manufacturer's business assets was, therefore, an occasional sale. *Glass-Tite Industries, Inc.* v. *State Board of Equalization* (1968) 266 Cal.App.2d 691 (this case was overturned by a 1983 amendment to Section 6014).

A manufacturer who makes no retail sales but whose product is suitable for retail sale is a ''seller'' and sale of the manufacturer's business assets was not an occasional sale. *Davis Wire Corp.* v. *State Board of Equalization* (1976) 17 Cal.3d 761.

Sale of hotel assets.—The sale by a hotel of all its furniture, fixtures, and other assets was not an ''occasional sale'' where the hotel operated a restaurant, bar, and smoke shop through which sales requiring the holding of a seller's permit were made and where the hotel had made numerous sales of property of the type disposed of in the final sale during the months prior to that sale. *Hotel Del Coronado Corp.* v. *State Board of Equalization* (1971) 15 Cal.App.3d 612.

Sale of Segment of Business Not an Occasional Sale.—An exchange of assets and name of a wholly owned subsidiary for common stock of, but not a controlling interest in, the transferee's parent, was subject to the sales tax even though the sale of plaintiff's subsidiary's business to the transferee's subsidiary business could have been effected by a tax free statutory merger. *Simplicity Pattern Company* v. *State Board of Equalization* (1980) 27 Cal.3d 900.

Hospital equipment.—Sale of hospital equipment used for medical and nursing services is an exempt occasional sale, even though hospitals held seller's permit for other activities. Board regulation applying unitary business concept conflicts with section 6006.5(a). *Ontario Community Foundation, Inc.* v. *State Board of Equalization* (1984) 35 Cal.3d 811.

Note.—See Sections 6275, 6281 and 6367 regarding vehicles, vessels and aircraft.

Producer of Crude Oil is a Seller.—A ''seller'' includes a producer of crude oil which made no retail sales of the crude oil. The sale of the producer's assets was not an exempt occasional sale. *Santa Fe Energy Co.* v. *State Board of Equalization* (1984) 160 Cal.App.3d 176.

Series of sales includes sales by all divisions of seller.—Where seller sold the assets of a service division, all sales by all divisions may be considered in determining whether a series of sales required seller to hold seller's permit. *Chemed Corp.* v. *State Board of Equalization* (1987) 192 Cal.App.3d 967.

Assumption of liabilities by a commencing partnership.—A taxable sale occurs when a commencing partnership assumes the liabilities of its partners in exchange for tangible personal property. *Industrial Asphalt, Inc.* v. *State Board of Equalization* (1992) 5 Cal.App.4th 1237.

6006.6. **"Sale"; auction.** ''Sale'' includes any sale at an auction in respect to tangible personal property which is sold to a successful bidder at the auction upon an agreement or understanding at the time of the sale that the property involved either will not be delivered to the successful bidder or that any amount which he may pay for the property pursuant to the sale will be returned to him. The tax shall be computed in such case upon the amount of the successful bid.

History.—Added by Stats. 1957, p. 2802, in effect September 11, 1957.

6007. **"Retail sale."** A ''retail sale'' or ''sale at retail'' means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.

History.—Stats. 1955, p. 1396, in effect September 7, 1955, added "or agent of such owner, former owner or factor," and "or person for redelivery to a consumer,". Stats. 1992, Ch. 902, in effect September 25, 1992, operative January 1, 1993, substituted "When" for "The delivery in this State" before "tangible", added "is delivered" after "property", added a comma after "thereof", deleted comma after "factor", substituted "that" for "such" after "agent of", deleted ", if the delivery is" after "or factor", added "to a" after "comsumer or", substituted "state" for "State" after "business in this", deleted "is a retail sale in this State by" after "state,", added "shall be deemed . . . property" after "delivery" in the first sentence of the second paragraph; added "or she" after "He", added "or her" after "his", and added "or sales price" after "gross receipts" in the second sentence of the second paragraph.

Sales of breeding animals.—Sales of fur-bearing animals known as chinchillas for breeding purposes are not exempt from the sales tax as sales for the purpose of resale. *Chapman Chinchilla Sales Co.* v. *Johnson* (1942) 49 Cal.App.2d 195.

Sales of chemicals used in manufacture of alcohol.—Sales of chemicals for use in the manufacture of commercial alcohol, only a small and uncertain proportion of the chemicals remaining in the alcohol, are retail sales and, accordingly, the sales tax applies with respect thereto. *American Distilling Co.* v. *State Board of Equalization* (1942) 55 Cal.App.2d 799.

Sales of ice to packers and shippers of vegetables.—Sales of ice to packers and shippers of vegetables for the purpose of preserving the vegetables during shipment are retail sales and, therefore, taxable even though the purchasers of the vegetables may be billed separately for the ice. *People* v. *Puritan Ice Co.* (1944) 24 Cal.2d 645; *People* v. *Monterey County Ice & Development Co.* (1938) 29 Cal.App.2d 421.

Sales of dairy cows.—Sales of cows to dairymen for the primary purpose of producing milk are not sales for resale merely because the purchaser intends to market them as beef when their usefulness as dairy cows is ended. *Kirk* v. *Johnson* (1940) 37 Cal.App.2d 224. See, however, Section 6358, under which the receipts from such sales are now exempt.

Regular course of business.—A sale to be a ''retail sale'' need not be of the kind made in the regular course of business of the seller. *Market Street Railway Co.* v. *State Board of Equalization* (1955) 137 Cal.App.2d 87.

Dry ice.—Sales of dry ice are at retail when made to a retailer who places the dry ice with ice cream products in a cardboard container and delivers the entire package to a purchaser of the ice cream products. *Good Humor Co.* v. *State Board of Equalization* (1957) 152 Cal.App.2d 873.

Metal door frames.—The manufacturer was the retailer rather than the consumer of door frames furnished f.o.b. jobsite and installed by others. *Overly Manufacturing Co.* v. *State Board of Equalization* (1961) 191 Cal.App.2d 20.

Operator of employee cafeterias.—An independent contractor who operated employee cafeterias pursuant to contracts with employers was the retailer of meals which were not exempt from sales tax under section 6363 which, prior to September 20, 1963, exempted sales of meals to employees by employers' and employees' organizations. *Automatic Canteen Co.* v. *State Board of Equalization* (1965) 238 Cal.App.2d 372.

Furnishing and installing fixtures.—The furnishing and installation of fixtures for a lump sum price is a retail sale and not a sale to contractors for resale by them. *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 897.

Special Test Equipment Purchased for Resale by Government Contractors.—Sales and use tax is restricted in its operation to the sale or use of property sold at retail. A sale for resale is not a retail sale. *Lockheed Aircraft Corp.* v. *State Board of Equalization; Aerojet General Corp.* v. *State Board of Equalization* (1978) 81 Cal.App.3d 257.

By-Products of Manufacturing Process.—An aid in the manufacturing process is taxable despite the fact that some portion remains in the finished product or that an incidental waste or by-product results. *Kaiser Steel Corporation* v. *State Board of Equalization* (1979) 24 Cal.3d 188.

"Primary Purpose" Test.—The primary intent of the purchaser or primary purpose of the purchase is the test for determining whether a sale is taxable as a retail sale or exempt as a sale for resale, and such test is applicable to the manufacturing industries. *Kaiser Steel Corporation* v. *State Board of Equalization* (1979) 24 Cal.3d 188.

Transfer of Master Film Negatives for Use in Manufacturing.—When the primary purpose of selling film negatives and master recordings was to use them in manufacturing the final product rather than to incorporate them into that product, the sale is not a sale for resale. *Simplicity Pattern Company* v. *State Board of Equalization* (1980) 27 Cal.3d 900.

Advertising Catalogs—Marketing Aids.—A manufacturer which included with its video game cartridges, catalogs advertising its other games did not resell the catalogs as marketing aids. *Atari, Inc.* v. *State Board of Equalization* (1985) 170 Cal.App.3d 665.

Drop-ship rule is constitutional.—Drop-ship rule in second paragraph of section 6007 is constitutional and is an alternative definition of ''retail sale'' and under section 6091, a seller must overcome the presumption that its sale is at retail, including a ''retail sale'' as defined by the drop shipment rule. *Lyon Metal Products, Inc.* v. *State Board of Equalization* (1997) 58 Cal.App.4th 906, cert. denied (1998) 141 L.Ed.2d 158.

6007.5. **United States contractors.** A sale of tangible personal property to a contractor or subcontractor for use in the performance of contracts with the United States for the construction of improvements on or to real property in this State is a retail sale. The gross receipts from such a sale or the sales price of property so sold shall be included in the measure of the taxes imposed by this part.

History.—Added by Stats. 1955, Ch. 795, Section 2, in effect September 7, 1955.

Note.—See also Section 6384.

Constitutionality.—California has the constitutional power to impose sales and use taxes on contractors in relation to work performed at Federal facilities located in California because Congress has expressly consented to such tax in the Buck Act (4 U.S. C. 105) and has thereby waived the sovereign immunity of the United States. *C. R. Fedrick, Inc.* v. *State Board of Equalization* (1974) 38 Cal.App.3d 385, *cert. denied* (1975) 42 L.Ed.2d 820.

6008. **"Storage."** ''Storage'' includes any keeping or retention in this State for any purpose except sale in the regular course of business or subsequent use solely outside this State of tangible personal property purchased from a retailer.

Property installed in this state.—Use tax applies to automatic control equipment which is purchased outside this state, brought to this state, and permanently attached in this state to a locomotive which operates in interstate commerce partly in this state, even though the only actual functional use of the equipment occurs while the locomotive is running in another state. *Atchison, Topeka and Santa Fe Railway Co.* v. *State Board of Equalization* (1955) 131 Cal.App.2d 677.

6009. **"Use."** "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, and also includes the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease, except that it does not include the sale of that property in the regular course of business.

History.—Stats. 1965, p. 5445 operative August 1, 1965, added "and also includes the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease."

First substantial use.—Substantial use of property in state provides a taxable moment subjecting property to use tax, disregarding formal use in other states. *Western Pacific RR Co.* v. *State Board of Equalization* (1963) 213 Cal.App.2d 20.

Sale outside state and leased back in state.—Where a California retailer sold two oil tankers with title and possession passing out of state and the vessels were immediately leased back to the retailer and were used in California in intrastate commerce, the leasing of the vessels in California was a taxable use by the lessor. *Union Oil Co.* v. *State Board of Equalization* (1963) 60 Cal.2d 441, appeal dismissed (1964) 377 U.S. 404.

Special Test Equipment Purchased for Resale by Government Contractor.—In order for tax to apply under this section, the taxable "use" must occur while the purchaser is the owner, since the taxable use is that which is incident to ownership of the property. *Lockheed Aircraft Corp.* v. *State Board of Equalization; Aerojet General Corp.* v. *State Board of Equalization* (1978) 81 Cal.App.3d 257.

Packing Materials.—A custom packer is the consumer of, rather than the seller of, packing materials used to package items for shipping where there is no express provision in the packers billings, invoices or other contract writings passing title of the materials to the customer prior to use. *Sternoff* v. *State Board of Equalization* (1980) 103 Cal.App.3d 828.

Primary purpose test.—Taxpayer failed to prove that its manufacture of computer components was for the primary purpose of selling the components, where it first used the components to test other components. Materials purchased under resale certificates but used to manufacture the components were subject to use tax. *Burroughs Corp.* v. *State Board of Equalization* (1984) 153 Cal.App.3d 1152.

6009.1. **"Storage" and "use"; exclusion.** "Storage" and "use" do not include the keeping, retaining or exercising any right or power over tangible personal 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 tangible personal property to be transported outside the state and thereafter used solely outside the state.

History.—Added by Stats. 1943, p. 2569, operative July 1, 1943. Stats. 1953, p. 2460, in effect September 9, 1953, deleted "shipped or brought into this State" after "power over tangible personal property." Stats. 1965, p. 3004, in effect September 17, 1965, added the second paragraph. Stats. 1980, Ch. 546, operative January 1, 1980, deleted second paragraph.

Property installed in this state.—Use tax applies to automatic control equipment which is purchased outside this state, brought to this state, and permanently attached in this state to a locomotive which operates in interstate commerce partly in this state, even though the only actual functional use of the equipment occurs while the locomotive is running in another state. *Atchison, Topeka and Santa Fe Railway Co.* v. *State Board of Equalization* (1955) 131 Cal.App.2d 677.

Use tax applies to in-state installation of equipment previously tested and held at taxpayer's out-of-state national base and scheduled to be substantially consumed in interstate commerce outside the state. *American Airlines* v. *State Board of Equalization* (1963) 216 Cal.App.2d 180.

1953 Amendment.—The 1953 amendment deleting the words "shipped or brought into the State" was a change rather than a clarification of previous law. *Levine* v. *State Board of Equalization* (1956) 142 Cal.App.2d 760.

Containers for storage use only.—Original cans filled and used in this state to store tomato paste until further processing in another state are not exempt from the sales and use tax as they are not purchased for resale and do not become an integral part of the finished product. *H. J. Heinz Co.* v. *State Board of Equalization* (1962) 209 Cal.App.2d 1.

Delivery of trucks.—Exclusion applies to trucks transported under their own power for out-of-state delivery. Board regulation requiring passive transportation abridged statutory exclusion. *Stockton Kenworth, Inc.* v. *State Board of Equalization* (1984) 157 Cal.App.3d 334.

Warehousing and assembling displays is functional purpose.—Where taxpayer first stored and then assembled promotional displays into prepacks, there was a functional purpose for the displays other than to move through the state for consumption elsewhere, and section 6009.1 does not preclude use tax on displays shipped out of state. *Parfums-Corday, Inc.* v. *State Board of Equalization* (1986) 187 Cal.App.3d 630.

6010. **"Purchase."** "Purchase" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession" includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) When performed outside this state or when the customer gives a resale certificate pursuant to Article 3 (commencing with Section 6091) of Chapter 2, the 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.

(c) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(d) A transfer for a consideration of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Any lease of tangible personal property in any manner or by any means whatsoever, for consideration, except a lease of:

(1) Motion pictures or animated motion pictures, including television, films, and tapes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.

(5) 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 transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property. For purposes of this paragraph, "transferor" shall mean the following:

(A) A person from whom the lessor acquired the property in a transaction described in subdivision (b) of Section 6006.5.

(B) A decedent from whom the lessor acquired the property by will or the laws of succession.

(6) A mobilehome, as defined in Sections 18008 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.

(7) Paragraphs (1) and (5) and Section 6094.1 shall not apply to rentals or leases of video cassettes, video tapes, and video discs 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, video tape, or video disc.

History.—Stats. 1945, p. 1723, operative July 1, 1945, rearranged wording for clarification. Stats. 1959, p. 3130, in effect September 18, 1959, added "of title or possession" and "lease or rental" to the first sentence of (a), added the second sentence to (a), added (b), and relettered (c) and (d). Stats. 1965, p. 5445 (First Extra Session) operative August 1, 1965, added "or" and deleted "lease or rental" from the first sentence and " 'lease' or 'rental' " from the second sentence, and added (e). Stats. 1966, p. 191, in effect April 26, 1966, operative as to all transactions occurring after July 1, 1965 (except that retroactive operation shall not affect the state's right to any tax which vested prior to the effective date), added "or leased in substantially the same form as acquired by a transferor," "or transferor", and the definition of transferor to (e)(4). Stats. 1967, p. 2721, in effect November 8, 1967, renumbered former (e)(4) as (e)(5) and added new (e)(4). Stats. 1970, p. 2133, in effect November 23, 1970, reworded (e)(4). Stats. 1971, p. 3833, operative January 1, 1972, added parenthetical reference to section 6091 in (b). Deleted the words "for-hire" following "equipment for use in", made reference to section 6023 and deleted examples of mobile transportation equipment in (e)(4). Stats. 1978, Ch. 1211, effective January 1, 1979, in (e)(5) deleted "or transferor has paid sales tax reimbursement pursuant to Section 6052 or" following "as to which the lessor" and substituted "establishes to the satisfaction of the board that the lessor or his transferor acquired the property in a transaction that was a retail sale with respect to which the retailer has reported and paid the sales tax to the board or as to which the lessor or the transferor". Stats. 1980, Ch. 285, operative July 1, 1980, added (e) (6). Stats. 1980, Ch. 1068, effective September 26, 1980 deleted "establishes to the satisfaction of the board that the lessor" following "transferor as to which the lessor" and substituted "lessor or transferor has paid sales tax" for "retailer has reported and paid the sales tax to the board" following "with respect to which the" in (e) (5). Stats. 1982, Ch. 1589, in effect January 1, 1983, substituted "transferor has paid sales tax reimbursement" for "his transferor . . . the transferor" before "has paid use tax" in subsection (5) of subdivision (e). Stats. 1983, Ch. 323, in effect July 21, 1983, operative September 1, 1983, added subsection (7) to subdivision (e). Stats. 1983, Ch. 1102, in effect September 27, 1983, added the balance of the first sentence after "videodiscs" in subdivision (e)(7). Stats. 1987, Ch. 915, in effect September 21, 1987, in subdivision (a), deleted comma after "Transfer of possession"; in subdivision (b), deleted "of this part" after "Chapter 2"; in subdivision (e)(1), deleted "picture" after "Motion" and substituted "pictures or animated motion pictures"; in subdivision (e)(5), deleted "hereof, transferor" following "For purposes" and substituted "of this paragraph, 'transferor' "; and in subdivision (e)(7), inserted spaces after "video.".

Note.—Stats. 1976, Ch. 1384, operative September 30, 1976, provides in part: ''Sale'' and ''purchase'', for the purposes of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, do not include any transfer of title of tangible personal property consistituting any project or pollution control facility to the California Pollution Control Financing Authority by any participating party, nor any lease or transfer of title of tangible personal property constituting any project or pollution control facility by the authority to any participating party, when the transfer or lease is made pursuant to Division 27 (commencing with Section 44500) of the Health and Safety Code. The terms ''project'', ''pollution control facility'', and ''participating party'' as used in this section have the meanings ascribed to them in Sections 44506 and 44508 of the Health and Safety Code.

Supplies consumed in repairs.—Sales of supplies to repair shops were taxable retail sales even when the repair shops made a separate charge itemized as ''paints and materials'' for the purpose of recovering their costs of supplies consumed during the repairs. The repair shops did not furnish the supplies to their customers but consumed them in making the repairs and thus did not purchase the supplies for resale. *Modern Paint & Body Supply, Inc.* v. *State Board of Equalization* (2001) 87 Cal.App.4th 703.

Fixtures.—The Board properly applied Regulation 1521 in determining that the signs at issue were fixtures. *Richard Boyd Industries, Inc.* v. *State Board of Equalization* (2001) 89 Cal.App.4th 706.

6010.1. **Continuing purchase.** The possession of tangible personal 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 person.

History.—Added by Stats. 1965, p. 5446, operative August 1, 1965.

6010.3. **"Sale" and "purchase"; printing materials.** ''Sale'' and ''purchase,'' for the purposes of this part, do not include (a) the fabrication or transfer by a typographer of composed type or reproduction proofs thereof for use in the preparation of printed matter, or (b) the fabrication or transfer of such reproduction proofs or impressed mats when the fabrication is for, and the transfer is to, a printer or publisher for use in printing.

The foregoing provisions shall not apply to the fabrication or transfer of a ''pasteup,'' ''mechanical'' or ''assembly'' of which a reproduction proof is a component part.

History.—Added by Stats. 1968, p. 2061, in effect November 13, 1968.

6010.4. **"Sale" and "purchase"; motion picture production.** 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 shall not constitute either a ''sale'' or ''purchase.''

History.—Added by Stats. 1972, p. 1191, operative October 1, 1972.

6010.5. **Place of sale.** For the purposes of this part, 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, as defined in this part, takes place.

History.—Added by Stats. 1965, p. 4488, in effect September 17, 1965.

6010.6. **''Sale'' and ''purchase''; motion pictures and motion picture property.** (a) Except as provided in subdivision (c), ''sale'' and ''purchase,'' for the purposes of this part, do not include any of the following:

(1) The performance of any qualified production services in connection with the production of all or any part of any qualified motion picture. Persons performing those qualified production services are consumers of paintings, models, and art work used by those filming special effects, titles, or credits, and of film, tape, or other embodiment upon which sound, visual images, or computer-generated graphics are created or recorded, notwithstanding that title to the property may be transferred pursuant to the qualified production services contract.

(2) Any transfer of all or any part of any qualified motion picture, or any interest therein or any rights relating thereto, under either of the following circumstances:

(A) The transfer is made prior to the date that the qualified motion picture is exhibited or broadcast to its general audience.

(B) The transfer is made to any person or persons 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.

(b) For purposes of this section:

(1) ''Motion picture'' means 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 products, tapes, prints and original, duplicate, and other sound or visual recordings created to accompany the pictorial material depicted in the motion picture.

(2) ''Produce or production of any qualified motion picture'' means 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.

(3) ''Qualified motion picture'' means any motion picture, whether or not the production of that motion picture is completely finished, which is produced, adapted, or altered for exploitation in, on, or through any medium or by any device, including, but not limited to, a motion picture produced for exploitation in movie theaters, through any form of television, or videocassettes, videotapes, or videodiscs, in amusement parks, or on commercial carriers, for any purpose, including, but not limited to, for any entertainment, commercial, advertising, promotional, industrial, or educational purpose. Qualified motion picture includes, but is not limited to, all adapted versions thereof (whether adapted for exploitation in any language, for any media, or otherwise) creative advertising, and publicity materials, such as trailers, television spots, or featurettes. Qualified motion picture does not include motion pictures produced for private noncommercial use, such as weddings or graduations.

(4) ''Qualified production services'' means any fabrication performed by any person in any capacity (whether as an employee, agent, independent contractor, or otherwise) on film, tape, or other audiovisual embodiment in connection with the production of all or any part of any qualified motion picture, including, but not limited to, photography, sound, music, special effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, dubbing, mixing, editing, or cutting services. ''Qualified production services'' do not include services or other work to manufacture release prints or to duplicate tapes for exhibition or broadcast.

(5) ''Transfer'' means any change of title or possession in any manner or form by any means whatsoever, conditional or otherwise, including, but not limited to, any sale, assignment, exchange, lease, license, or barter.

(6) ''Rights relating to any qualified motion picture'' includes, but is not limited to, any and all rights to produce or exploit all or any part of the qualified motion picture by any means and in or through any medium.

(7) ''Exploit'' or ''exploitation'' with respect to any qualified motion picture includes, but is not limited to, exhibiting, broadcasting, telecasting, displaying, projecting, transmitting, duplicating, reproducing, distributing, promoting, advertising, commercializing, merchandising, marketing, or otherwise using all or any part of the qualified motion picture 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.

(c) Subdivision (a) shall not apply to any of the following:

(1) Any sale or purchase of raw film or videotape stock.

(2) Any sale or purchase of release prints or tapes for exhibition or broadcast.

(3) Any rentals or leases of videocassettes, videotapes, or videodiscs for private use, as described in paragraph (7) of subdivision (g) of Section 6006 and paragraph (7) of subdivision (e) of Section 6010.

History.—Added by Stats. 1988, Ch. 1157, in effect September 22, 1988.

6010.7. **"Sale" and "purchase"; chemical toilet.** Paragraph (5) of subdivision (g) of Section 6006, paragraph (5) of subdivision (e) of Section 6010, and Section 6094.1 shall have no application to a lease of a chemical toilet unit. Such a lease is a ''sale'' and ''purchase'' and the taxes imposed by this part apply measured by the lease or rental price accordingly, regardless of whether the unit is leased in substantially the same form as acquired and regardless of whether sales tax or use tax has been paid with respect to the chemical toilets at the time of their acquisition.

History.—Added by Stats. 1968, p. 1954, in effect August 6, 1968, operative October 1, 1968. Stats. 1978, Ch. 1211, effective January 1, 1979, in the last sentence deleted "reimbursement" following "sales tax" and added "with respect to the chemical toilets at the time of their acquisition." following "has been paid".

6010.8. **"Sale" and "purchase"; alternative energy and advanced transportation project.** ''Sale'' and ''purchase,'' do not include any transfer of title of tangible personal property constituting any project to the California Alternative Energy and Advanced Transportation Financing Authority by any participating party, nor any lease or transfer of title of tangible personal property constituting any project by the authority to any participating party, when the transfer or lease is made pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code. The terms ''project'' and ''participating party'' as used in this section have the same meanings as in Section 26003 of the Public Resources Code.

History.—Added by Stats. 1980, Ch. 908, operative January 1, 1981. Stats. 1994, Ch. 1218, in effect January 1, 1995, substituted "and Adanced Transportation" for "Source" after "Energy" in the first sentence.

6010.9. **"Sale" and "purchase"; custom computer program.** ''Sale'' and ''purchase,'' for the purposes of this part, do not include the design, development, writing, translation, fabrication, lease, or transfer for a consideration of title or possession, of a custom computer program, other than a basic operational program (as defined in Section 995.2), either in the form of written procedures or in the form of storage media on which, or in which, the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program so transferred.

As used in this section:

(a) ''Storage media'' includes punched cards, tapes, discs, diskettes, or drums on which computer programs may be embodied or stored.

(b) ''Computer'' does not include tape-controlled automatic drilling, milling, or other manufacturing machinery or equipment.

(c) ''Computer program'' means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing

equipment instructions necessary to solve a problem and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

(d) ''Custom computer program'' means a computer program prepared to the special order of the customer and 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. The term does not include a ''canned'' or prewritten computer program which is held or existing for general or repeated sale or lease, even if the prewritten or ''canned'' program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification.

History.—Added by Stats. 1982, Ch. 1274, in effect September 22, 1982.

Note.—Stats. 1982, Ch. 1274, Sections 4–8 provided, ''The Legislature finds and declares that sales and service of custom computer programs, as defined in Section 6010.9 of the Revenue and Taxation Code, other than basic operational programs, are service transactions not subject to sales or use taxes under any existing state law. The use of any storage media in the transfer of custom computer programs is only incidental to the true object of the transaction, which is the performance of a service. Therefore, the Legislature, consistent with the statement of intent in Chapter 165 of the Statutes of 1972, declares that Section 2 of this act is declaratory of, and not a change in, existing law. It is the intent of the Legislature in enacting this act to clarify the existing law and to affect all applicable pending proceedings.''

''The Legislature further finds and declares that there presently is uncertainty in the application of sales and use tax to the sales and service of custom computer programs which this act is intended to clarify, and this uncertainty has resulted in incorrect payment of sales and use tax by some taxpayers and the incorrect assessment of deficiencies of sales and use tax against some taxpayers.''

''For the public purpose of assuring equity in the payment of sales and use taxes among retailers selling and servicing custom computer programs, any outstanding and unpaid deficiency assessments are hereby canceled, and any sales and use taxes which have been incorrectly paid by retailers on or after July 1, 1972, shall be refunded in accordance with the provisions of this act, notwithstanding any other provision of law. Claims for refund by the retailer pursuant to this act shall only be submitted for, and shall distinguish between, the following:

(a) Taxes, interest, and any penalty incorrectly paid for which there was no customer reimbursement.

(b) Taxes incorrectly paid for which there was customer reimbursement and for which the retailer can and will return incorrectly paid taxes to customers who reimbursed the retailer.

(1) The retailer shall return to a customer reimbursement paid by that customer in proportion to the amount of refund received for those paid taxes.

(2) Any taxes refunded to the retailer that have not been returned to the customer within 60 days of the receipt of the refund shall be returned to the state.''

''On or before December 15, 1982, any person claiming a refund of sales and use taxes as provided in Section 5 of this act shall file a claim for refund with the State Board of Equalization in such form as the board may prescribe. Any person who fails to file a claim by December 15, 1982, as provided in this section, shall have no right to a refund, notwithstanding any other provision of law.''

''On or before July 1, 1983, the State Board of Equalization shall certify to the Controller the amount of refund due to each claimant pursuant to this act. The total amount of money to be available for refunds pursuant to this act shall not exceed one million two hundred thousand dollars ($1,200,000). If the total amount of claims exceeds one million two hundred thousand dollars ($1,200,000), the board shall determine the pro-rata share due each claimant based on the proportion each claim bears to the total amount of claims and shall report that amount for certification.''

''No interest shall be paid on any refund of taxes made pursuant to this act.''

''It is the intent of the Legislature in enacting this act that the refund provisions in this act shall supercede the provisions of Chapter 7 (commencing with Section 6901) of Part 1 of Division 2 of the Revenue and Taxation Code and to make the provisions of this act the exclusive procedure and remedy for the claim of, or action for, a refund of sales and use taxes on the sale or service of custom computer programming, as defined in Section 6010.9 of the Revenue and Taxation Code.''

Note.—Section 148.5 of Stats. 1983, Ch. 323, in effect July 21, 1983, amended Section 7 of Stats. 1982, Ch. 1274, to provide ''To the extent money is appropriated in the Budget Act of 1984, for the purposes of making the refunds pursuant to this act, the refunds pursuant to this act shall be paid by September 15, 1984.''

Custom Computer Programs on Punch Cards.—Transfers of custom computer programs on punch cards were nontaxable services, as clarified by 1982 legislation. *General Business Systems, Inc.* v. *State Board of Equalization* (1984) 162 Cal.App.3d 50.

Custom computer programs not exempt when resold.—Once a computer program has been created and is in possession of the original customer, a subsequent sale can no longer be characterized as a tax exempt service transaction. *Touche Ross & Co.* v. *State Board of Equalization* (1988) 203 Cal.App.3d 1057.

Programs developed for in-house use not custom when sold.—Taxpayer developed a program for its own in-house use, and the program was thereafter sold. It was not developed and sold as a custom program for the purchaser. Rather, this was a taxable sale of a pre-existing program. It is irrelevant that it was not a ''canned'' program. *Navistar Internat. Transportation Corp.* v. *State Board of Equalization* (1994) 8 Cal.4th 868.

6010.10. **"Sale" and "purchase"; pollution control facility.** ''Sale'' and ''purchase,'' for the purposes of this part, do not include any transfer of title of tangible personal property constituting any project or pollution control facility to the California Pollution Control Financing Authority by any participating party, nor any lease or transfer of title of tangible personal property constituting any project or pollution control facility by the authority to any participating party, when the transfer or lease is made pursuant to Division 27 (commencing with Section 44500) of the Health and Safety Code. The terms ''project,'' ''pollution control facility,'' and ''participating party'' as used in this section have the meanings ascribed to them in Sections 44506 and 44508 of the Health and Safety Code.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983.

6010.11. **"Sale" and "purchase"; qualified mass commuting vehicle.** ''Sale'' and ''purchase,'' for the purpose of this part, do not include any transfer of a qualified mass commuting vehicle pursuant to a safe harbor lease arrangement described in Section 168(f)(8) of the Internal Revenue Code of 1954, as amended by Section 208 of Public Law 97-248, Section 5 of Public Law 97-354, and Section 102 of Public Law 97-448, or pursuant to a sale-leaseback or lease-leaseback arrangement which includes a safe harbor lease arrangement. For purposes of this section, ''qualified mass commuting vehicle'' means a qualified mass commuting vehicle as defined in Section 103(b)(9) of the Internal Revenue Code of 1954.

History.—Added by Stats. 1984, Ch. 1511, effective September 28, 1984, operative October 1, 1984.

6010.30. **"Sale" and "purchase"; art transferred at social gatherings.** (a) ''Sale'' and ''purchase,'' for the purpose of this part, do not include the transfer of original drawings, sketches, illustrations, or paintings by an artist or designer at a social gathering for entertainment purposes, if all of the following requirements are met:

(1) Substantially all of the drawings, sketches, illustrations, or paintings are delivered by the artist or designer to a person or persons other than the purchaser.

(2) Substantially all of the drawings, sketches, illustrations, or paintings are received by a person or persons, other than the purchaser, at no cost to the person or persons who become the owner of the drawings, sketches, illustrations, or paintings.

(3) The charge for the drawings, sketches, illustrations, or paintings is based on a preset fee.

(4) The fee charged for the drawings, sketches, illustrations, or paintings is contingent upon a minimum number of at least three drawings, sketches, illustrations, or paintings to be produced by the artist or designer at the social gathering.

(b) For purposes of this section, ''substantially all'' means 80 percent or more.

History.—Added by Stats. 1999, Ch. 799, (SB 330), in effect October 10, 1999, but operative April 1, 2000.

6010.40. **"Sale" and "purchase"; pet adoptions.** ''Sale'' and ''purchase,'' for the purpose of this part, do not include the transfer by a city, city and county, county, or other local government animal shelter or a nonprofit animal welfare organization of any animal to an individual for use as a pet, or any charges made by the government shelter or nonprofit organization for services in connection with the transfer of that animal, including, but not limited to, the spaying or neutering or future spaying or neutering of the animal, or any vaccination, future vaccination, or similar service. For purposes of this section, ''nonprofit animal welfare organization'' means any organization formed and operated for the primary purpose of prevention of abuse, neglect, or exploitation of animals and that qualifies for the exemption from taxation pursuant to Section 23701d.

History.—Added by Stats. 1999, Ch. 361, (AB 563), in effect September 7, 1999, but operative January 1, 2000.

6010.50. **Trades and exchanges; endangered and threatened plants and animals.** (a) For purposes of this part, ''sale'' and ''purchase'' do not include any transfer of an endangered or threatened animal or plant species acquired or disposed of through a trade or exchange between nonprofit zoological societies or between a member of the American Zoo and Aquarium Association (AZA) and a nonprofit zoological society.

(b) For purposes of this section and Section 6366.5, ''endangered or threatened animal or plant species'' means animals or plants that are any of the following:

(1) Listed in Appendix I, II, or III to the Convention for International Trade of Endangered Species.

(2) Listed as endangered or threatened by the United States Department of the Interior, Fish and Wildlife Service.

(c) For purposes of this section and Section 6366.5, a ''nonprofit zoological society'' includes both of the following:

(1) A zoological society operated for charitable, educational, or scientific purposes and qualified for exemption under Section 501(c)(3) of the Internal Revenue Code.

(2) A zoological park owned or operated by a city, county, or other instrumentality of any state or foreign government.

History.—Added by Stats. 1994, Ch. 771, in effect September 26, 1994, but operative January 1, 1995.

6010.65. **"Sale" and "purchase"; acquisition sale and leaseback.** (a) ''Sale'' and ''purchase,'' for purposes of this part, do not include any transfer of title to, nor any lease of, tangible personal property pursuant to an acquisition sale and leaseback. An acquisition sale and leaseback is a sale by a person and leaseback to that person of tangible personal property where both of the following conditions are satisfied:

(1) That person has paid 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 that person's first functional use of the property.

(b) ''Sale'' and ''purchase'' include, for purposes of this part, the transfer of title to a lessee upon termination of an acquisition sale and leaseback.

(c) This section shall apply to acquisition sale and leaseback arrangements executed on or after the operative date of this section.

History.—Added by Stats. 1990, Ch. 558, in effect January 1, 1991. Stats. 1994, Ch. 286, in effect July 21, 1994, but operative January 1, 1995, deleted "and before January 1, 1995" after "section" in subdivision (c) and deleted former subdivision (d) which would have repealed the section effective January 1, 1995.

6011. **"Sales price."** (a) ''Sales price'' means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) ''Sales price'' does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code 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 or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value

shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, ''technology transfer agreement'' means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

History.—Stats. 1943, p. 2453, operative July 1, 1943, added (c) to first paragraph and (d) and former (e) to last paragraph. Stats. 1945, p. 1723, operative July 1, 1945, added "valued in money, whether paid in money or otherwise" to first paragraph and deleted same words from (a) in second paragraph; added a provision respecting return of property within 90 days from purchase. Stats. 1947, p. 506, in effect February 6, 1947, added present (e) and (f) to last paragraph and relettered former (e) in last paragraph as (g). Stats. 1953, p. 1957, in effect September 9, 1953, in (b) of last paragraph deleted "upon rescission of the contract of sale" and the provision respecting return of property within 90 days from purchase and added the language following "credit." Stats. 1957, p. 1687, in effect September 11, 1957, added last sentence to (b) of third paragraph. Stats. 1960, p. 17, in effect June 25, 1960, added (h). Stats. 1961, p. 4535, in effect September 15, 1961, added (c) to second paragraph. Stats. 1962, p. 5, in effect July 3, 1962, deleted "prior to its purchase" and added "except as excluded by other provisions of this section" in (c) of the first paragraph; and in (e) and (f) of the last paragraph deleted the words "On and after February 1, 1947," and completely revised paragraph (g). Stats. 1965, p. 5446 (First Extra Session), operative August 1, 1965, added in first paragraph "or leased or rented, as the case may be" and in the second paragraph "or leased or rented." Stats. 1968, p. 1791, in effect November 13, 1968, deleted (c) of second paragraph relating to a tax that is presumed to be on the consumer and added words "rapid transit district" in (e) and (f) of the last paragraph. Stats. 1971, p. 2780, operative July 1, 1972, relettered the section and added paragraph (b)(3). Stats. 1982, Ch. 1589, in effect January 1, 1983, added "mobilehome, or commercial coach" after each "vehicle" in subsection (8) of subdivision (c). Stats. 1983, Ch. 844, in effect September 16, 1983, operative January 1, 1984, added the third sentence in subdivision (c)(2). Stats. 1988, Ch. 500, in effect August 22, 1988, added "(A)" and ", except as provided in subparagraph (B))" in subdivision (c)(4) and added subparagraph (B). Stats. 1988, Ch. 1647, in effect October 1, 1988, operative January 1, 1989, added present subsection (8) and relettered former subsection (8) as subsection (9) in subdivision (c). Stats. 1993, Ch. 887, in effect October 8, 1993, but operative April 1, 1994, substituted "the" for "such" after "whether" in paragarph (6) of subdivision (c); substituted ". However," for "; provided, that" in paragraph (7) of subdivision (c); and added paragraph (10) to subdivision (c). Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, added "4081 or" after "Section" in subparagraph (B) of paragraph (4), substituted "that" for "such" after "consumption in" in paragraph (6) of subdivision (c), and added paragraph (11) to subdivision (c). Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added "or for which . . . Section 6245.5" after "excise tax paid" in subparagraph (B) of paragraph (4) of subdivision (c). Stats. 2002, Ch. 593, (AB 2701), in effect September 16, 2002, but operative January 1, 2003, added paragraph (12).

Note.—Section 3 of Stats. 1987, Ch. 1280, added Section 1793.25 to the Civil Code to provide that the Board shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer pursuant to subparagraph (d) (2) (B) of Section 1793.2 (commonly known as California's ''Lemon Law''), when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle. Section 1793.25 specifically states that this provision for reimbursement to manufacturers does not in any way change the general application of the sales and use tax to the gross receipts from the sale, and the storage, use or other consumption in this state of tangible personal property.

Note.—Section 4 of Stats. 1988, Ch. 500, adds an uncodified section as follows. (a) With respect to sales of diesel fuel made during the period of April 1, 1988, through September 30, 1988, a purchaser entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid may so certify to the seller of the diesel fuel not later than December 31, 1988, in a form prescribed by the board.

(b) A seller receiving the certificate referred to in subdivision (a) may claim a refund or may claim credit on his or her return for the reporting period in which he or she receives the certificate with respect to sales or use tax reported by the seller which would not have been part of the sales price under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or part of the gross receipts under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 if Sections 1 and 2 of this act had been in effect on and after April 1, 1988. The seller shall return the amount of the refund or credit to the purchaser.

Note.—Section 3 of Stats. 1993, Ch. 887, expressed the intent of the Legislature that the provisions of this act clarify the application of the Sales and Use Tax Law (commencing with Section 6001) to technology transfer agreements. It was also the intent not to create any inference regarding the application of the Sales and Use Tax Law to other transactions involving the transfer of both intangible rights and property and tangible personal property.

Charges for Delivery to Seller's Agent are not Excluded From Sales Price.—Where the seller's agent makes actual delivery to the buyer, a separately stated charge for transportation from the seller to the agent is subject to tax as a part of the sales price since only charges for transportation from the retailer's place of business directly to the purchaser may be excluded from the sales price and the tax. *Beeline Fashions, Inc.* v. *State Board of Equalizaton* (1976) 56 Cal.App.3d 389.

Determining Sales Price of Fixtures.—When there is no prevailing price upon which to calculate sales tax, the cost price shall be deemed to be the amount stated in the price lists, bid sheets or other records of the contractor. *Honeywell, Inc.* v. *State Board of Equalization* (1982) 128 Cal.App.3d 739.

Establishing Sales Price.—It is not unreasonable for the board to establish a sales price for assembled components by taking into consideration the service costs incurred by taxpayer and relying on bid sheets and other records. The board could properly use contractor's bid sheets and calculate all anticipated contract costs and profits to determine sales price of self-manufactured fixtures and components. *Montgomery Elevator* v. *State Board of Equalization* (1981) 118 Cal.App.3d 887.

Sales price of elevator includes preinstallation labor to assemble component fixtures.—Where taxpayer purchased components and, at its factory, assembled the components into elevator systems before installing the elevator systems at the jobsites, the taxpayer was the manufacturer of the elevator systems and the sales price included labor costs of assembling the components into the systems. *Coast Elevator Co.* v. *State Board of Equalization* (1986) 186 Cal.App.3d 206.

Technology transfer agreement.—The transfer of a copyright interest along with copyrighted tangible personal property as part of a written agreement contemplating the copying and selling of the copyrighted property constitutes a technology transfer agreement as defined in sections 6011 and 6012. Tax applies only to the charge attributable to the transfer of the tangible personal property as specified in sections 6011 and 6012 and not to the charge for the copyright interest. *Preston* v. *State Board of Equalization* (2001) 25 Cal.4th 197.

6011.1. **"Sales price"; consumer cooperatives.** (a) Notwithstanding Section 6011, "sales price" from the sale of tangible personal property by consumer cooperatives, as defined in subdivision (b), shall not include the value of initial or periodic membership fees and the value of labor performed in lieu of, or as part of, monthly membership fees; provided, the exclusion authorized by this section shall not be interpreted to permit consumer cooperatives to exclude from "sales price" the cost of the property sold.

(b) As used in this section, consumer cooperative means a corporation or group of persons composed of ultimate producers or consumers, or both, organized for the purpose of conducting any lawful business primarily for the mutual benefit of its shareholders who may be natural or legal persons, and the earnings, savings, or benefits of which are used for the general welfare of the shareholders or patrons or are distributed in the form of cash, stock, evidences of indebtedness, goods, or services, proportionately and equitably among the persons for which it does business upon the basis of the amount of their transactions or participation in production, or both. However, any such corporation may pay out of its net surplus earnings, savings, or benefits, not to exceed 5 percent interest upon its capital stock.

History.—Added by Stats. 1982, Ch. 406, in effect July 7, 1982.

6012. **"Gross receipts."** (a) "Gross receipts" mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, 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 the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) ''Gross receipts'' do not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The price received for labor or services used in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code 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 or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to

retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to

produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, ''technology transfer agreement'' means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

History.—Stats. 1943, p. 2454, operative July 1, 1943, added (c) to first paragraph and (d) and former (e) to third paragraph. Stats. 1945, p. 1724, operative July 1, 1945, added "valued in money, whether received in money or otherwise" to first paragraph and deleted same words from (a) in second paragraph; added last sentence to (a) in first paragraph; added to (b) in third paragraph a provision respecting return of property within 90 days from sale. Stats. 1947, p. 506, in effect February 6, 1947, added present (e) and (f) to third paragraph and relettered former (e) in third paragraph as (g). Stats. 1953, p. 1958, in effect September 9, 1953, in (b) of third paragraph deleted "upon rescission of the contract of sale" and the provision respecting return of property within 90 days from sale and added the language following "credit." Stats. 1957, p. 1688, in effect September 11, 1957, added last sentence to (b) of third paragraph. Stats. 1960, p. 18, in effect June 25, 1960, added (h). Stats. 1961, p. 4536, in effect September 15, 1961, added (d) to second paragraph. Stats. 1962, p. 6, in effect July 3, 1962, substituted "except as excluded by other provisions of this section" for "prior to its sale to the purchaser" in (c) of the first paragraph; and deleted "On and after February 1, 1947" from (e) and (f) of the last paragraph, and completely revised (g). Stats. 1968, p. 1792, in effect November 13, 1968, deleted (d) of second paragraph relating to a tax that is presumed to be on the consumer and added words "rapid transit district" in (e) and (f) of the last paragraph. Stats. 1971, p. 2781, operative July 1, 1972, relettered the section and added paragraph (a)(4). Stats. 1978, Ch. 1211, effective January 1, 1979, added new last sentence to (c) (8). Stats. 1982, Ch. 1589, in effect January 1, 1983 added "mobilehome, or commercial coach" after each "vehicle" in subsection (8) of subdivision (c). Stats. 1983, Ch. 844, in effect September 16, 1983, operative January 1, 1984, substituted "that entire amount" for "the full sale price" after "when" in the first sentence of, and added the third sentence to, subsection (2) of subdivision (c). Stats. 1988, Ch. 500, in effect August 22, 1988, added "A" and "except as provided in subparagraph (B)) in subdivision (c)(4) and added subparagraph (B). Stats. 1988, Ch. 1647, in effect October 1, 1988, operative January 1, 1989, added present subsection (8) and relettered former subsection (8) as subsection (9) in subdivision (c). Stats. 1993, Ch. 887, in effect October 8, 1993, but operative April 1, 1994, substituted "any" for "such" and added "or her" following "his" in the first sentence of, and substituted "that" for "such a" and added "or her" following "his" in the second sentence of, subdivision (a)(1), substituted "that" for "such" and substituted "the" for "such" following "whether," in subdivision (a)(6), deleted "; provided that" and added ". However," in subdivision (c)(7), and added paragraph (10) to subdivision (c). Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, added "4081 or" after "Section" in subparagraph (B) of paragraph (4) of subdivision (c) and added paragraph (11) to subdivision (c). Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added "or for which . . . Section 6245.5" after "excise tax paid" in subparagraph (B) of paragraph (4) of subdivision (c). Stats. 2002, Ch. 593, (AB 2701), in effect September 16, 2002, but operative January 1, 2003, added paragraph (12).

Note.—Section 3 of Stats. 1987, Ch. 1280, added Section 1793.25 to the Civil Code to provide that the Board shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer pursuant to subparagraph (d) (2) (B) of Section 1793.2 (commonly known as California's ''Lemon Law''), when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle. Section 1793.25 specifically states that this provision for reimbursement to manufacturers does not in any way change the general application of the sales and use tax to the gross receipts from the sale, and the storage, use or other consumption in this state of tangible personal property.

Note.—Section 4 of Stats. 1988, Ch. 500, adds an uncodified section as follows. (a) With respect to sales of diesel fuel made during the period of April 1, 1988, through September 30, 1988, a purchaser entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid may so certify to the seller of the diesel fuel not later than December 31, 1988, in a form prescribed by the board.

(b) A seller receiving the certificate referred to in subdivision (a) may claim a refund or may claim credit on his or her return for the reporting period in which he or she receives the certificate with respect to sales or use tax reported by the seller which would not have been part of the sales price under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or part of the gross receipts under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 if Sections 1 and 2 of this act had been in effect on and after April 1, 1988. The seller shall return the amount of the refund or credit to the purchaser.

Credits.—The sales price at which a wholly owned subsidiary corporation sold property to its parent or to another subsidiary constituted ''gross receipts'' of the wholly owned subsidiary where the buyer and seller were operated as separate corporate entities and the buyer gave the seller credit on its books for the amount of the sales price. *Northwestern Pacific Railroad Co.* v. *State Board of Equalization* (1943) 21 Cal.2d 524.

Allowance for "trade-in."—The value fixed by agreement between seller and buyer of property exchanged as a part of the purchase price of other property, rather than the appraised or market value, constitutes ''gross receipts'' upon which the tax is imposed. The difference between the agreed and appraised values is not deductible from gross receipts as a cash discount. *Hawley* v. *Johnson* (1943) 58 Cal.App.2d 232.

Aircraft wings exchange.—Where the taxpayer modified aircraft wings, installed them on customer's aircraft, and took the aircraft's original wings in exchange as trade-ins, the exchange was a retail sale, the gross receipts of which included the taxpayer's charges for labor in modifying the wings. *Aircraft Tank Service, Inc.* v. *State Board of Equalization* (1964) 224 Cal.App.2d 582.

Trading Stamps.—Trading stamps issued by a retailer to customers who pay cash for their purchases and redeem the stamps in merchandise at the redemption office or store of the company furnishing the stamps to the retailer constitute a ''cash discount'' within the meaning of this section, and the retailer is not, therefore, required to pay sales tax upon the portion of gross receipts equivalent to the amount paid by him for the stamps so issued. *Eisenberg's White House, Inc.* v. *State Board of Equalization* (1945) 72 Cal.App.2d 8.

Tips.—To the extent of the minimum wages provided by law, tips received and retained by restaurant waitresses and which are credited to employer as payment of minimum wages, pursuant to the contract of employment, are a part of the employer's gross receipts and subject to tax. *Anders* v. *State Board of Equalization* (1947) 82 Cal.App.2d 88.

Transportation charges.—Separately stated charges for transportation are included in gross receipts and subject to tax where the merchandise is consigned to the buyer and shipped f.o.b. cars at the destination point, transportation charges collect and allowed. *Meyer* v. *State Board of Equalization* (1954) 42 Cal.2d 376.

Where a contract obligated a retailer to deliver concrete blocks or decomposed granite to a point designated by the customer without any mutual understanding as to where title would pass, title passed at the destination, and separately stated charges for transportation are subject to sales tax, even though the same transportation charges were subject to tax under the Motor Vehicle Transportation License Tax Law. *O'Kelley-Eccles Co.* v. *State of California* (1958) 160 Cal.App.2d 60; *Select Base Materials, Inc.* v. *State Board of Equalization* (1959) 51 Cal.2d 640.

Returned merchandise—prior law.—Return of merchandise within 90 days pursuant to an agreement to credit customers with purchase price constitutes timely refund and rescission under (b) of the third paragraph prior to 1953 amendment, even though entries in records were not made until after the 90-day period. *Youngstown Steel Products Co.* v. *State Board of Equalization* (1957) 148 Cal.App.2d 205.

Lease of equipment with option to purchase.—When tangible personal property is leased with an option to purchase and, upon exercise of the option a charge is made for ''interest on deferred balance'' during the term of the lease, such charge is includable in gross receipts and is subject to sales tax. *Peterson Tractor Company* v. *State Board of Equalization* (1962) 199 Cal.App.2d 662.

Damages.—The sellers' payments to the purchasers, termed ''voluntary price adjustments'' in the settlement of Clayton Act anti-trust actions, were damage payments rather than true price adjustments. No change occurred in the price on which the tax must be computed. *Southern California Edison Co.;* and *San Diego Gas & Electric Co.* v. *State Board of Equalization* (1972) 7 Cal.3d 652.

Board Classification of Drapes as Tangible Personal Property Upheld.—Plaintiff, L.A.J., Inc., sold and installed custom drapes to builders of apartment houses pursuant to lump-sum contracts, on the basis that the drapes were tangible personal property, with the tax being measured by the total sales price. Taxpayer asserted that the drapes were fixtures, in which case only the cost of the material used in the drapes would be subject to tax. The trial court classified the drapes as fixtures, ignoring the classification made by the Board. On appeal, the court held that the trial court had no authority to disregard the Board's classification of the drapes as tangible personal property in the absence of a finding that the classification was arbitrary or capricious, or had no reasonable or rational basis. The trial court had made no such finding, nor could it have done so in light of the testimony at the trial. Resolving the issues raised by plaintiff's suit, the court held that taxpayer had failed to carry its burden of proof that the classification was unreasonable since the uncontradicted evidence supported the conclusion that there was a reasonable basis for the Board's classification. The trial court was thus directed to enter judgment for the Board. *L.A.J., Inc.* v. *State Board of Equalization* (1974) 38 Cal.App.3d 549.

Subsidies to Cafeteria Operators.—Subsidies paid by employers to operators of employee cafeterias are not includable within the operators' gross receipts and not subject to tax. *Szabo Food Service, Inc. of California* v. *State Board of Equalization* (1975) 46 Cal.App.3d 268.

Goods exchanged for trading stamps.—Regulation 1671 defines the selling price for sales tax purposes of goods exchanged for trading stamps as the average amount paid to the trading stamp operator by its customers for the stamps surrendered in exchange for the goods. This average price may properly be calculated by excluding cash rebates and stamps given without charge to customers when the rebates and extra stamps are given in return for promotional advertising, guaranteed large distributions, or other services by the customers. *Botney* v. *Sperry & Hutchinson Co.* (1976) 55 Cal.App.3d 49.

Concrete Pumping Service.—Plaintiff sold concrete and pumped such concrete to areas difficult to reach. Where no agreement existed passing title to the concrete to the customer prior to the pumping, the pumping operation was a taxable transportation function which occurred before the sale of the concrete was completed. *Tobi Transport, Inc.* v. *State Board of Equalization* (1980) 104 Cal.App.3d 730.

Lease in lieu of cash was valuable consideration.—Where seller and buyer agreed to an actual purchase price for sale of cranes, but seller acknowledged receipt of valuable consideration in lieu of cash by buyer's execution of lease agreement, sales tax was properly measured by actual purchase price. *U. S. Lines, Inc.* v. *State Board of Equalization* (1986) 182 Cal.App.3d 529.

Prime contractor not subcontractor's vendor.—A subcontractor claimed a credit on its return for sales tax which it had refunded to the prime contractor after realizing that the sale was of ''machinery and equipment'' and thus, not taxable. A claim for refund was not timely filed. The court held that the provisions of Section 6012 do not apply because the prime contractor could in no way be considered to be the subcontractor's vendor. *Philips & Ober Electric Co.* v. *State Board of Equalization* (1991) 231 Cal.App.3d 723.

Technology transfer agreement.—The transfer of a copyright interest along with copyrighted tangible personal property as part of a written agreement contemplating the copying and selling of the copyrighted property constitutes a technology transfer agreement as defined in sections 6011 and 6012. Tax applies only to the charge attributable to the transfer of the tangible personal property as specified in sections 6011 and 6012 and not to the charge for the copyright interest. *Preston* v. *State Board of Equalization* (2001) 25 Cal.4th 197.

6012.1. **"Gross receipts"; consumer cooperatives.** (a) Notwithstanding Section 6012, ''gross receipts'' from the sale of tangible personal property by consumer cooperatives, as defined in subdivision (b), shall not include the value of initial or periodic membership fees and the value of labor performed in lieu of, or as part of, monthly membership fees; provided, the exclusion authorized by this section shall not be interpreted to permit consumer cooperatives to exclude from ''gross receipts'' the cost of the property sold.

(b) As used in this section, consumer cooperative means a corporation or group of persons composed of ultimate producers or consumers, or both, organized for the purpose of conducting any lawful business primarily for the mutual benefit of its shareholders who may be natural or legal persons, and the earnings, savings, or benefits of which are used for the general welfare of the shareholders or patrons or are distributed in the form of cash, stock, evidences of indebtedness, goods, or services, proportionately and equitably among the persons for which it does business upon the basis of the amount of their transactions or participation in production, or both. However, any such corporation may pay out of its net surplus earnings, savings, or benefits, not to exceed 5 percent interest upon its capital stock.

History.—Added by Stats. 1982, Ch. 406, in effect July 7, 1982.

6012.2. **Mobilehomes; current value.** (a) For purposes of this part, ''gross receipts'' from the sale of a used mobilehome, as defined in Section 18014 of the Health and Safety Code, and the ''sales price'' of a used mobilehome, sold or stored, used, or otherwise consumed in this state shall be based on the current value of the used mobilehome as specified by a recognized value guide, whenever a 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, or 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'' and ''gross receipts'' shall be based on the actual sales price of the mobilehome as evidenced by the purchase documents. The State Board of Equalization shall approve the value guides for use within this state through regulation.

(b) For the purposes of this part, ''gross receipts'' from the sale of a mobilehome, whether new or used, shall exclude the amount of separately stated escrow fees on the sale of such mobilehome.

(c) For the purposes of this section, the ''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.

History.—Added by Stats. 1979, Ch. 863, effective January 1, 1980. Stats. 1982, Ch. 1591, in effect September 30, 1982, operative January 1, 1983, substituted "Section 18014 of the Health and Safety Code" for "Sections 396 and 665 of the Vehicle Code" after "defined in," "be based on . . . value guide" for "exclude the . . . as a vehicle," before "when," and "Health and Safety Code" for "Vehicle Code" after "under the," in the first sentence of, and added the second sentence to, subdivision (a); and, added subdivision (C). Stats. 1984, Ch, 1707, effective January 1, 1985, substituted "determined" for "specified" after "Mobilehome as" in (a), deleted "If the value . . . purchase documents," before last sentence in (a). Stats. 1985, Ch. 1539, effective January 1, 1986, substituted "specified" for "determined", added "if the value . . . by purchase documents" in subdivision (a), deleted "and the . . . or used" before "shall exclude" in subdivision (b), deleted repeal language and added "for the . . . documentation fees" in subdivision (c).

6012.2. **Mobilehomes; exclusions.** [Repealed by Stats. 1985, Ch. 1539, effective January 1, 1986.]

6012.5. **"Common carrier," sales to; exemption.** Nothing in Sections 6011 and 6012 shall affect the exemption afforded under Section 6385 to sales of tangible personal property to a common carrier under the circumstances set forth in Section 6385.

History.—Added by Stats. 1962, p. 8, in effect July 3, 1962. Sec. 4 of the act provides it is not the intent of the Legislature in the enactment of this act to affect the application of the sales or use tax to any charges other than those for the final transportation of property to the purchaser.

6012.6. **Factory-built school building.** (a) For the purposes of this part, ''gross receipts'' from the sale of a factory-built school building, and the ''sales price'' of a factory-built school building, sold or stored, used, or otherwise consumed in this state shall be 40 percent of the sales price of the factory-built school building to the consumer.

(b) For purposes of this section, ''factory-built school building'' means any building designed in compliance with state laws for school construction and approved by the structural safety section in the Office of the State Architect, which is either wholly manufactured or is in substantial part manufactured at an offsite location , to be assembled, erected, or installed on a site owned or leased by a school district or a community college district.

(c) For purposes of this section, the place of sale or purchase of a factory-built school building is the place of business of the retailer of the factory-built school building as provided in Section 7205, regardless of whether sale of the building includes installation or whether the building is placed upon a permanent foundation.

History.—Added by Stats. 1989, Ch. 816, in effect September 26, 1989. Stats. 1990, Ch. 763, in effect September 13, 1990, deleted "or intended for use as a school building, as defined in Sections 39214 and 81165 of the Education Code" and added "in compliance . . . State Architect" after "building designed", deleted "in accordance with standards prescribed by the Department of General Services or the Department of Housing and Community Development" after "offsite location", and substituted "site owned . . . district", for "school site", in subdivision (b), and deleted subdivision (d) which provided, "If a 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 percent 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 percent of the sales price."

6012.7. **Factory-built housing.** [Repealed by Stats. 1980, Ch. 1246, operative January 1, 1981.]

6012.7. **Factory-built housing.** (a) For the purposes of this part, ''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) For purposes of this section, ''factory-built housing'' includes:

(1) A residential building, dwelling unit or an individual dwelling room or combination of rooms thereof, or building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage, or destruction of the part, 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 Commission of Housing and Community Development of the State of California pursuant to Section 19990 of the Health and Safety Code or in accordance with applicable local building requirements of such factory-built housing is inspected and approved by the local enforcement agency at the place of, and during the time of, manufacture.

(2) ''Modular housing,'' which is a three-dimensional box or cube-shaped structure or structures making up one or more rooms of a residential building.

(3) ''Sectionalized housing,'' which generally consists of two modules which form a total living unit.

(4) ''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.

(c) For purposes of this section, ''factory-built housing'' does not include:

(1) A ''mobilehome,'' as defined in Section 18008 of the Health and Safety Code.

(2) ''Precut housing packages'' where more than 50 percent of the package consists of precut lumber only.

(3) ''Panelized construction,'' such as walls or components that may become one or more rooms of a building, unless a complete housing package is provided by the builder or manufacturer, such as by providing wall panels, floors, and a roof which will form a complete housing structure.

(4) ''Porches'' or ''awnings'' which are not purchased as a part of the original housing package.

(d) If a purchaser certifies in writing to a retailer that the factory-built housing purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 60 percent 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 percent of the sales price.

History.—Stats. 1980, Ch. 1246, repealed former section and added present section operative January 1, 1981.

6012.8. **Mobilehomes; installed as residences.** [Repealed by Stats. 1980, Ch. 1160, effective July 1, 1980.]

6012.8. **Mobilehomes; installed as residences.** (a) For the purposes of this part, ''gross receipts'' from the sale of a new mobilehome, and the ''sales price'' of a new mobilehome sold or stored, used, or otherwise consumed in this state shall be 75 percent of the sales price of the mobilehome to the retailer, if the mobilehome is sold by the retailer to the purchaser for installation on a foundation system pursuant to Section 18551 of the Health and Safety Code for occupancy as a residence, and is thereafter subject to property taxation. The retailer shall be considered to be the consumer for purposes of this part if the sale by the retailer would otherwise have been subject to sales tax and if the retailer is not also the manufacturer of the mobilehome. If the retailer of the mobilehome is the manufacturer, tax shall be measured by an amount equal to 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.

Notwithstanding any other provision of this part, a retailer may give a resale certificate for the purchase by the retailer of such a mobilehome and shall report the gross receipts or sales price from the purchase with the return for the period during which the mobilehome is sold to the purchaser for installation for occupancy as a residence.

Notwithstanding any other provision of this part, any retailer who is a licensed mobilehome dealer under Section 18002.6 of the Health and Safety Code is a retailer-consumer regardless of whether or not it installs the mobilehome on a foundation system as an improvement to realty. The licensed dealer may give a resale certificate for the purchase of such a mobilehome, and shall report the gross receipts or sales price from the purchase with the return for the period during which the mobilehome is installed by the licensed dealer for occupancy as a residence.

(b) For purposes of this section, a ''mobilehome'' is defined in Sections 18008 and 18211 of the Health and Safety Code.

(c) If a purchaser certifies in writing to a retailer that the mobilehome purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 25 percent of the gross receipts or sales price to the retailer from the measure of tax, and uses the property in some other manner or for some other purpose which would not be subject to any other exclusion or exemption under this part, the purchaser shall be liable for payment of tax measured by the amount of the sales price to the purchaser less an amount equal to 75 percent of the gross receipts or sales price of the mobilehome to the retailer.

(d) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state of any used mobilehome, the initial retail sale of which qualified for the partial exemption from tax provided for by this section.

History.—Added by Stats. 1979, Ch. 1160, operative July 1, 1980. Stats. 1980, Ch. 285, operative July 1, 1980, added "new" following "sale of a" and " 'sales price' of a", substituted "75" for "60" deleted part of first sentence following "property taxation", added second and third sentences in (a), substituted "25" for "40", substituted "less" for "minus", substituted "75 percent of the gross receipts or" for "the" following "equal to" in (c), and reworded (d) and (e). Stats. 1980, Ch. 1149, operative January 1, 1981, added second paragraph of (a). Stats. 1985, Ch. 786, effective September 19, 1985, substituted "the" for "such" in first and second paragraph and added third paragraph in subdivision (a), and deleted subdivision (e). Stats. 1986, Ch. 608, effective January 1, 1987, substituted 18002.6 for 18006.2.

6012.9. **Mobilehomes; installed as residences subject to property tax.** (a) For the purposes of this part, "gross receipts" from the sale of a new mobilehome, and the "sale price" of a new mobilehome sold or stored, used or otherwise consumed in this state shall be 75 percent of the sales price of the mobilehome to the retailer, if such mobilehome is sold by the retailer to the purchaser for installation for occupancy as a residence pursuant to the requirements of Section 18613 of the Health and Safety Code, and is thereafter subject to property taxation. The retailer shall be considered to be the consumer for purposes of this part if the sale by the retailer would otherwise have been subject to sales tax and if the retailer is not also the manufacturer of the mobilehome. If the retailer of the mobilehome is the manufacturer, tax shall be measured by an amount equal to 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.

Notwithstanding any other provision of this part, a retailer may give a resale certificate for the purchase by the retailer of such a mobilehome and shall report the gross receipts or sales price from such purchase with the return for the period during which the mobilehome is sold to the purchaser for installation for occupancy as a residence.

(b) For the purpose of this section, a "mobilehome" is defined in Sections 18008 and 18211 of th Health and Safety Code.

(c) If a purchaser certifies in writing to a retailer that the mobilehome purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 25 percent of the gross receipts or sales price to the retailer from the measure of tax, and uses the property in some other manner or for some other purpose which would not be subject to any other exclusion or exemption under this part, the purchaser shall be liable for payment of tax

measured by the amount of the sales price to the purchaser less an amount equal to 75 percent of the gross receipts or sales price of the mobilehome to the retailer.

(d) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state of any used mobilehome, the initial retail sale of which qualified for the partial exemption from tax provided for by this section.

History.—Added by Stats. 1979, Ch. 1180, applicable only to sale or use occurring on or after July 1, 1980. Stats. 1980, Ch. 285, operative July 1, 1980, added "new" following "sale of a" and " 'sales price' of a", substituted "75" for "80", deleted part of first sentence following "property taxation", added second and third sentences in (a), substituted "25" for "20", substituted "less" for "minus", substituted "75 percent of the gross receipts or" for "the" following "equal to" in (c), and reworded (d). Stats. 1980, Ch. 1149, operative January 1, 1981, added second paragraph of (a).

6013. **"Business."** "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

Social club as engaged in business.—Sales from the operations of a dining room and bar of a nonprofit corporation organized for social and political purposes are nevertheless subject to the sales tax. The fact that no profit, indeed a loss, was sustained is immaterial, because it was unquestioned that "gain," "benefit" or "advantage" was derived by the club, which was therefore engaged in "business" as defined in this section. *Union League Club* v. *Johnson* (1941) 18 Cal.2d 275.

School districts.—A school district which, over a period of several years, makes on the average of two or three retail sales per quarter of tangible personal property consisting of buildings and improvements and miscellaneous equipment no longer needed for school purposes, is engaged in "business" within the meaning of this section, and is required to pay the sales tax upon such sales. *Los Angeles City High School District* v. *State Board of Equalization* (1945) 71 Cal.App.2d 486.

Counties.—A county making 72 sales over a period of several years is required to pay sales tax on such sales, which constitute doing business and are not exempt because not made for profit. *People* v. *Imperial County* (1946) 76 Cal.App.2d 572.

Bank.—Sale of personalized checks to depositors by a bank was held a "business" within the purview of this section although the sales did not occur in the bank's regular course of business. *Bank of America* v. *State Board of Equalization* (1962) 209 Cal.App.2d 780.

6014. **"Seller."** "Seller" includes every person engaged in the business of selling 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.

For the purposes of this section, the phrase "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" includes all tangible personal property of a kind the gross receipts from the retail sale of which is, or would be, required to be included in the measure of the sales tax if sold at retail, whether or not the tangible personal property is ever sold at retail or is suitable for sale at retail.

History.—Stats. 1949, p. 1344, operative July 1, 1949, added "of a kind." Stats. 1983, Ch. 184, in effect July 11, 1983, operative January 1, 1984, added the second paragraph.

Manufacturer.—A manufacturer who had made sales for resale but no retail sales and whose product was not suitable for retail sale was not a "seller". *Glass-Tite Industries, Inc.* v. *State Board of Equalization* (1968) 266 Cal.App.2d 691 (this case was overturned by the 1983 amendment to Section 6014).

A manufacturer who makes no retail sales but whose product is suitable for retail sale is a "seller." *Davis Wire Corp.* v. *State Board of Equalization* (1976) 17 Cal.3d 761.

6015. **"Retailer."** (a) "Retailer" includes:

(1) Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

(2) Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

(3) Any person conducting a race meeting under the provisions of Chapter 4 of Division 8 of the Business and Professions Code, with respect to horses which are claimed during such meeting.

(b) When the board determines that it is necessary for the efficient administration of this part to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, or employers the board may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for purposes of this part.

(c) Notwithstanding subdivision (b), a newspaper carrier is not a retailer and the retailer is the publisher or distributor for whom the carrier delivers the newspapers. The publisher or distributor is responsible for the tax measured by the price charged to the customer by the carrier.

History.—Stats. 1943, p. 2455, operative July 1, 1943, deleted provisions relating to meals served students and employees, related provisions being enacted as Section 6363. Stats. 1943, p. 2620, operative July 1, 1943, added (c). Stats. 1949, p. 1344, operative July 1, 1949, substituted "Every seller who makes any retail sale or sales of tangible personal property, and every person engaged" for "Every person engaged in the business of making sales at retail or" in (a) and "Chapter 4 of Division 8 of the Business and Professions Code" for "Chapter 769, Statutes of 1933, as amended" in (c). Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, lettered the former first and second paragraphs as subdivisions (a) and (b), respectively; renumbered former subdivisions (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; substituted "the" for "such" after "on behalf of", in subdivision (b); and added subdivision (c).

Note.—Section 14 of Ch. 88, Stats. 1991, states that the provisions of Section 6359.5 shall become operative on July 15, 1991.

Trustee in Bankruptcy as "retailer."—A trustee in bankruptcy who is selling the physical equipment of the bankrupt business, but is not conducting or continuing such business, is not a "retailer," and is not subject to payment of sales tax upon sales made by him in liquidation of the assets of the bankrupt estate. *State Board of Equalization* v. *Boteler* (1942) 131 F.2d 386; *California State Board of Equalization* v. *Goggin* (1951) 191 F.2d 726, cert. den. (1952) 342 U.S. 909. But see *Debtor Reorganizers, Inc.* v. *State Board of Equalization* (1976) 58 Cal.App.3d 691, summary following Section 6201.

Optometrists.—An optometrist who supplies glasses to his patients is a "retailer," and is required to pay sales tax on such portion of his charges as represents the fair retail value of the glasses. *Kamp* v. *Johnson* (1940) 15 Cal.2d 187. See, however, Section 6018, under which optometrists are consumers on and after September 19, 1947.

Contractor.—Sales and use tax ruling 11 (now regulation 1521), which provides that contractors are retailers of "fixtures" which they furnish and install, is valid. *General Electric Co.* v. *State Board of Equalization* (1952) 111 Cal.App.2d 180; *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 907.

A subcontractor was a retailer of tangible personal property and not a consumer under ruling 11 (now regulation 1521) when he supplied completed door frames f.o.b. jobsite which were installed by others. *Overly Manufacturing Co.* v. *State Board of Equalization* (1961) 191 Cal.App.2d 20.

Possession by retailer.—Person who receives purchase order from consumer and who then places his own purchase order with supplier and requires supplier to ship directly to consumer is a retailer and not a broker when there is no contract between supplier and consumer. *Meyer* v. *State Board of Equalization* (1954) 42 Cal.2d 376.

Sales of equipment by a railroad.—A railroad is a "retailer" where it makes a total of 900 separate sales of tangible personal property between 1933 and 1944. *Market Street Railway Co.* v. *State Board of Equalization* (1955) 137 Cal.App.2d 87.

Installation assistance.—Sellers of precut or prefabricated materials who render some assistance to customers in installation are retailers rather than contractors. *Greenblatt* v. *State Board of Equalization* (1957) 148 Cal.App.2d 619.

Seller of building materials.—A manufacturer of wet mix concrete and asphalt, who transports such property to a jobsite and discharges it into forms, where it is spread and finished by a contractor, is the retailer of concrete and asphalt and tax applies to gross receipts of such sales. *Hayward Building Material Co.* v. *State Board of Equalization* (1958) 164 Cal.App.2d 607.

Seller of used trucks.—A manufacturer of food products for resale was the retailer of used delivery trucks and the tax applies to the gross receipts of such sales where it purchased the equity of the retiring salesmen in the used trucks and resold them to new salesmen. *Frito Co.* v. *State Board of Equalization* (1961) 192 Cal.App.2d 331.

National Bank.—A bank which sold to its depositors personalized checks was ''engaged in the business'' of making sales of such checks and thus was a ''retailer'' under this section. *Bank of America* v. *State Board of Equalization* (1962) 209 Cal.App.2d 780.

Distributor of Greeting Cards Held Retailer of Cards Sold Through Agents.—Plaintiff, a California corporation that distributed greeting cards to independent salesmen in California and other western states, sought a refund of taxes paid by it, contending that the salesmen were the actual retailers of the cards. The salesmen, who were solicited by an out-of-state corporation associated with plaintiff, forwarded orders to that corporation who in turn forwarded them to plaintiff. Plaintiff mailed the cards, which were drawn from stocks acquired from its out-of-state parent corporation, directly to the salesmen. The Board had ordered that plaintiff, rather than the salesmen, be regarded as the retailer of the cards pursuant to Revenue and Taxation Code Section 6015 which provides that the Board may, for the efficient administration of the Sales Tax Law, regard salesmen as agents of the distributors ''. . . under whom they operate or from whom they obtain the tangible personal property sold by them. . .'' and the distributors as retailers. The trial court found that plaintiff distributed the cards to the salesmen, that the salesmen obtained the cards from plaintiff, and that the salesmen were so numerous that the Board could not effectively collect the tax directly from the salesmen. In affirming, the court held that plaintiff was not required to have an ownership interest in the cards to be a distributor. The fact that it was a subsidiary of the parent corporation and that the cards sent to the salesmen by plaintiff bore its identification in the form of a return address, and at times even contained sales literature inserted by it, was sufficient. The court noted that it was plaintiff which actually delivered the greeting cards to the salesmen, and that this act constituted the final service accorded to the salesmen by any of the tripartite entities. The court further held that plaintiff was not entitled to a refund with respect to sales which might have been made outside the state since it failed to offer any evidence as to which of its sales were made out of California. *Sunshine Art Studios of California* v. *State Board of Equalization* (1974) 39 Cal.App.3d 223.

Initial Sale.—The tax applies to the initial retail sale of a seller even though the seller was not a retailer prior to that sale. *Davis Wire Corp.* v. *State Board of Equalization* (1976) 17 Cal.3d 761.

Manufacturer of soft drinks sold through vending machines.—The court held that a manufacturer of soft drinks sold to vending machine owners and lessees was the retailer. *Associated Beverage Company, Inc.* v. *State Board of Equalization* (1990) 224 Cal.App.3d 192.

Liquidation sales by trustees in bankruptcy.—A nondiscriminatory tax on a bankruptcy liquidation sale is not barred by the now discredited intergovernmental tax immunity doctrine, and there is no longer any constitutional impediment to imposition of a sales tax or a use tax on a bankruptcy liquidation sale. The sales and use tax does not discriminate against a bankruptcy trustee or those that they deal with, and the bankruptcy trustee is not so closely connected to the federal government that the two cannot be viewed as separate entities. *California State Board of Equalization* v. *Sierra Summit, Inc.* (1989) 490 U.S. 844.

6015.5. **Commercial advertising.** [Repealed by Stats. 1993, Ch. 257, effective January 1, 1994.]

6016. **''Tangible personal property.''** ''Tangible personal property'' means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.

Sale of sand and gravel.—Where a supplier agreed to furnish sand and gravel to a highway contractor ''f.o.b. jobsite'' from its own pit, it was a sale of tangible personal property and not a transfer of interest in real property. *Santa Clara Sand and Gravel Co.* v. *State Board of Equalization* (1964) 225 Cal.App.2d 676.

Sale of equipment agreed by the parties to be personal property.—Equipment was tangible personal property where the parties agreed and intended that such equipment attached to real property would remain personal property with rights to removal, replacement and consumption. *Standard Oil Co.* v. *State Board of Equalization* (1965) 232 Cal.App.2d 91.

Transfer of Master Film Negatives.—Film negatives and master recordings used to make audiovisual materials for training medical personnel, which were transferred by plaintiff as part of a sale of the segment of its business devoted to producing and marketing such materials, were tangible personal property. *Simplicity Pattern Co. Inc.* v. *State Board of Equalization* (1980) 27 Cal.3d 900.

Printing of lottery tickets.—Sales of printed lottery tickets to the California Lottery Commission were subject to tax. The exemption of lottery tickets from state and local taxes, pursuant to Government Code § 8880.68 applies to sales of lottery tickets to the public after the Lottery Commission has authorized the use of the tickets in lottery games. *City of Gilroy* v. *State Board of Equalization* (1989) 212 Cal.App.3d 589.

6016.3. **Leased fixtures.** ''Tangible personal property,'' for the purpose of this part, includes any leased fixtures if the lessor has the right to remove the fixtures upon breach or termination of the lease, unless the lessor is also the lessor of the realty.

History.—Added by Stats. 1965, p. 5447, operative August 1, 1965. Stats. 1971, p. 3834, in effect December 16, 1971, substituted "leased fixtures" for "leased property affixed to realty", and "remove the fixtures" for "remove the property", deleted "to which the property is affixed" from the end of the sentence.

6016.5. **Tangible personal property; exclusion.** Notwithstanding any other provision of law, ''tangible personal property,'' for purposes of this part, does not include telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained.

History.—Added by Stats. 1965, p. 4488, in effect September 17, 1965. Section 3 of the act provides, "Section 2 of this act [§6016.5] shall be for prospective application. The law as it existed prior to the effective date of Section 2 shall continue in full force and effect and as if Section 2 had not been enacted, as respects the application of sales and use taxes to sales of telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained, and as respects the application of sales and use taxes to tangible personal property sold or purchased and used in the performance of construction contracts for the construction of such lines, poles, towers or conduit, when the contract of salefor the lines, poles, tower or conduit or the contract for the construction thereof was validly entered into before the effective date of this act."

Electrical Power Transmission Lines.—A contract for the construction of an electrical power transmission line entered into before the effective date of section 6016.5 was a construction contract within the meaning established by ruling 11 (now regulation 1521). *King* v. *State Board of Equalization* (1972) 22 Cal.App.3d 1006; *A.S. Schulman Electric Co.* v. *State Board of Equalization* (1975) 49 Cal.App.3d 180.

Components.—This section does not extend to components, such as cable, purchased to be used in the construction or repair of transmission and distribution lines. *Chula Vista Electric Co.* v. *State Board of Equalization* (1975) 53 Cal.App.3d 445.

Film Negatives and Master Recordings.—Film negatives and master recordings are tangible personal property for sales tax purposes even though valued in part for their intellectual content. *Simplicity Pattern Co. Inc.* v. *State Board of Equalization* (1980) 27 Cal.3d 900.

6017. **"In this State."** ''In this State'' or ''in the State'' means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

Note.—The application of the tax within federal areas subsequent to December 31, 1940, is authorized by act of Congress (4 U.S.C., Sections 105–110; 61 Stat. 641).

6018. **Oculists, optometrists and dispensing opticians.** A licensed optometrist, physician and surgeon, pharmacist, or registered dispensing optician is a consumer of and shall not be considered a retailer within the provisions of this part as follows:

(a) In the case of a licensed optometrist or physician and surgeon with respect to the ophthalmic materials used or furnished by him or her, in the performance of his or her professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof.

(b) In the case of a licensed pharmacist only with respect to replacement contact lenses dispensed pursuant to Section 4124 of the Business and Professions Code.

(c) In the case of a registered dispensing optician with respect to the dispensing of ophthalmic materials.

History.—Added by Stats. 1947, p. 656, in effect September 19, 1947. Stats. 1970, p. 3433, operative July 1, 1971, deleted "or" after the first "optometrist"; added "or registered dispensing optician", "in the case of a licensed optometrist or physician and surgeon" and "or in the case of a registered dispensing optician." Stats. 1997, Ch. 184 (SB 13), in effect August 4, 1997, operative January 1, 1998, added "pharmacist," after "surgeon" and added "as follows:" after "this part" in the first paragraph; created new subdivision (a) with balance of the sentence beginning with "in the case of a licensed optometrist" and added "or her" after "him", added "or her" after "his" and deleted ", or" after "thereof" therein; added subdivision (b); created new subdivision (c) with the balance of the sentence beginning with "in the case of a registered dispensing optician".

6018.1. **Veterinarians.** A licensed veterinarian is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, drugs and medicines used or furnished by him or her in the performance of his or her professional services.

For the purposes of this section, ''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.

History.—Added by Stats. 1985, Ch. 1585, effective October 2, 1985.

6018.4. **Chiropractors.** A licensed chiropractor is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, vitamins, minerals, dietary supplements, and orthotic devices used or furnished by him in the performance of his professional services.

History.—Added by Stats. 1978, Ch. 1182, operative January 1, 1979.

6018.5. **Podiatrists.** A licensed podiatrist is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, the prosthetic materials and inlays used or furnished by him in the performance of his professional services in the diagnosis, treatment, or correction of conditions of the human foot, including the adaptation of arch supports or special footgear for the aid thereof.

History.—Added by Stats. 1961, p. 575, in effect September 15, 1961.

6018.6. **Alteration, cleaning, or dyeing of garments.** (a) Any person who receives no more than 20 percent of his or her total gross receipts from the alteration of garments during the preceding calendar year is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, property used or furnished by that person in altering new or used clothing, provided both of the following apply:

(1) That person operates a location or locations as a pickup and delivery point for garment cleaning, or provides spotting and pressing services on the premises but not garment cleaning, or operates a garment cleaning or dyeing plant on the premises.

(2) Seventy-five percent or more of that person's total gross receipts represent charges for garment cleaning or dyeing services.

(b) Sales tax shall not apply to the charges for alterations specified in subdivision (a). 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.

(c) For the purpose of this section:

(1) ''Cleaning'' means wet cleaning and drycleaning.

(2) ''Wet cleaning'' means the process of cleaning a garment by immersion in water, or by applying manually or by any mechanical device, water, or any detergent and water, or by spraying or brushing the garment with water or water and any detergent, or water vapor, or steam, and includes self-service or coin-operated equipment in whole or in part.

(3) ''Drycleaning'' means the process of cleaning or renovating wearing apparel, feathers, furs, hats, fabrics, household items, or textiles by immersion and agitation, spraying, vaporization, or immersion only, in a volatile, commercially moisture-free solvent or by the use of a volatile or inflammable product, applied either manually or by means of a mechanical appliance and including self-service or coin-operated equipment in whole or in part.

(4) ''Dyeing'' means the process of coloring wearing apparel, feathers, furs, hats, fabrics, or textiles by the use of aniline dyes, mordants, or acids, with or without steam, excluding, however, the use of any dye or combination of dyes which is directly soluable or dispersible in water and which does not require chemical alteration of its structure for application, where that dye or combination of dyes is applied to cotton, viscose rayon, or cuprammonium rayon other than wearing apparel.

(5) ''Spotting'' means the process of removing spots or stains or localized areas of soil from a garment, either before or after, and with or without drycleaning or wet cleaning, by brushing, spraying, or other means of manual or mechanical application, other than immersion, with water, detergents, and volatile or inflammable solvents, chemicals, or any, or all of them.

(6) ''Pressing'' means the process of restoring the garment to the original shape, dimensions or contour thereof, or to those in which the same was received from the customer, or as directed by the customer, and the removal of wrinkles, stresses, bulges, and impressions, imprint marks and shine, from a garment by the application of pressure, heat, moisture, water vapor or steam, or all of them, whether applied manually, or by any mechanical means.

History.—Added by Stats. 1983, Ch. 605, in effect August 31, 1983, operative January 1, 1984. Stats. 1986, Ch. 308, added definitions for "cleaning", "wet cleaning", "drycleaning", "dyeing", "spotting", and "pressing".

Note.—Sec. 24, Stats. 1986, Ch. 308, states that the amendment to Section 6018.6 of the Revenue and Taxation Code does not constitute a change in, but is declaratory of, the existing law.

6018.7. **Licensed hearing aid dispenser.** A licensed hearing aid dispenser is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to hearing aids sold or furnished by him or her.

History.—Added by Stats. 1984, Ch. 1576, effective September 30, 1984, operative January 1, 1985.

6018.8. **Department of Transportation.** The Department of Transportation is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, passenger transportation vehicles, including, but not limited to, rail passenger cars, locomotives, other rail vehicles, bus and van fleets, and ferryboats, which it sells to and leases back

from any person pursuant to Article 4 (commencing with Section 14060) of Chapter 1 of Part 5 of Division 3 of Title 2 of the Government Code.

History.—Added by Stats. 1984, Ch. 1510, effective September 28, 1984.

6019. **"Retailer" further defined.** Every individual, firm, copartnership, joint venture, trust, business trust, syndicate, association or corporation making more than two retail sales of tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, shall be considered a retailer within the provisions of this part in his or its individual, firm, copartnership, joint venture, trust, business trust, syndicate, associate or corporate capacity.

History.—Added by Stats. 1951, p. 2389, operative July 1, 1951.

Scope.—Section 6019 does not constrict the statutory definition of retailer; it enlarges it. *Davis Wire Corp.* v. *State Board of Equalization* (1976) 17 Cal.3d 761.

6020. **Producers of X-ray films or photographs.** Producers of X-ray films or photographs for the purpose of diagnosing medical or dental conditions of human beings, excluding use of those products for purely cosmetic purposes, are the consumers of materials and supplies used in the production thereof.

History.—Added by Stats. 1951, p. 2286, in effect June 1, 1951, as Section 6019. Renumbered by Stats. 1953, p. 2723, in effect September 9, 1953. Stats. 1982, Ch. 301, in effect June 22, 1982, operative October 1, 1982, added "or photographs" after "films" and substituted "diagnosing medical . . . purposes" for "diagnosis" after "purpose of" in the first sentence.

6021. **Vending machine operators.** Notwithstanding any other provision of law, the sale tax applies to the receipts of operators of vending machines located on Army, Navy or Air Force installations and dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax. This section shall not be deemed to require payment of sales tax measured by receipts of such operators who lease the machines to exchanges of the Army, Air Force, Navy or Marine Corps which acquire title to and sell the merchandise through the machines to authorized purchasers from such exchanges.

The term ''operator,'' as used herein, means any person who owns or possesses vending machines and who controls the operations of the machines, as by placing the merchandise therein or removing the coins therefrom, and who has access thereto for any purpose connected with the sale of merchandise through the machines, and whose compensation is based, in whole or in part, upon receipts from sales made through such machines.

History.—Added by Stats. 1959, p. 2357, in effect September 18, 1959.

6022. **"Vehicle"; "motor vehicle."** ''Vehicle'' and ''motor vehicle,'' as used in this part, shall have the meanings ascribed to them in Sections 415 and 670 of the Vehicle Code.

History.—Added by Stats. 1963, p. 3834, operative October 1, 1963.

6023. **"Mobile transportation equipment."** ''Mobile transportation equipment'' includes equipment 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. ''Mobile transportation equipment'' does not include passenger vehicles as defined in Section 465 of the Vehicle Code, trailers and baggage containers designed for hauling by passenger vehicles, or ''one-way rental trucks'' as defined and identified pursuant to Section 6024.

History.—Added by Stats. 1971, p. 3834, in effect December 16, 1971, operative January 1, 1972.

6024. **"One-way rental trucks."** ''One-way rental trucks'' are motortrucks 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 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, in such manner as the board may prescribe, for employment in such one-way or local hauling. Upon the leasing of such a truck to a customer, the person shall make known to the customer the fact that the vehicle is designated as a one-way rental truck and any taxes imposed by this part which are payable measured by the rentals.

History.—Added by Stats. 1971, p. 3834, in effect December 16, 1971, operative January 1, 1972.

CHAPTER 1.5. STREAMLINED SALES TAX PROJECT *

§ 6025. Title of chapter.
§ 6026. Definitions.
§ 6027. Board of Governance.
§ 6028. Relationship to state law.
§ 6029. Authority to enter agreement; requirements.
§ 6030. Cooperating sovereigns.
§ 6031. Limited binding and beneficial effect.

6025. **Title of chapter.** This chapter shall be known as and referred to as the ''Streamlined Sales Tax Project.''

6026. **Definitions.** For purposes of this act:

(a) ''Agreement'' means the Streamlined Sales and Use Tax Agreement.

(b) ''Board'' means the board of governance, as defined in this act, or the board's designee.

(c) ''Certified automated system'' means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) ''Certified service provider'' means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(e) ''Person'' means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(f) ''Sales tax'' means the tax levied by Chapter 2 (commencing with Section 6051) of Part 1 of Division 2 of the Revenue and Taxation Code.

* Chapter 1.5 was added by Stats. 2003, Ch. 702 (SB 157), in effect January 1, 2004.

(g) "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a service is provided.

(h) "Seller" means any person making sales, leases, or rentals of personal property of services.

(i) "Sourcing" means determining the tax situs of a transaction.

(j) "State" means any state of the United States and the District of Columbia.

(k) "Signatory state" means a state that has entered into the agreement.

(*l*) "Use tax" means the tax levied by Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code.

6027. **Board of Governance.** (a) There is created in state government a Board of Governance consisting of two Members of the Senate chosen by the Senate Committee on Rules, one of whom shall belong to the majority party and one of whom shall belong to the minority party, two Members of the Assembly chosen by the Speaker of the Assembly, one of whom shall belong to the majority party and one of whom shall belong to the minority party, one member of the State Board of Equalization, one member of the Franchise Tax Board, and one member of the Governor's Department of Finance.

(b) The board may represent this state in all meetings, limited only to those states that are also authorized by statute to enter into the agreement. The board shall vote on behalf of this state and shall represent the position of this state in all matters relating to the adoption of or amendments to the agreement.

(c) The board shall report quarterly to the Assembly and Senate Revenue and Taxation Committees on the board's progress in negotiating the agreement and shall recommend to the committees the state statutes required to be added, amended, or otherwise modified for purposes of substantially complying with the agreement.

6028. **Relationship to state law.** The state's decision to join the Streamlined Sales Tax Project shall not invalidate, amend, or otherwise modify, in whole or in part, any provision of the law of this state. Implementation of any provision of the agreement in this state, whether adopted before, at, or after this state's adoption of the agreement, shall be exclusively done by a separate act or acts of the Legislature.

6029. **Authority to enter agreement; requirements.** The board may not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(a) The agreement shall set restrictions to limit over time the number of state rates.

(b) The agreement shall establish uniform standards for the following:

(1) The sourcing of transactions to taxing jurisdictions.

(2) The administration of exempt sales.

(3) Sales and use tax returns and remittances.

(c) The agreement shall provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(d) The agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the signatory states does not by itself determine whether the seller has nexus with a state for any tax.

(e) The agreement shall provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting variances between the state and local taxes bases.

(2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.

(3) Restricting the frequency of changes in local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

(4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(f) The agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement shall allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes or state and local governments under various levels of complexity.

(g) The agreement shall require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(h) The agreement shall require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(i) The agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

6030. **Cooperating sovereigns.** The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

6031. **Limited binding and beneficial effect.** (a) The agreement shall bind and inure only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the

agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with subdivision (a), no person shall have any cause of action or defense under the agreement or by virtue of this state's decision to join the Streamlined Sales Tax Project. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

Chapter 2. The Sales Tax

Constitutionality.—The Retail Sales Tax Act, reciting that it should become effective immediately upon its approval, is not unconstitutional because not passed by a two-thirds vote in each house of the Legislature. The constitutional mandate, contained in section 1 of Article VI, that no act shall go into effect until 90 days after the adjournment of the Legislature, specifically excepts three classes of measures, i.e., acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the state and certain urgency measures. It is only the last group that requires a two-thirds vote. The Legislature has the power to determine by a majority vote in each house when the other two classes of excepted acts shall become effective. Even though the act failed to become effective immediately on July 31, 1933, when it was approved, the collection of taxes for the first quarterly period beginning with August 1, 1933, was not illegal for the reason that the act would become retroactive as to the period of time prior to its effective date.

The act does not contravene either the Federal or the State Constitution by depriving individuals of property without due process of law and does not unreasonably discriminate with respect to the different classes of businesses to which it applies. Thus, the act is not unconstitutional because it applies to retail and not wholesale merchants and to tangible and not intangible personal property, because it provides for certain specific exemptions and because section 8½ authorizes the retailer to collect the tax "from the consumer insofar as the same can be done." *Roth Drugs, Inc.* v. *Johnson* (1936) 13 Cal.App.2d 720.

Article 1. Imposition of Tax. §§6051–6055.
2. Permits. §§6066–6077.
3. Presumptions and Resale Certificates. §§6091–6095.

Article 1. Imposition of Tax

Sec. 35. Imposition and rate of additional sales and use tax.
§ 6051. Imposition and rate of sales tax.
§ 6051. Imposition and rate of sales tax. [Repealed.]
§ 6051.1. Temporary sales tax increase. [Repealed.]
§ 6051.2. Imposition and rate of additional sales tax.
§ 6051.3. Imposition and rate of additional sales tax.
§ 6051.4. Conditions necessary for additional sales tax to cease.
§ 6051.45. Operative date of tax.
§ 6051.5. Imposition and rate of sales tax. [Repealed.]
§ 6051.5. Imposition and rate of additional sales tax; Fiscal Recovery Fund.
§ 6051.6. Comparison of estimated receipts with actual receipts by Controller. [Repealed.]
§ 6051.6. Exemption from tax; aircraft common carriers.
§ 6051.7. Imposition and rate of sales tax. [Repealed.]
§ 6051.8. Conditions for activation of Section 6051.7. [Repealed.]
§ 6052. Reimbursement. [Repealed.]
§ 6052.5. Reimbursement schedules. [Repealed.]
§ 6053. Unlawful advertising. [Repealed.]
§ 6054. Itemization of tax remburseement. [Repealed.]
§ 6054.5. Excessive reimbursement. [Repealed.]
§ 6055. Worthless accounts.

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California Constitutional Provision

SEC. 35. **Imposition and rate of additional sales and use tax.** (a) The people of the State of California find and declare all of the following:

(1) Public safety services are critically important to the security and well-being of the State's citizens and to the growth and revitalization of the State's economic base.

(2) The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.

(3) In order to assist local government in maintaining a sufficient level of public safety services, the proceeds of the tax enacted pursuant to this section shall be designated exclusively for public safety.

(b) In addition to any sales and use taxes imposed by the Legislature, the following sales and use taxes are hereby imposed:

(1) For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of ½ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State on and after January 1, 1994.

(2) An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on and after January 1, 1994, for storage, use, or other consumption in this State at the rate of ½ percent of the sales price of the property.

(c) The Sales and Use Tax Law, including any amendments made thereto on or after the effective date of this section, shall be applicable to the taxes imposed by subdivision (b).

(d) (1) All revenues, less refunds, derived from the taxes imposed pursuant to subdivision (b) shall be transferred to the Local Public Safety Fund for allocation by the Legislature, as prescribed by statute, to counties in which either of the following occurs:

(A) The board of supervisors, by a majority vote of its membership, requests an allocation from the Local Public Safety Fund in a manner prescribed by statute.

(B) A majority of the county's voters voting thereon approve the addition of this section.

(2) Moneys in the Local Public Safety Fund shall be allocated for use exclusively for public safety services of local agencies.

(e) Revenues derived from the taxes imposed pursuant to subdivision (b) shall not be considered proceeds of taxes for purposes of Article XIII B or state General Fund proceeds of taxes within the meaning of Article XVI.

(f) Except for the provisions of Section 34, this section shall supersede any other provisions of this Constitution that are in conflict with the provisions of this section, including, but not limited to, Section 9 of Article II.

History.—Adopted by voters, Proposition 172, in effect November 3, 1993.

6051. **Imposition and rate of sales tax.** For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2½ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after August 1, 1933, and to and including June 30, 1935, and at the rate of 3 percent thereafter, and at the rate of 2½ percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent on and after July 1, 1949, and to and including July 31, 1967, and at the rate of 4 percent on and after August 1, 1967, and to and including June 30, 1972, and at the rate of 3¾ percent on and after July 1, 1972, and to and including June 30, 1973, and at the rate of 4¾ percent on and after July 1, 1973, and to and including September 30, 1973, and at the rate of 3¾ percent on and after October 1, 1973, and to and including March 31, 1974, and at the rate of 4¾ percent thereafter.

History.—Stats. 1943, p. 2918, in effect June 1, 1943, added provision for temporary 2½ percent rate, and added provisions for postwar reserve. Temporary reduction and postwar reserve were also provided for by Stats. 1943, p. 1581, in effect May 7, 1943. Stats. 1945, p. 1292, in effect June 5, 1945, continued temporary 2½ percent rate. Stats. 1947, p. 1866, in effect June 17, 1947, continued temporary 2½ percent rate, and deleted provisions for postwar reserve. Stats. 1948, p. 16, in effect April 9, 1948, continued temporary 2½ percent rate. Stats. 1967, p. 2471, operative August 1, 1967, increased the rate to 4 percent. Stats. 1971, p. 2783, operative July 1, 1972, decreased the tax rate to 3¾ percent, pp. 4895 and 5131, effective December 8, 1971, amended the section to decrease the rate to 3¼ percent during 1975, operative if the Legislative Analyst does not make the certification referred to in section 316.2. (p. 5131). Stats. 1972, p. 2969, effective December 26, 1972, repealed the section as amended by Ch. 1400 of Stats. 1971, and reenacted the section operative June 1, 1973, increasing the rate to 4¾ percent after May 31, 1973, and repeals this section if the Legislative Analyst does not make the certification described in subdivision (c) of section 316.2 of Ch. 1 of the 1971 First Extraordinary Session. Stats. 1973, Ch. 67, effective May 29, 1973, delayed to July 1, 1973, the rate increase to 4¾ percent; Ch. 296, effective August 23, 1973, decreased the rate to 3¾ percent on October 1, 1973, and raises it to 4¾ percent on April 1, 1974, operative October 1, 1973. On October 7, 1974, the Legislative Analyst made the certification described in section 316.2(c) of Chapter 1 of the Stats 1971. Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, added "on and after April 1, 1974, and to and including June 30, 1991, and at the rate of 5 percent" after "March 31, 1974, and at the rate of 4¾ percent". Stats. 1991, Ch. 117, in effect July 16, 1991, deleted "on and after April 1, 1974, and to and including July 14, 1991, and at the rate of 5 percent" after "March 31, 1974, and at the rate of 4¾ percent".

6051. **Imposition and rate of sales tax.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

Tax on retailer.—The sales tax is a charge upon the retailer and not upon the consumer. *Meyer Construction Co.* v. *Corbett* (1934) 7 F.Supp. 616; *People* v. *Herbert's of Los Angeles* (1935) 3 Cal.App.2d 482; *Graham Brothers, Inc.* v. *City of Los Angeles* (1935) 6 Cal.App.2d 203; *Clary* v. *Basalt Rock Co.* (1950) 99 Cal.App.2d 458; *Pacific Coast Engineering Co.* v. *State of California* (1952) 111 Cal.App.2d 31; *Livingston Rock and Gravel Co., Inc.* v. *De Salvo* (1955) 136 Cal.App.2d 156. In the *Meyer Construction Co.* case, supra, the court decided that a contractor who had undertaken to construct buildings on a military reservation under the exclusive jurisdiction of the United States, and who was considered the consumer of the personal property used in this work under a lump sum contract with the government, was not the proper party to raise any question with respect to the constitutionality of the Sales Tax Act. The court ruled that this issue could be raised only by the person upon whom the tax is levied, i.e., the retailer, and that the tax was not on the consumer, although it might be passed on to him by the retailer as a part of the purchase price of the goods sold.

Sale of retailer's equipment.—A retailer is required to pay sales tax on his receipts from the sale of equipment used in his business. *Bigsby* v. *Johnson* (1941) 18 Cal.2d 860.

Sales of capital equipment.—A railroad company holding a seller's permit and making regular sales from its ''stores department'' is required to pay the sales tax upon retail sales of rolling stock and a motor vehicle to its parent and other subsidiaries even though the sales are not made through that department. In view of the number, scope and character of the sales of the rolling stock and vehicle, they are not exempt from tax as casual or isolated sales. *Northwestern Pacific Railroad Co.* v. *State Board of Equalization* (1943) 21 Cal.2d 524.

Nature of liability for tax.—Liability for sales tax arises by operation of law and not by contract. Hence, the provisions of sections 700 and 707 of the Probate Code, which require that a claim against an estate arising upon contract must be presented within six months after the first publication of notice to creditors, are not effective to bar a claim of the state for additional sales taxes filed after the six months' period. *People* v. *Hochwender* (1942) 20 Cal.2d 181.

In a claim against a county for sales tax the provisions of the Sales and Use Tax Law control and take priority over the general statutes dealing with the filing of claims aganst counties in ordinary cases. *People* v. *Imperial County* (1946) 76 Cal.App.2d 572.

Liquidation sale.—The tax upon the privilege of selling tangible personal property at retail applies to liquidation sales where a retailer is going out of business. *Market Street Railway Co.* v. *State Board of Equalization* (1955) 137 Cal.App.2d 87.

Title passage.—Where a sale is made under a contract which provides that title is to pass to the buyer at the out-of-state shipping point upon delivery of the property by the seller to a common carrier consigned to the buyer, the sale does not occur in this state and is not subject to sales tax. Where a sale is made under a contract which provided for shipment from an out-of-state point f.o.b. shipping point with freight charges prepaid by seller, trial court's finding that the title passed at the destination was supported and the sales tax applied. *Diebold, Inc.* v. *State Board of Equalization* (1959) 168 Cal.App.2d 628.

Sale of sand and gravel.—Where a supplier agreed to furnish sand and gravel to a contractor "f.o.b. job site," the transaction was a sale of tangible personal property and not a transfer of an interest in real property notwithstanding that the agreement of sale referred to "royalty" for materials removed. The nomenclature does not bind the board as a third party to the contract, and the true nature of the contract must be looked to to determine whether there was a sale of personal property subject to the sales tax. *Santa Clara Sand and Gravel Co.* v. *State Board of Equalization* (1964) 225 Cal.App.2d 676.

Former Section 6376 and fixed price construction contracts prior to August 1, 1967.—Former Section 6376, added by Stats. 1967, Ch. 964, exempted construction material and fixtures from 1 percent tax rate increase where fixed price construction contract was entered into prior to August 1, 1967. Section 6376 did not also exempt construction equipment and supplies, where it is reasonable to assume the Legislature used the terms "material and fixtures" in the sense which had been given to the terms by the Board's longstanding administrative ruling. Further, plaintiff was not subjected to any unconstitutional impairment of its contract with the Department of Water Resources as a result of any additional burden falling on it by virtue of the increased tax. *Western Contracting Corp.* v. *State Board of Equalization* (1974) 39 Cal.App.3d 341.

Incidence of the Sales Tax for Federal Purposes is on the Purchaser.—The incidence of the sales tax for federal purposes is on the purchaser. Accordingly, sales to a national bank were not subject to sales tax. [The Federal law, 12 U.S.C. Section 548, was amended after the period involved in the case to allow states to tax national banks the same as state banks.] *Diamond National Corp.* v. *State Board of Equalization* (1976) 425 U.S. 268.

Incidence of the Sales Tax for Federal Purposes is on the Purchaser.—Where a lessor leases tangible personal property to the United States, the incidence of sales tax applied to the rental receipts would fall upon the United States; such tax is impermissible because it would be a violation of the constitutional immunity of the United States from state taxation. *United States* v. *State Board of Equalization* (1976) 536 F.2d 294.

Incidence of the Sales Tax is on the retailer.—Under California law, the legal incidence and the economic burden are two separate and distinct concepts. Where no federal immunity is involved, the legal incidence of the retail sales tax is on the retailer. Accordingly, article XIII, section 28(f) of the California Constitution (and Rev. & Tax. Code § 12204), which provides that the insurance tax is in lieu of other taxes, does not forbid the imposition of a sales tax on retail sales of personal property to insurance companies. *Occidental Life Ins. Co.* v. *State Board of Equalization* (1982) 135 Cal.App.3d 845.

Sales to State Banks.—Sales tax on sales to state banks was constitutional even though sales tax on sales to national banks was barred by federal law and court decision. *Hibernia Bank* v. *State Board of Equalization* (1985) 166 Cal.App.3d 393.

6051.1. **Temporary sales tax increase.** [Repealed by Stats. 1991, Ch. 1091, in effect January 1, 1992.]

6051.2. **Imposition and rate of additional sales tax.** (a) In addition to the taxes imposed by Section 6051 and any other provision of this part, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of ½ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on and after July 15, 1991.

(b) All revenues received pursuant to this section shall be deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code.

(c) This section shall cease to be operative on the first day of the first month of the calendar quarter following notification to the board by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal that the revenues collected pursuant to this section and Section 6201.2 that are deposited in the Local Revenue Fund are either of the following:

(1) ''General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution,'' as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) ''Allocated local proceeds of taxes,'' as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

History.—Added by Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991. Stats. 1991, Ch. 88, in effect June 30, 1991 operative July 15, 1991, substituted "July 15" for "July 1" in subdivision (a). Stats. 1993, Ch. 100, in effect July 13, 1993, added subdivision (b) and relettered former subdivision (b) as (c).

6051.3. **Imposition and rate of additional sales tax.** In addition to the taxes imposed by Sections 6051, 6051.2, 6051.5, and any other provision of this part, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of ¼ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on and after July 15, 1991, and during any period in which this section is operative pursuant to Section 6051.4.

History.—Added by Stats. 1991, Ch. 117, in effect July 16, 1991.

6051.4. **Conditions necessary for additional sales tax to cease.** (a) Section 6051.3 shall be operative with respect to the sale of all tangible personal property sold at retail in this state on or after July 15, 1991, but shall cease to be operative during any period described in subdivision (c) or (d).

(b) On or before November 1, 1993, and on or before every November 1 thereafter, the Director of Finance shall determine and certify to the Governor, the Legislature, and the board both of the following:

(1) Whether the amount in the Special Fund for Economic Uncertainties, as established pursuant to Section 16418 of the Government Code, as of June 30 of the prior fiscal year exceeded 4 percent of General Fund revenues for that prior fiscal year.

(2) Whether the estimated amount in the Special Fund for Economic Uncertainties as of June 30 of the current fiscal year (without inclusion of any revenue derived pursuant to Section 6051.3 on and after January 1 of the current fiscal year) exceeds 4 percent of General Fund revenues for the current fiscal year.

(c) Section 6051.3 shall cease to be operative on and after January 1, 1994, if on or before November 1, 1993, the Director of Finance certifies pursuant to subdivision (b) that both amounts certified pursuant to paragraphs (1) and (2) of that subdivision exceed 4 percent of General Fund revenues for the respective fiscal year for which each amount is determined and certified.

(d) Section 6051.3 shall cease to be operative on and after January 1 following any November 1 in which Section 6051.3 is operative and the Director of Finance certifies pursuant to subdivision (b) that both amounts certified pursuant to paragraphs (1) and (2) of that subdivision exceed 4 percent of General Fund revenues for the respective fiscal year for which each amount is determined and certified.

(e) Section 6051.3 shall become operative on and after January 1 following any November 1 in which Section 6051.3 is inoperative and the Director of Finance certifies pursuant to paragraph (2) of subdivision (b) that the estimated amount does not exceed 4 percent of the General Fund revenues as of June 30 of the current fiscal year.

History.—Added by Stats. 1991, Ch. 117, in effect July 16, 1991.

6051.45. **Operative date of tax.** Notwithstanding 6051.4 or any other provision of law, the state sales tax rate in Section 6051.3 shall not be operative in any calendar year beginning on or after January 1, 2002, if the Director of Finance determines both of the following:

(a) The General Fund reserve is 3 percent of revenues excluding the revenues derived from the ¼ cent sales and use tax rate.

(b) Actual General Fund revenues for the period May 1 through September 30 equal or exceed the May Revision forecast, prior to the November 1 determination.

The Director of Finance shall make the determination on or before November 1 of each year.

The ¼ cent reduction shall be operative for each calendar year commencing on the next January 1 after the determination is made.

History.—Added by Stats. 2001, Ch. 156 (AB 426), in effect August 7, 2001, operative September 1, 2001.

6051.5. **Imposition and rate of sales tax.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6051.5. **Imposition and rate of additional sales tax; Fiscal Recovery Fund.** (a) In addition to the taxes imposed by Section 6051 and any other provision of this part, for the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of one-half of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state.

(b) All revenues, net of refunds, received pursuant to this section shall be deposited in the State Treasury to the credit of the Fiscal Recovery Fund, as established pursuant to Section 99008 of the Government Code.

(c) Revenues received pursuant to this section accruing to the Fiscal Recovery Fund shall not be considered to be "State General Fund proceeds of taxes appropriated pursuant to Article XIII B" within the meaning of either Section 8 of Article XVI of the California Constitution or Section 41202 of the Education Code.

(d) This section shall become operative on July 1, 2004, and shall cease to be operative on the first day of the first calendar quarter commencing more than 90 days following a notification to the board by the Director of Finance pursuant to subdivision (b) of Section 99006 of the Government Code.

History.—Added by Stats. 2003, Ch. 13X (AB 7X), in effect August 2, 2003, but operative July 1, 2004.

6051.6. **Comparison of estimated receipts with actual receipts by Controller.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6051.6. **Exemption from tax; aircraft common carriers.** There are exempted from the taxes imposed by Section 6051.5 the gross receipts derived from the sale of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of the aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

History.—Added by Stats. 2003, Ch. 13X (AB 7X), in effect August 2, 2003, but operative July 1, 2004.

6051.7. **Imposition and rate of sales tax.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6051.8. **Conditions for activation of Section 6051.7.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6052. **Reimbursement.** [Repealed by Stats. 1978, Ch. 1211, effective January 1, 1979.]

Collection not mandatory.—This section does not require a retailer to collect reimbursement for sales tax from consumers. *Diamond National Corp.* v. *State Board of Equalization* (1976) 60 Cal.App.3d 283 on remand from (1976) 425 U.S. 628.

Note.—Stats. 1978, Ch. 1211, effective January 1, 1979, added Section 1656.1 to the Civil Code, amended by Stats. 1985, Ch. 20, effective April 1, 1985, as follows:

CIVIL CODE

1656.1. Reimbursement. (a) 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. 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:

(1) The agreement of sale expressly provides for such addition of sales tax reimbursement;

(2) Sales tax reimbursement is shown on the sales check or other proof of sale; or

(3) 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.

(b) 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.''

(c) (1) The State Board of Equalization shall prepare and make available for inspection and duplication or reproduction a sales tax reimbursement schedule which shall be identical with the following tables up to the amounts specified therein:

4¾ percent

Price	Tax
.01– .10	.00
.11– .31	.01
.32– .52	.02
.53– .73	.03
.74– .94	.04
.95–1.15	.05

5 percent

Price	Tax
.01– .09	.00
.10– .29	.01
.30– .49	.02
.50– .69	.03
.70– .89	.04
.90–1.09	.05

5¼ percent

Price	Tax
.01– .09	.00
.10– .28	.01
.29– .47	.02
.48– .66	.03
.67– .85	.04
.86–1.04	.05

5½ percent

Price	Tax
.01– .09	.00
.10– .27	.01
.28– .45	.02
.46– .63	.03
.64– .81	.04
.82– .99	.05
1.00–1.18	.06

5¾ percent

Price	Tax
.01– .08	.00
.09– .26	.01
.27– .43	.02
.44– .60	.03
.61– .78	.04
.79– .95	.05
.96–1.13	.06

6 percent

Price	Tax
.01– .08	.00
.09– .24	.01
.25– .41	.02
.42– .58	.03
.59– .74	.04
.75– .91	.05
.92–1.08	.06

6¼ percent

Price	Tax
.01– .07	.00
.08– .23	.01
.24– .39	.02
.40– .55	.03
.56– .71	.04
.72– .87	.05
.88–1.03	.06

6½ percent

Price	Tax
.01– .07	.00
.08– .23	.01
.24– .38	.02
.39– .53	.03
.54– .69	.04
.70– .84	.05
.85– .99	.06
1.00–1.15	.07

6¾ percent

Price	Tax
.01– .07	.00
.08– .22	.01
.23– .37	.02
.38– .51	.03
.52– .66	.04
.67– .81	.05
.82– .96	.06
.97–1.11	.07

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7 percent

Price	Tax
.01– .07	.00
.08– .21	.01
.22– .35	.02
.36– .49	.03
.50– .64	.04
.65– .78	.05
.79– .92	.06
.93–1.07	.07

7¼ percent

Price	Tax
.01– .06	.00
.07– .20	.01
.21– .34	.02
.35– .48	.03
.49– .62	.04
.63– .75	.05
.76– .89	.06
.90–1.03	.07

7½ percent

Price	Tax
.01– .06	.00
.07– .19	.01
.20– .33	.02
.34– .46	.03
.47– .59	.04
.60– .73	.05
.74– .86	.06
.87– .99	.07
1.00–1.13	.08

(2) Reimbursement on sales prices in excess of those shown in the schedules 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.

(3) If sales tax reimbursement is added to the sales price of tangible personal property sold at retail, the retailer shall use a schedule provided by the board, or a schedule approved by the board.

(d) The presumptions created by this section are rebuttable presumptions.

History.—Stats. 1985, Ch. 20, effective April 1, 1985, added table for rate of 7 percent. Stats. 1990, Ch. 1528, in effect January 1, 1991, added "or her" after "his" twice, revised tables of rates for 4¾ percent, 5 percent, 5¼ percent, 6 percent, 6¼ percent, 6½ percent and 7 percent, and added tables of rates for 5½ percent, 5¾ percent, 6¾ percent, 7¼ percent and 7½ percent.

1656.2. **Preparation of sales tax reimbursement schedule.** [Repealed by Stats. 1990, Ch. 1528, in effect January 1, 1991.]

6052.5. **Reimbursement schedules.** [Repealed by Stats. 1978, Ch. 1211, effective January 1, 1979.]

Note.—See note to Section 6052.

6053. **Unlawful advertising.** [Repealed by Stats. 1978, Ch. 1211, effective January 1, 1979.]

Reimbursement for tax.—Inasmuch as the tax is on the retailer and any amount of sales tax reimbursement which is separately stated is itself part of the purchase price, it is of no immediate legal concern to one purchasing an article at a list price of 15 cents plus 01 cent as sales tax reimbursement that the retailer is required to pay to the state a tax of only 4¼ mills on account of the transaction. The provisions of this and the preceding section relating to the "passing on" of the tax are valid. *De Aryan* v. *Akers* (1939) 12 Cal.2d 781, cert. den. (1939) 308 U.S. 581.

The provisions of this and the preceding section give the retailer no right of action against the consumer unless the consumer has agreed to pay reimbursement for the tax as a part of the price and has failed to do so. *Clary* v. *Basalt Rock Co.* (1950) 99 Cal.App.2d 458; *Pacific Engineering Co.* v. *State of California* (1952) 111 Cal.App.2d 31; *Livingston Rock and Gravel Co.* v. *De Salvo* (1955) 136 Cal.App.2d 156.

6054. **Itemization of tax reimbursement.** [Repealed by Stats. 1978, Ch. 1211, effective January 1, 1979.]

6054.5. **Excessive reimbursement.** [Repealed by Stats. 1978, Ch. 1211, effective January 1, 1979.]

Note.—See note to Section 6052.

Unintentional overpayment.—Where a retailer mistakenly collects excess sales taxes from its customers and pays them over to the state, the board may require as a condition of refund to the retailer that the excess be returned to the customer from whom it was collected. *Decorative Carpets, Inc.* v. *State Board of Equalization* (1962) 58 Cal.2d 252.

Joinder of Board in suit for refund by consumer against retailers.—Where a consumer brings a class action for refund of sales tax reimbursement against retailers who have failed or refused to apply for tax refunds to which they are entitled, the consumer may join the Board as a party in the suit. *Javor* v. *State Board of Equalization* (1974) 12 Cal.3d 790.

6055. **Worthless accounts.** (a) A retailer is relieved from liability for sales tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the tax may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the tax shall be paid with the return. For purposes of this subdivision, the term ''retailer'' shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(b) (1) In the case of accounts held by a lender, a retailer or lender who makes a proper election under paragraph (4) shall be entitled to a deduction or refund of the tax that the retailer has previously reported and paid if all of the following conditions are met:

(A) No deduction was previously claimed or allowed on any portion of the accounts.

(B) The accounts have been found worthless and written off by the lender in accordance with the requirements of subdivision (a).

(C) The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The retailer remitted the tax on or after January 1, 2000.

(E) The party electing to claim the deduction or refund under paragraph (4) files a claim in a manner prescribed by the board.

(2) If the retailer or the lender thereafter collects in whole or in part any accounts, one of the following shall apply:

(A) If the retailer is entitled to the deduction or refund under the election specified in paragraph (4), the retailer shall include the amount collected in its first return filed after the collection and pay tax on that amount with the return.

(B) If the lender is entitled to the deduction or refund under the election specified in paragraph (4), the lender shall pay the tax to the board in accordance with Section 6451.

(3) For purposes of this subdivision, the term ''lender'' means any of the following:

(A) Any person who holds a retail account which that person purchased directly from a retailer who reported the tax.

(B) Any person who holds a retail account pursuant to that person's contract directly with the retailer who reported the tax.

(C) Any person who is either an affiliated entity, under Section 1504 of Title 26 of the United States Code, of a person described in subparagraph (A) or (B), or an assignee of a person described in subparagraph (A) or (B).

(4) Prior to claiming any deduction or refund under this subdivision, the retailer who reported the tax and the lender shall file an election with the board, signed by both parties, designating which party is entitled to claim the deduction or refund. This election may not be amended or revoked unless a new election, signed by both parties, is filed with the board.

History.—Added by Stats. 1959, p. 3263, in effect September 18, 1959. Adopted from former Section 6453.5, added by Stats. 1957, p. 1938, in effect September 11, 1957, except that Section 6055 applies solely to sales tax, substitutes "retailer" for "seller," adds the provision for relief from liability, changes from a "credit . . . against the tax shown to be due on the return" to a "deduction," deletes the requirement that the credit be limited to accounts found to be worthless and actually charged off "during the period covered by the return," and rearranges wording for clarity. Stats. 1970, p. 1056, in effect November 23, 1970, added to first sentence, "or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.", and deleted "for income tax purposes" from the end of the second sentence. Stats. 2000, Ch. 600 (AB 599), in effect January 1, 2001, added subdivision letter designation (a) before first paragraph, substituted "that" for "which" after "for sales tax", deleted "subsequent to September 30, 1957" after "due and payable", substituted "that" for "which" after "by accounts", and added "by the retailer" after "tax purposes" in the first sentence, substituted "A retailer that" for "If the retailer" after "accounting principles.", deleted ", he" after "paid the tax" and added "by the retailer" after "charged off" in the second sentence, substituted "these" for "any such" before "accounts are", substituted "the" for "such" after "collection", and added "shall be" after "and the tax" in the third sentence, and added the fourth sentence therein; and added subdivision (b).

Bankruptcy.—Bad debt credits resulting from the writeoff of pre-petition accounts receivable were the property of the receiver in bankruptcy and could not be used by the reorganized debtor to offset its liability for penalties and interest for late payment of taxes. *Gough Industries* v. *Rothman* (1971) 446 F.2d 536; Cert den. (1972) 405 U.S. 916.

Article 2. Permits

§ 6066. Application for permit.
§ 6066.3. Collection of information by cities and counties for seller's permits.
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§ 6076. Exemption from permit; hay sellers.
§ 6077. Retail florists.

6066. **Application for permit.** (a) Every person desiring to engage in or conduct business as a seller within this state shall file with the board an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the board may require. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the board. The

application shall state that the applicant will actively engage in or conduct business as a seller of tangible personal property.

(b) An application filed pursuant to this section may be filed using electronic media as prescribed by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

History.—Stats. 1971, Ch. 1634, operative January 1, 1972, deleted "to which shall be attached the written evidence of his authority" from the last sentence. Stats. 1980, Ch. 91, operative January 1, 1981, added second paragraph. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, add subdivision letter designation (a) before first paragraph, added second sentence, deleted "be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application. The person signing the application shall certify" after "The application shall" in the former second sentence; and added subdivisions (b) and (c).

6066.3. **Collection of information by cities and counties for seller's permits.** (a) A city, county, or city and county may collect information from persons desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property under this part and shall transmit that information to the board. The information shall be provided to the board in a format to be determined by the board after consulting with the League of California Cities and the California State Association of Counties.

(b) The information submitted to the board under subdivision (a) shall serve as all of the following:

(1) The preliminary application for a seller's permit.

(2) Notification to the board by the city, county, or city and county of a person desiring to engage in the business of selling of tangible personal property in that jurisdiction.

(3) Notice to the board for purposes of redistribution under Section 7209.

(c) The board shall issue a determination regarding issuance of a seller's permit and receipt of notification for purposes of paragraphs (2) and (3) of subdivision (b). The board shall provide a copy of that determination and receipt of notification to the city, county, or city and county from which the board has received information under subdivision (a). The board shall make its determination as follows:

(1) For persons for whom a determination can be made based on the information submitted, the determination shall be issued within 30 days of receipt of the information.

(2) For persons for whom additional information is required before a determination can be made, the determination shall be issued within 120 days of receipt of the information.

(d) The board shall, after consulting with the League of California Cities and the California State Association of Counties, adopt standardized data addressing and naming conventions that are compatible with local jurisdiction conventions for new registrants and, to the extent possible, for current accounts.

(e) A city, county, or city and county may not charge applicants a fee for collecting and transmitting information pursuant to this section.

History.—Added by Stats. 1999, Ch. 908,(AB 990), in effect January 1, 2000. Stats. 2003, Ch. 471 (SB 1062), in effect January 1, 2004, deleted former subdivision (f) which provided "(f) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date."

Note.—Sec. 3, Stats. 1999, Ch. 908, (AB 990), requires that, on or before January 1, 2003, the State Board of Equalization shall report to the Legislature the amount of sales and use tax revenues collected from persons not previously registered by the board and the board's cost to administer the provisions of this act.

6066.4. **Providing of seller's permit to cities and counties.** A city, county, or city and county may require each person desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property to provide his or her seller's permit account number, if any.

History.—Added by Stats. 1999, Ch. 908, (AB 990), in effect January 1, 2000. Stats. 2003, Ch. 471 (SB 1062), in effect January 1, 2004, deleted subdivision letter designation (a) before "A city, county," and deleted former subdivision (b) which provided "(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date."

Note.—Sec. 3, Stats. 1999, Ch. 908,(AB 990), requires that, on or before January 1, 2003, the State Board of Equalization shall report to the Legislature the amount of sales and use tax revenues collected from persons not previously registered by the board and the board's cost to administer the provisions of this act.

6066.5. **Notice to applicant.** At the time the board provides the applicant with an application form, the applicant shall be provided with a written notice in a form prescribed by the board outlining the provisions of Sections 6072 and 6094.5 and the penalties that will accrue to the applicant should the permit be used in a manner which is prohibited by those sections.

History.—Added by Stats. 1980, Ch. 91, operative January 1, 1981.

6067. **Issuance and display of permit.** After compliance with Sections 6066 and 6701 by the applicant, and after the giving the applicant the notice required by Section 6066.5, the board shall grant and issue to each applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

History.—Former section 6068 renumbered and amended by Stats. 1966, p. 185, in effect April 18, 1966, operative July 1, 1966, deleted reference to section 6067. Stats. 1980, Ch. 91, operative January 1, 1981, added "and after the giving the applicant the notice required by Section 6066.5,".

6068. **Change of address.** Upon such notification of a change of address as may be required by the board, a permit may be reissued for the new address of a business place of a permitholder without the filing of a new application.

History.—Added by Stats. 1966, p. 185, in effect April 18, 1966, operative July 1, 1966. Former section 6068 was renumbered and amended as section 6067 by Stats. 1966, p. 185, in effect April 18, 1966.

6069. **Renewal of permit.** A seller whose permit has been previously suspended or revoked shall pay the board a fee of fifty dollars ($50) for the renewal or issuance of a permit.

History.—Stats. 1966, p. 185, in effect April 18, 1966, operative July 1, 1966, raised the fee from $1 to $15. Stats. 1986, Ch. 1361, effective January 1, 1987, raised the fee from $15 to $50.

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

6070. **Revocation of permit.** Whenever any person fails to comply with any provision of this part relating to the sales tax or any rule or regulation of the board relating to the sales tax prescribed and adopted under this part, the board upon hearing, after giving the person 10 days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The board shall give to the person written notice of the suspension or revocation of any of his permits. The notices herein required may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The board shall not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this part relating to the sales tax and the regulations of the board.

History.—Stats. 1951, p. 2389, operative July 1, 1951, added provision requiring notice of suspension or revocation of permit. Stats. 1957, p. 1207, in effect September 11, 1957, added the former last paragraph, which imposed a $25 fee for a new permit after the permit had been revoked three times within a two-year period. Stats. 1966, p. 186, in effect April 18, 1966; operative July 1, 1966, deleted the former last paragraph.

6071. **Unlawful acts.** A person who engages in business as a seller in this state without a permit or permits or after a permit has been suspended or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor punishable as provided in Section 7153.

History.—Stats. 1971, p. 3526, operative January 1, 1972, added "or revoked" after "suspended". Stats. 1986, Ch. 1361, effective January 1, 1987, added reference to Section 7153.

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

6071.1. **Surrender of permit.** (a) A permitholder who fails to surrender a seller's permit upon transfer of a business shall be liable for any tax, interest, and penalty incurred by the transferee if the permitholder has actual or constructive knowledge that the transferee is using the permit in any manner. The predecessor's liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.

(b) The limitation on liability provided for in subdivision (a) shall not apply in cases where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor.

(c) For purposes of this section, 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.

History.—Added by Stats. 1993, Ch. 1109, in effect January 1, 1994.

6072. **Inactive permit.** 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.

Any person who knowingly issues a resale certificate while the person is not actively engaged in business as a seller, for personal gain or to evade the payment of taxes, shall be liable for the taxes that would otherwise have been due on the transaction, plus a penalty of 10 percent or five hundred dollars ($500), whichever is greater, in addition to all other penalties imposed by this part, and interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

History.—Added by Stats. 1965, p. 1475, in effect September 17, 1965. Stats. 1980, Ch. 91, operative January 1, 1981, added second paragraph. Stats. 1982, Ch. 1589, in effect January 1, 1983, substituted "the person" for "he" after "while," added "which is in . . . this part" after "percent," and substituted "adjusted annual . . . until" for "rate of . . . transaction to" in the second paragraph. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, in second paragraph substituted "in . . . greater" for "which is" after "10 percent," substituted "modified adjusted . . . thereof" for "adjusted annual rate" before "established," substituted "Section 6591.5" for "Section 19269." Stats. 1984, Ch. 512, effective July 17, 1984, deleted "which is" after "10 percent" in second paragraph, added "or . . . greater" after "10 percent." Stats. 1984, Ch. 930, effective January 1, 1985, added "compounded daily", after "Section 19269."

6073. **Swap meet or flea market.** (a) (1) When the board determines it is necessary for the efficient administration of this part, the board may require the operator of a swap meet, flea market, or special event as a prerequisite to renting or leasing space on the premises owned or controlled by that operator to a person desiring to engage in or conduct business as a seller, to obtain written evidence that the seller is the holder of a valid seller's permit issued pursuant to Section 6067, or a written statement from the seller that he or she is not offering for sale any item that is taxable under this part or is otherwise not required to hold a valid seller's permit.

(2) In providing the board with documentation required by the board pursuant to paragraph (1), an operator of a swap meet, flea market, or special event may require each person desiring to engage in or conduct business as a seller at that swap meet, flea market, or special event to provide his or her driver's license number to the operator on a form authorized by the board or under Section 6073.1.

(b) At any time as the board may specify in a written notice, but in no case more than three times in a calendar year, the board may require an operator to submit to the board a list of vendors conducting business on their premises as a seller. Each listing shall be provided to the board within 30 days after the date of the board's notice. The list shall contain the name and seller's permit

number for permitholders and the name, address, and driver's license number for vendors who do not have seller's permits. Records shall be retained to the same extent as all transactions involving sales or use tax liability as provided in Section 7053.

(c) ''Swap meet, flea market, or special event,'' as used in this section, means an activity involving a series of sales sufficient in number, scope and character to constitute a regular course of business, or any event at which two or more persons offer tangible personal property for sale or exchange and at which a fee is charged for the privilege of displaying the property for sale or exchange or at which a fee is charged to prospective buyers for admission to the area where the property is offered or displayed for sale or exchange.

(d) Any operator of a swap meet, flea market, or special event who fails or refuses to comply with this section is subject to a penalty not exceeding one thousand dollars ($1,000) for each offense.

History.—Added by Stats. 1973, Ch. 746, effective January 1, 1974. Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1983, substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500)" after "exceeding" in subdivision (c). Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "swap meet, flea market, or special event" for "swap meet or flea market" in subdivisions (a) and (c), following "operator of a," and at the beginning of subdivision (b), inserted "or she" following "seller that he" in subdivision (a), and added ", or any event . . . for sale or exchange" at the end of subdivision (b). Stats. 1992, Ch. 902, in effect September 25, 1992, operative January 1, 1993, deleted "of this part" after "Section 6067" in subdivision (a), added subdivision (b), and relettered former subdivisions (b) and (c) as (c) and (d); added a comma after "flea market", deleted "the provisions of" after "comply with", and substituted "subject to a penalty" for "punishable by a fine of" after "this section is" in subdivision (d). Stats. 1993, Ch. 1109, in effect January 1, 1994, added "(1)" to subdivision (a), substituted "that" for "such" preceding "operator" in the first sentence, added "written" before "evidence" in subdivision (a), added "or is otherwise . . ." at the end of subdivision (a), added subparagraph (2) to subdivision (a), substituted "driver's license" for "social security" preceding "number for vendors" in the last sentence of subdivision (b), and substituted "the" for "such" preceding both references of "property" in subdivision (c). Stats. 1994, Ch. 903, in effect January 1, 1995, added "to the same . . . liability" after "retained" in the third sentence of subdivision (b).

Note.—See Business and Professions Code, Sections 21660–21667, concerning recordkeeping and reporting duties for swap meet operators and vendors.

6073.1. **Form requirement; swap meet, flea market, or special event.** An operator of a swap meet or flea market, as defined in Section 6073, or special event, who verifies that a seller has a valid seller's permit, or who obtains from the seller a certificate that the seller is not offering for sale any item that is taxable under this part and who completes the form requirements of Section 21663 of the Business and Professions Code, shall be deemed to have complied with the requirements of Section 6073. No additional forms will be required by the State Board of Equalization.

History.—Added by Stats. 1988, Ch. 1138, in effect January 1, 1989.

6073.2. **Trade shows; exclusion.** (a) Section 6073 shall not apply to any of the following:

(1) An event or show for which all exhibitors' contracts prohibit any sale of tangible personal property at the event or show and at which no tangible personal property is actually sold.

(2) An event or show that is conducted for informational or educational purposes only, and at which no sales of tangible personal property occur.

(3) A trade show.

(b) For purposes of this section, a ''trade show'' means an event or show that complies with all of the following conditions:

(1) The event or show is not open to the general public for any portion of the show.

(2) Only orders for tangible personal property are solicited or taken during the event or show from sellers, as defined in Section 6014, for purposes of subsequent resale.

(3) The event or show is operated by an organization that qualifies for tax exempt status under Section 501(c) of the Internal Revenue Code.

(c) When the board determines it is necessary for the efficient administration of this part, the board may require the operator of a trade show, within 10 days from the close of that show, to provide the board with a listing of the names and addresses of the agents or representatives soliciting orders at the trade show, and their principals, including, but not limited to, manufacturers, wholesalers, distributors, or suppliers.

(d) Any operator of a trade show who willfully fails or refuses to comply with subdivision (c) is subject to a penalty in an amount not to exceed one thousand dollars ($1,000) for each offense.

History.—Added by Stats. 1994, Ch. 393, in effect September 1, 1994.

6074. **Catering trucks.** (a) When the board determines it is necessary for the efficient administration of this part, the board may, by written notice, require any person making sales to operators of catering trucks, operated out of that person's facility pursuant to Section 114295 of the Health and Safety Code, who resell the property in the regular course of his or her business, to obtain evidence that the operator is the holder of a valid seller's permit issued pursuant to Section 6067.

At any time as the board may specify in a written notice, but in no case more than three times in a calendar year, the board may require a person making sales to operators of catering trucks to submit to the board a listing of operators of catering trucks who purchase goods from that person. Each listing shall be provided to the board within 30 days after the date of the board's notice, and shall include the name and seller's permit number on file of each operator, or, for those operators who do not provide evidence of a valid seller's permit, the operator's name, address, and telephone number.

The board may also, by written notice, require a person making sales to operators of catering trucks to promptly notify the board if a newly purchasing operator does not provide to the person, within 30 days of the date of the first purchase, evidence of a valid seller's permit.

Persons required by written notice of the board to obtain evidence, or provide a listing or notification, who fail to comply, may be subject to a penalty not to exceed five hundred dollars ($500) for each failure.

(b) Persons making sales to operators of catering trucks who do not have valid seller's permits or whose permits have been revoked shall report and pay the tax on property as if the property were sold at retail at the time of the sale. Nothing in this section shall relieve any operator of a catering truck of his or her obligations as a seller under this part.

(c) If the board finds that a person's failure to comply with this section 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 imposed by this section.

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 he or she bases his or her claim for relief.

History.—Added by Stats. 1985, Ch. 591, effective January 1, 1986, Stats. 1989, Ch. 319, in effect January 1, 1990, added ", by written notice," after "the board may" and ", operated . . . Safety Code," after "catering trucks" in subdivision (a), substituted current subdivision (b) for "Any person making sales to the operator of a catering truck who fails to comply with this section shall pay a penalty of five hundred dollars ($500) for each such failure to comply." Stats. 1996, Ch. 1023, in effect September 29, 1996, substituted "114295" for "27792" after "pursuant to Section" in the first paragraph of subdivision (a).

6075. **Exemption from permit; feed and hay sellers.** (a) No permit shall be required of any person who engages in business in this state as a seller of feed, for any form of animal life, that is exempt from taxation pursuant to subdivision (b) of Section 6358 and who engages in no other taxable sales of tangible personal property at retail.

(b) In the case of any seller of hay who is also a grower of hay, the exemption provided in subdivision (a) shall apply only to growers who are either of the following:

(1) A grower who produces hay for sale only to beef cattle feedlots or dairies.

(2) A grower who sells exclusively through a farmer-owned cooperative.

(c) Nothing in this section shall relieve any grower of hay that is not exempt pursuant to subdivision (b) of Section 6358 from obtaining a permit.

History.—Added by Stats. 1995, Ch. 696, in effect October 10, 1995, operative April 1, 1996.

6076. **Exemption from permit; hay sellers.** No permit shall be required of any person who engages in business in this state as a seller of hay to an association or cooperative that has obtained a permit if that person engages in no other taxable sales of tangible personal property at retail.

History.—Added by Stats, 1995, Ch. 555, in effect January 1, 1996.

6077. **Retail florists.** (a) Any retail florist who fails to obtain a 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).

(b) Every mobile retail florist shall have a copy of the permit at each sales location which shall be in the possession of a person operating at that location.

(c) For purposes of this section:

(1) "Retail florist" means any person selling any flowers, potted hornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products at retail. "Retail florist" does not include any flower or ornamental plant grower who sells his or her own products.

(2) "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.

History.—Added by Stats, 1996, Ch. 1130, in effect January 1, 1997.

Article 3. Presumptions and Resale Certificates

§ 6091. Presumption of taxability; resale certificate.
§ 6092. Effect of certificate.
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§ 6094. Liability of purchaser; accommodation loans.
§ 6094.1. Leases; election to pay use tax.
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§ 6095. Resale certificate; fungible goods.

6091. **Presumption of taxability; resale certificate.** 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.

Gross receipts.—Where a taxpayer's records show his receipts from sales to be substantially less than his disbursements, the difference, in the absence of explanation, is deemed to represent additional taxable sales. *People* v. *Schwartz* (1947) 31 Cal.2d 59.

Overcoming presumption.—Submission of questionnaires by taxpayer to its purchasers to establish that sales were for resale failed to rebut presumption of taxability in the absence of resale certificates. *Honeywell, Inc.* v. *State Board of Equalization* (1982) 128 Cal.App.3d 739.

"Retail sale" includes drop shipment under 6007.—Drop-ship rule in second paragraph of section 6007 is constitutional and is an alternative definition of "retail sale" and under section 6091, a seller must overcome the presumption that its sale is at retail, including a "retail sale" as defined by the drop shipment rule. *Lyon Metal Products, Inc.* v. *State Board of Equalization* (1997) 58 Cal.App.4th 906, cert. denied (1998) 141 L.Ed.2d 158.

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.

History.—Stats. 1966, p. 176, in effect July 1, 1967, substituted "liability for sales tax" for "the burden of proof", added reference to section 6066, and deleted the last clause providing "and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose."

6092.1. **Lessors of mobile transportation equipment.** Notwithstanding any other provision of law, any person, other than a person exempt from payment of use tax in accordance with Section 6352, who leases mobile transportation equipment and who cannot otherwise properly issue a resale certificate may issue such a certificate for the limited purpose of reporting his use tax liability based on fair rental value as provided in subdivision (d) of Section 6094 and subdivision (d) of Section 6244. With respect to matters arising out of mergers or acquisitions, the provisions of this section shall apply to any matters pending before the board on the effective date of this section.

History.—Added by Stats. 1979, Ch. 1161, operative January 1, 1980.

6093. **Form of certificate.** The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the

permit issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the board may prescribe.

6094. **Liability of purchaser; accommodation loans.** (a) If a purchaser who gives a resale 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, except as provided in subdivisions (b), (c), and (d) of this section, the sales price of the property to him shall be the measure of the tax.

(b) If such use is limited to the loan of the 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 the tax is the fair rental value of the property for the duration of each loan so made.

(c) If the property 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 the tax is the fair rental value of the property for the period of such other use or uses.

(d) If the property is mobile transportation equipment as defined in Section 6023, and the use is limited to leasing the equipment, the purchaser may elect to pay his use tax 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, or in such other manner as the board may prescribe. 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 the state. The election may not be revoked with respect to the equipment as to which it is made.

(e) As used in subdivision (d), the term ''fair rental value'' means the rentals required by the purchaser under the lease except where the board determines that such rentals are nominal. The term shall not include any reimbursement payments made by the lessee to the purchaser for such use tax.

History.—Stats. 1953, p. 2460, in effect September 9, 1953, substituted "taxable to the purchaser under Chapter 3 of this part" for "deemed a retail sale by the purchaser" and "sales price of the property to him shall be the measure of the tax" for "cost of the property to him shall be deemed the gross receipts from such retail sale" in the first sentence, added the second sentence, and substituted "sales price" for "cost" in the last sentence. Stats. 1965, p. 5447 (First Extra Session) operative August 1, 1965, deleted last sentence providing, "if the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charge rather than the sales price of the property to him." Stats. 1966, p. 176, in effect July 1, 1967, added reference to section 6201, and deleted the last sentence providing, "Only when there is an unsatisfied use tax liability on this basis shall the seller be liable for sales tax with respect to the sale of the property to the purchaser." Stats. 1967, p. 2061, in effect November 8, 1967, added most of the language of (b). Stats. 1968, p. 1999, in effect November 13, 1968, divided the former section into subdivisions, added the reference in (a) to subdivisions (b) and (c), added "or while property is being repaired for customers by the lender" to (b), and added (c). Stats. 1971, p. 3835, in effect December 16, 1971, operative January 1, 1972, substituted "subdivisions (b), (c), and (d)" for "subdivisions (b) and (c)" in first paragraph, and added subdivision (d). Stats. 1978,

Ch. 1211, effective January 1, 1979, deleted the last sentence in subdivision (d): "The purchaser's use tax liability may not be charged to the lessee as separately stated tax or tax reimbursement." Stats. 1980, Ch. 1352, effective September 30, 1980, added (e).

Commingling property purchased with property produced by purchaser.—An oil company which purchases crude oil for resale and commingles it with crude oil of its own production, refines the mixture and uses a portion thereof in its own business, is liable for the tax upon that proportion of the refined product so used by it which is equal to the proportion that the purchased crude oil bears to the total crude oil refined. *Union Oil Co.* v. *Johnson* (1943) 58 Cal.App.2d 636. See, however, Sections 6095 and 6245, as to the application of the tax on and after July 1, 1943.

Out-of-state contractors.—Where tangible personal property purchased under a resale certificate in this state undergoes fabrication in this state for use in performing a construction contract, the puchaser is subject to tax under this section, as it existed prior to 1953, even though the job site is located out of state. *Levine* v. *State Board of Equalization* (1956) 142 Cal.App.2d 760. But see Section 6386 for present law.

Property Treated as Depreciable Assets.—Horses held for resale were subject to use tax when capitalized and treated as depreciable assets for income tax purposes. *McConville* v. *State Board of Equalization* (1978) 85 Cal.App.3d 156 (as modified, 85 Cal.App.3d 1032a).

6094.1. **Leases; election to pay use tax.** If a purchaser acquires property in a transaction described in subdivision (a) of Section 6006.5 and leases such property, the purchaser may elect at the time the property is first leased by him, after the effective date of this section, to pay use tax measured by the purchase price of the property. Purchaser shall include a transferee who acquires property in a transaction which qualifies under the provisions of subdivisions (b) of Section 6006.5 and, for purposes hereof, the purchase price of the transferee shall be the same as that paid by the original purchaser.

History.—Added by Stats. 1966, p. 192, in effect April 26, 1966, operative as to all transactions occurring after July 1, 1965 (except that retroactive operation shall not affect the state's right to any tax which vested prior to the effective date).

6094.5. **Improper use of certificate.** Except as provided in Sections 6012.8 and 6012.9:

(a) 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 to be resold by him or her or the corporation 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 punishable as provided in Section 7153.

(b) 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 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. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars ($500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes.

History.—Added by Stats. 1953, p. 3384, in effect September 9, 1953. Stats. 1977, Ch. 607, operative January 1, 1978, numbered existing first paragraph as (a), and added new paragraph (b). Stats. 1980, Ch. 1149, operative January 1, 1981, added "Except as provided in Sections 6012.8 and 6012.9:". Stats. 1984, Ch. 512, effective July 17, 1984, added "or her" after "him" in (a), added "or her" after "him" and "or she" after "he" in (b), added last sentence in (b). Stats. 1984, Ch. 1490, effective September 27, 1984, added "including . . . corporation" after "any person" and "or the corporation" after "her" in (a) and (b), added "punishable as provided in Section 7153" at end of (a), substituted "such" for "the" after "given" in (b), and deleted comma after "($500)" in (b).

6095. **Resale certificate; fungible goods.** If a purchaser gives a certificate with respect to the purchase of fungible goods, or purchases those goods for resale in the regular course of business, and thereafter commingles

these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold. Goods removed from the commingled mass for consumption shall be deemed to be a consumption of goods not so purchased until a quantity of commingled goods equal to the quantity of goods not so purchased has been consumed.

History.—Added by Stats. 1943, p. 2455, operative July 1, 1943. Stats. 1983, Ch. 377, in effect January 1, 1984, added "or purchase . . . business," after the first "goods" in the first sentence, and added the second sentence.

Chapter 3. The Use Tax

Article 1. Imposition of Tax. §§ 6201–6207.
2. Registration. § 6226.
3. Presumptions and Resale Certificates. §§ 6241–6249.

Article 1. Imposition of Tax

Sec. 35. Imposition and rate of additional sales and use tax.
§ 6201. Imposition and rate of use tax. [Repealed.]
§ 6201. Imposition and rate of use tax.
§ 6201.1. Temporary use tax increase. [Repealed.]
§ 6201.2. Imposition and rate of additional use tax.
§ 6201.3. Imposition and rate of additional use tax.
§ 6201.4. Operative date of rate increase.
§ 6201.45. Operative date of tax.
§ 6201.5. Imposition and rate of use tax. [Repealed.]
§ 6201.5. Imposition and rate of additional use tax; Fiscal Recovery Fund.
§ 6201.6. Comparison of estimated receipts with actual receipts by Controller. [Repealed.]
§ 6201.6. Exemption from tax; aircraft common carriers.
§ 6201.7. Imposition and rate of use tax. [Repealed.]
§ 6201.8. Conditions for activation of Section 6201.7. [Repealed.]
§ 6202. Liability for tax.
§ 6202.5. Acquisitions of endangered or threatened animals and plants.
§ 6202.7. Loans of automobiles to university officials.
§ 6203. Collection by retailer.
§ 6203.5. Worthless accounts.
§ 6204. Tax as debt.
§ 6205. Unlawful advertising.
§ 6206. Separate statement of tax.
§ 6207. Unlawful acts.

California Constitutional Provision

SEC. 35. **Imposition and rate of additional sales and use tax.** (a) The people of the State of California find and declare all of the following:

(1) Public safety services are critically important to the security and well-being of the State's citizens and to the growth and revitalization of the State's economic base.

(2) The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.

(3) In order to assist local government in maintaining a sufficient level of public safety services, the proceeds of the tax enacted pursuant to this section shall be designated exclusively for public safety.

(b) In addition to any sales and use taxes imposed by the Legislature, the following sales and use taxes are hereby imposed:

(1) For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of ½ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State on and after January 1, 1994.

(2) An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on and after January 1, 1994, for storage, use, or other consumption in this State at the rate of ½ percent of the sales price of the property.

(c) The Sales and Use Tax Law, including any amendments made thereto on or after the effective date of this section, shall be applicable to the taxes imposed by subdivision (b).

(d) (1) All revenues, less refunds, derived from the taxes imposed pursuant to subdivision (b) shall be transferred to the Local Public Safety Fund for allocation by the Legislature, as prescribed by statute, to counties in which either of the following occurs:

(A) The board of supervisors, by a majority vote of its membership, requests an allocation from the Local Public Safety Fund in a manner prescribed by statute.

(B) A majority of the county's voters voting thereon approve the addition of this section.

(2) Moneys in the Local Public Safety Fund shall be allocated for use exclusively for public safety services of local agencies.

(e) Revenues derived from the taxes imposed pursuant to subdivision (b) shall not be considered proceeds of taxes for purposes of Article XIII B or state General Fund proceeds of taxes within the meaning of Article XVI.

(f) Except for the provisions of Section 34, this section shall supersede any other provisions of this Constitution that are in conflict with the provisions of this section, including, but not limited to, Section 9 of Article II.

History.—Adopted by voters, Proposition 172, in effect November 3, 1993.

6201. **Imposition and rate of use tax.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6201. **Imposition and rate of use tax.** An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1935, for storage, use, or other consumption in this state at the rate of 3 percent of the sales price of the property, and at the rate of 2½ percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent on and after July 1, 1949, and to and including July 31, 1967, and at the rate of 4 percent on and after August 1, 1967, and to and including June 30, 1972, and at the rate of 3¾ percent on and after July 1, 1972, and to and including June 30, 1973, and at the rate of 4¾ percent on and after July 1, 1973, and to and

including September 30, 1973, and at the rate of 3¾ percent on and after October 1, 1973, and to and including March 31, 1974, and at the rate of 4¾ percent thereafter.

History.—Stats. 1943, p. 2919, in effect June 1, 1943, added provision for temporary 2½ percent rate and added provisions for postwar reserve. Temporary reduction and postwar reserve were also provided for by Stats. 1943, p. 1581, in effect May 7, 1943. Stats. 1945, p. 1292, in effect June 5, 1945, continued temporary 2½ percent rate. Stats. 1947, p. 1866, in effect June 17, 1947, continued temporary 2½ percent rate, and deleted provisions for postwar reserve. Stats. 1948, p. 16, in effect April 9, 1948, continued temporary 2½ percent rate. Stats. 1967, p. 2474, operative August 1, 1967, increased the rate to 4 percent. Stats. 1971, p. 2784, operative July 1, 1972, decreased tax rate to 3¾ percent. Stats. 1972, Ch. 1406, effective December 26, 1972, repealed and reenacted the section operative June 1, 1973, increasing the rate to 4¾ percent after May 31, 1973, and repeals this section if the Legislative Analyst does not make the certification described in subdivision (c) of section 316.2 of Ch. 1 of the 1971 First Extraordinary Session. Stats. 1973, Ch. 67, effective May 29, 1973, delayed to July 1, 1973, the rate increase to 4¾ percent; Ch. 296, effective August 23, 1973, decreased the rate to 3¾ percent on October 1, 1973, and raised it to 4¾ percent on March 1, 1974, operative October 1, 1973. Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, added "on and after April 1, 1974, and to and including June 30, 1991, and at the rate of 5 percent" after "March 31, 1974, and at the rate of 4¾ percent". Stats. 1991, Ch. 88, in effect June 30, 1991". Stats. 1991, Ch. 117, in effect July 16, 1991, deleted "on and after April 1, 1974, and to and including July 14,1991, and at the rate of 5 percent" after "March 31, 1974, and at the rate of 4¾ percent."

Constitutionality.—The imposition of the tax upon the use of property after it has been brought into the state does not violate either the Commerce Clause or the Fourteenth Amendment of the Federal Constitution. *Felt & Tarrant Manufacturing Co.* v. *Gallagher* (1939) 306 U.S. 62.

Nature of the tax.—The use tax is an excise tax and not a property tax, and therefore the provisions of Article XIII of the State Constitution have no application with respect to it. *Douglas Aircraft Co., Inc.* v. *Johnson* (1939) 13 Cal.2d 545.

Temporary use outside the State.—Switch engines purchased outside of California and brought into California within six months of purchase for permanent use therein are subject to use tax even though they were temporarily used outside of California prior to their being brought into the state. *Atchison, Topeka and Santa Fe Railway Co.* v. *State Board of Equalization* (1956) 139 Cal.App.2d 411.

Bankruptcy liquidation sale.—Purchaser of tangible personal property from trustee in bankruptcy at liquidation sale is not subject to tax under this section. *California State Board of Equalization* v. *Goggin* (1957) 245 F.2d 44, cert. den. (1957) 353 U.S. 961. But see *Debtor Reorganizers, Inc.* v. *State Board of Equalization* (1976) 58 Cal.App.3d 691, below.

Contemplated use in California.—Parts and materials are purchased for use in California if at the time of purchase it is contemplated that they might be used anywhere, including California, as the needs of the purchaser might require, and they are in fact used in California. *Western Contracting Corp.* v. *State Board of Equalization* (1968) 265 Cal.App.2d 568.

Lease of Property Purchased Ex-Tax from Trustee in Bankruptcy.—The collection of use tax on receipts from leases of property purchased by the lessor from a trustee in bankruptcy does not unlawfully interfere with the process of the bankruptcy court. *Debtor Reorganizers, Inc.* v. *State Board of Equalization* (1976) 58 Cal.App.3d 691.

Use tax on railroad passenger cars discriminated against rail carrier.—Federal act prohibited assessment of California use tax on rail passenger cars, where the use tax was not imposed on passenger aircraft and watercraft used by other common carriers in interstate commerce. *National Railroad Passenger Corp.* v. *State Board of Equalization* (1986) 652 F.Supp. 923.

Gifts used when delivered to common carrier.-A gift occurs, and California use tax applies, when property is delivered to a common carrier in California for shipment to a donee, whether the donee is inside or outside California. *Yamaha Corp. of America* v. *State Board of Equalization* (1999) 73 Cal.App.4th 338.

6201.1. **Temporary use tax increase.** [Repealed by Stats. 1991, Ch. 1091, in effect January 1, 1992.]

6201.2. **Imposition and rate of additional use tax.** (a) In addition to the taxes imposed by Section 6201 and any other provision of this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 15, 1991, for storage, use, or other consumption in this state at the rate of ½ percent of the sales price of the property.

(b) All revenues receive pursuant to this section shall be deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code.

(c) This section shall cease to be operative on the first day of the first month of the calendar quarter following notification to the board by the Department of Finance of a final judicial determination by the California

Supreme Court or any California court of appeal that the revenues collected pursuant to this section and Section 6201.2 and deposited in the Local Revenue Fund are either of the following:

(1) ''General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution,'' as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) ''Allocated local proceeds of taxes,'' as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

History.—Added by Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991. Stats. 1991, Ch. 88, in effect June 30, 1991, operative July 15, 1991, substituted "July 15" for "July 1" in subdivision (a). Stats. 1993, Ch. 100, in effect July 13, 1993, added subdivision (b) and relettered former subdivision (b) as (c).

6201.3. **Imposition and rate of additional use tax.** In addition to the taxes imposed by Sections 6201, 6201.2, 6201.5, and any other provision of this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased fromany retailer on and after July 15, 1991, and purchased during any period in which this section is operative pursuant to Section 6201.4 at the rate of ¼ percent of the sales price of the property.

History.—Added by Stats. 1991, Ch. 117, in effect July 16, 1991. Stats. 1993, Ch. 589, in effect January 1, 1994, substituted "and" for "an" after "retailer on".

6201.4. **Operative date of rate increase.** (a) Section 6201.3 shall be operative with respect to the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on and after July 15, 1991, but shall cease to be operative during any period described in subdivision (c) or (d).

(b) On or before November 1, 1993, and on or before every November 1 thereafter, the Director of Finance shall determine and certify to the Governor, the Legislature, and the board both of the following:

(1) Whether the amount in the Special Fund for Economic Uncertainties, as established pursuant to Section 16418 of the Government Code, as of June 30 of the prior fiscal year exceeded 4 percent of General Fund revenues for that prior fiscal year.

(2) Whether the estimated amount in the Special Fund for Economic Uncertainties as of June 30 of the current fiscal year (without inclusion of any revenue derived pursuant to Section 6201.3 on and after January 1 of the current fiscal year) exceeds 4 percent of General Fund revenues for the current fiscal year.

(c) Section 6201.3 shall cease to be operative on and after January 1, 1994, if on or before November 1, 1993, the Director of Finance certifies pursuant to subdivision (b) that both amounts certified pursuant to paragraphs (1) and (2) of that subdivision exceed 4 percent of General Fund revenues for the respective fiscal year for which each amount is determined and certified.

(d) Section 6201.3 shall cease to be operative on and after January 1 following any November 1 in which Section 6201.3 is operative and the Director of Finance certifies pursuant to subdivision (b) that both amounts

certified pursuant to paragraphs (1) and (2) of that subdivision exceed 4 percent of General Fund revenues for the respective fiscal year for which each amount is determined and certified.

(e) Section 6201.3 shall become operative on and after January 1 following any November 1 in which Section 6201.3 is inoperative and the Director of Finance certifies pursuant to paragraph (2) of subdivision (b) that the estimated amount does not exceed 4 percent of the General Fund revenues as of June 30 of the current fiscal year.

History.—Added by Stats. 1991, Ch. 117, in effect July 16, 1991.

6201.45. **Operative date of tax.** Notwithstanding 6201.4 or any other provision of law, the state use tax rate in Section 6201.3 shall not be operative in any calendar year beginning on or after January 1, 2002, if the Director of Finance determines both of the following:

(a) The General Fund reserve is 3 percent of revenues excluding the revenues derived from the ¼ cent sales and use tax rate.

(b) Actual General Fund revenues for the period May 1 through September 30 equal or exceed the May Revision forecast, prior to the November 1 determination.

The Director of Finance shall make the determination on or before November 1 of each year.

The ¼ cent reduction shall be operative for each calendar year commencing on the next January 1 after the determination is made.

History.—Added by Stats. 2001, Ch. 156 (AB 426), in effect August 7, 2001, operative September 1, 2001.

6201.5. **Imposition and rate of use tax.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6201.5. **Imposition and rate of additional use tax; Fiscal Recovery Fund.** (a) In addition to the taxes imposed by Section 6201 and any other provision of this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer at the rate of one-half of 1 percent of the sales price of the property.

(b) All revenues, net of refunds, received pursuant to this section shall be deposited in the State Treasury to the credit of the Fiscal Recovery Fund, as established pursuant to Section 99008 of the Government Code.

(c) Revenues received pursuant to this section accruing to the Fiscal Recovery Fund shall not be considered to be "State General Fund proceeds of taxes appropriated pursuant to Article XIII B" within the meaning of either Section 8 of Article XVI of the California Constitution or Section 41202 of the Education Code.

(d) This section shall become operative on July 1, 2004, and shall cease to be operative on the first day of the first calendar quarter commencing more than 90 days following a notification to the board by the Director of Finance pursuant to subdivision (b) of Section 99006 of the Government Code.

History.—Added by Stats. 2003, Ch. 13X (AB 7X), in effect August 2, 2003, but operative July 1, 2004.

6201.6. **Comparison of estimated receipts with actual receipts by Controller.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6051.6. **Exemption from tax; aircraft common carriers.** There are exempted from the taxes imposed by Section 6051.5 the gross receipts derived from the sale of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of the aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

History.—Added by Stats. 2003, Ch. 13X (AB 7X), in effect August 2, 2003, but operative July 1, 2004.

6201.7. **Imposition and rate of use tax.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6201.8. **Conditions for activation of Section 6201.7.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6202. **Liability for tax.** (a) Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His or her liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the board, under the rules and regulations as it may prescribe, to collect the tax and who is, for the purposes of this part relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to Section 6203, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Notwithstanding any other provision, when a person purchases a vessel or aircraft from another person through a broker, the purchaser's liability for use tax is relieved if the purchaser has paid an amount as sales or use tax to the broker, and the purchaser obtains and retains a receipt from the broker showing the payment of that tax to the broker.

(c) Notwithstanding any other provision, when a person purchases a vessel or aircraft from another person through a broker, if the broker collects from the purchaser an amount as sales or use tax, the broker shall be liable for that amount under Section 6204 as if the broker were a retailer engaged in business in this state required to collect that amount as use tax from the purchaser, and that amount constitutes a debt owed by the broker to this state.

History.—Stats. 1957, p. 2019, in effect September 11, 1957, substituted "engaged in" for "maintaining a place of" in second sentence. Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letter designation (a) before first paragraph, substituted "state" for "State" throughout the first paragraph, added "or her" after "His" and substituted "the" for "such" after "under" in the second sentence of the first paragraph; and added subdivisions (b) and (c).

Liability of county for tax.—A county purchasing property consisting mostly of books for the county library must pay the use tax thereon when the circumstances would call for payment of the tax had the purchases been made by a private individual or organization, where, by the express terms of the statute, its provisions are made applicable to a county. *People* v. *Imperial County,* (1946) 76 Cal.App.2d 572.

6202.5. **Acquisitions of endangered or threatened animals and plants.** Any retailer, other than a nonprofit zoological society as defined in

subdivision (c) of Section 6010.50, that stores, uses, or otherwise consumes in this state endangered or threatened animal or plant species, as defined in subdivision (b) of Section 6010.50, acquired through a trade or exchange with a nonprofit zoological society, shall be liable for the use tax.

History.—Added by Stats. 1994, Ch. 771, in effect September 26, 1994, but operative January 1, 1995. Stats. 1996, Ch. 124, in effect January 1, 1997, substituted "or" for "and" after "threatened animal".

6202.7. **Loans of automobiles to university officials.** Any retailer who loans any motor vehicle to any employee of the University of California or the California State University shall be liable for the use tax on the loan of that vehicle equal to the amount of tax that would have applied if the vehicle had been leased at fair rental value for a time period equal to the period the vehicle is loaned to the university or state university employee, provided that all of the following conditions are met:

(a) The vehicle is for the employee's exclusive use.

(b) The loan of the vehicle has been approved by the chancellor of the university or the president of the state university.

(c) It is demonstrated that the loan of the vehicle is not dependent upon the retailer receiving any automotive-related business from the university or the state university.

History.—Added by Stats. 1996, Ch. 366, in effect August 19, 1996, but operative January 1, 1997.

6203. **Collection by retailer.** (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) "Retailer engaged in business in this state" as used in this section and Section 6202 means and includes any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) (A) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

(B) This paragraph shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.

(5) Notwithstanding Section 7262, a retailer specified in paragraph (4) above, and not specified in paragraph (1), (2), or (3) above, is a ''retailer engaged in business in this state'' for the purposes of this part and Part 1.5 (commencing with Section 7200) only.

(d) (1) For purposes of this section, ''engaged in business in this state'' does not include the taking of orders from customers in this state through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of online communications services other than the displaying and taking of orders for products.

(2) This subdivision shall become inoperative upon the operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.

(e) Except as provided in this subdivision, a retailer is not a ''retailer engaged in business in this state'' under paragraph (2) of subdivision (c) if that retailer's sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if 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 15 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. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a ''retailer 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 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.

(f) Any limitations created by this section upon the definition of ''retailer engaged in business in this state'' shall only apply for purposes of tax liability under this code. Nothing in this section is intended to affect or limit, in any way, civil liability or jurisdiction under Section 410.10 of the Code of Civil Procedure.

History.—Stats. 1957, p. 2019, in effect September 11, 1957, substituted "engaged in" for "maintaining a place of" in first paragraph and added last paragraph. Stats. 1965, p. 5448, operative August 1, 1965, added in the first paragraph "Except as provided by Section 6292 every" and "Chapters 3.5 or," and added second paragraph and (c). Stats. 1972, Ch. 973, effective August 16, 1972, inserted "and 6293" in the first sentence. Stats. 1984, Ch. 144, effective January 1, 1985, added "(commencing with Section 6271)" after "Chapter 3.5" and "(commencing with Section 6351)" after "Chapter 4" in first paragraph, deleted "of this part" before "shall" in first paragraph. Stats. 1987, Ch. 1145, effective January 1, 1988, added paragraphs (d), (e), (f), (g), (h), (i). Stats. 1988, Ch. 60, in effect March 30, 1988, added paragraph (j). Stats. 1992, Ch. 902, in effect September 25, 1992, operative January 1, 1993, substituted "salesperson" for "salesman" after "agent", added "independent contractor," after "canvasser," and added "installing, assembling" after "delivering," in subdivision (b). Stats. 1994, Ch. 851, in effect September 27, 1994, but operative January 1, 1995, added subdivision (k). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "and Section 6202" for "and the preceding" after "in this" in the third paragraph; substituted "that" for "which" after "advertising" in subdivision (e); added paragraph designation "(1)" before "Any retailer" and added paragraph (2) in subdivision (f); deleted former subdivision (g) which provided, "Any retailer owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state"; relettered former subdivisions (h), (i), (j), and (k) as (g), (h), (i), and (j), respectively; added "or" after "(g)," and deleted ", or (i)" in subdivision (i); deleted "either (i)" after "date of", substituted "a congressional act" for "S. 1825 of the 103rd Congress of the United States" after "provisions of", and deleted "or (ii) substantially similar provisions of another Congressional act" after " retailers" in subparagraph (A) of paragraph (1) of subdivision (j). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, deleted former subdivision (e) which provided, "Any retailer who, pursuant to a contract with a broadcaster or publisher located in this state, solicits orders for tangible personal property by means of advertising that is disseminated primarily to consumers located in this state and only secondarily to bordering jurisdictions,"; deleted former subdivision (h) which provided, "Any retailer who, pursuant to a contract with a cable television operator located in this state, solicits orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this state,"; relettered former subdivisions (f), (g) and (i) as (e), (f) and (h), respectively; and substituted "or (f)" for "(f), (g) or (h)" in subdivision (g). Stats. 1997, Ch. 621 (AB 258), in effect October 3, 1997, operative April 1, 1998, added subdivision letter designations (a), (b) and (c) before first, second and third paragraphs, respectively; numbered former subdivisions (a), (b), (c), (d), and the second paragraph of former subdivision (d), and subdivisions (e), (f), and the second paragraph of former subdivision (f), subdivision (g) and (h) as (1), (2), (3), (4), (5), (6), (7), (8), and (9), respectively; added paragraph (5), added subparagraph letter (A) and (B) before the first and second paragraphs of paragraph (6), respectively, substituted "paragraph" for "subdivision" after "(B) This" in subparagraph (B) paragraph (6), added paragraph (8), substituted "paragraph (4), (5), (6), (7), or (8)" for "subdivision (d), (e), or (f)" after "specified in" in paragraph (9), and substituted "paragraph (1), (2), or (3)" for "subdivision (a), (b), or (c)" after "specified in" in paragraph (9) of subdivision (c); and added subdivision (e). Stats. 1998, Ch. 351, in effect January 1, 1999, deleted former paragraph (5) which provided, "Any retailer who, pursuant to a contract with a broadcaster or publisher located in this state, solicits orders for tangible personal property by means of advertising that is disseminated primarily to consumers located in this state and only secondarily to bordering jurisdictions", deleted former paragraph (8) which provided, "Any retailer, who pursuant to a contract with a cable television operator located in this state, solicits orders for tangible personal property by means of advertising that is transmitted or distributed over a cable television system in this state", renumbered former paragraphs (5), (6), (7), (8) and (9) as (5), (6) and (7), and made conforming paragraph numbering changes within paragraph (7) of subdivision (c); deleted "earlier of the following dates: (A) The" after "inoperative upon the" in paragraph (2) and deleted former subparagraph (B) which provided, "The date five years from the effective date of the act adding this subdivision." of paragraph (2) of subdivision (d); and added subdivision (f). Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000, deleted former paragraph (4) of subdivision (c) which provided, "Any retailer soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this state."; deleted former paragraph (6) of subdivision (c) which provided, "Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this section."; deleted "(5), or (6)" after "paragraph (4)" of former paragraph (7); and renumbered former paragraphs (5) and (7) as (4) and (5) in subdivision (c). Stats. 2000, Ch. 617 (AB 330), in effect September 24, 2000, operative January 1, 2001, substituted "15" for "seven" after "for more than", substituted "one hundred" for "ten" after "derive more than", substituted "one hundred thousand dollars ($100,000) of net" for "ten thousand ($10,000) of gross" after "derive more than" in subdivision (e); and substituted "Any limitations . . . Civil Procedure" for "The Legislature finds and declares that the deletion of language by the act adding this subdivision that was contained in paragraphs (5) and (8) of subdivision (c) is intended to codify the holdings of recent court cases" in subdivision (f).

Constitutionality, construction.—The requirement that retailers collect the tax is valid. A foreign corporation not qualified to do intrastate business in California, but represented in this state by two general agents, each of whom occupies an office leased by the corporation and used exclusively for the furtherance of its business, maintains a place of business in this state and may be required to collect the tax. *Felt & Tarrant Manufacturing Co.* v. *Gallagher* (1939) 306 U.S. 62.

Purchaser's liability to retailer.—The primary liability for the tax is upon the purchaser. Consequently, when a retailer pays an amount of tax to the state in satisfaction of the liability imposed on him by this section, the law implies an obligation on the part of the purchaser to reimburse the retailer for the amount so paid. *Brandtjen & Kluge* v. *Fincher* (1941) 44 Cal.App.2d Supp. 939.

What constitutes maintaining place of business.—A foreign law book publishing company is maintaining a place of business and making sales in this state and, therefore, required to collect the use tax from its customers, where it maintains large libraries in law offices in the state, in return for the use of which its salesmen are allotted office space, which it advertises as its local addresses, where in response to continuous solicitation of orders there is a regular flow of books into this state, and where its salesmen receive initial installment payments, exercise a limited discretion in respect of collections on delinquent accounts, and frequently consummate sales to customers to whom unordered books are sent. *West Publishing Co.* v. *Superior Court, San Francisco* (1942) 20 Cal.2d 720.

Requiring the law book publishing company described in the preceding paragraph to collect the use tax with respect to mail order sales to customers in this state as well as with respect to sales resulting from solicitation by its employees here does not violate either the Commerce Clause or the Fourteenth Amendment of the Federal Constitution. *People* v. *West Publishing Co.* (1950) 35 Cal.2d 80.

Insurance company not exempted.—An insurance company is not relieved from the responsibility of collecting a use tax by the constitutional provision exempting it from state sales taxes, when it sells automobiles belonging to it to private individuals, since the use tax is paid by the ultimate purchaser, not the insurance company. *Beneficial Standard Life Ins. Co.* v. *State Board of Equalization* (1962) 199 Cal.App.2d 18.

Liability of retailer.—National bank which retailed checks to depositors and failed to collect the use tax due must pay the same from its own funds. *Bank of America* v. *State Board of Equalization* (1962) 209 Cal.App.2d 780.

Sale outside state and leased back instate.—Where a California retailer sold two oil tankers with title and possession passing out of state and where the vessels were immediately leased back to the retailer and were used in California in intrastate commerce, the court held that the retailer was liable for the collection of the use tax. *Union Oil Co.* v. *State Board of Equalization* (1963) 60 Cal.2d 441, appeal dismissed, 377 U.S. 404.

Out-of-state border stores do not have to collect use tax on over-the-counter credit sales.—A retailer otherwise engaged in business in California does not have to collect California use tax on over-the-counter credit sales at the retailer's stores in Klamath Falls, Oregon, and Reno, Nevada, to customers with charge accounts bearing a California address. *Montgomery Ward & Co.* v. *State Board of Equalization* (1969) 272 Cal.App.2d 728, cert. denied (1970) 396 U.S. 1040.

Seller's in-state offices not related to mail order sales.—An out-of-state seller must collect use tax on its mail order sales, even though the seller's in-state offices only solicited advertising which was unrelated to the mail order sales. The seller's offices gained advantages of municipal services, and satisfied commerce clause and due process requirement of some definite link, or minimum connection, between the state and the retailer. *National Geographic Society* v. *California Board of Equalization* (1977) 430 U.S. 551.

Tax Injunction Act No Bar to Federal Jurisdiction.—A direct mail advertising and trade association brought an action, based on the Commerce Clause and the Due Process Clause of the U.S. Constitution, challenging the requirement that interstate mail order retailers collect use tax from their California customers. The court held that the Tax Injunction Act did not apply to bar federal jurisdiction over the matter. It rejected the Board's argument that the association members had a plain, speedy, and efficient remedy under state law since they could pay the contested taxes and file for a refund. *Direct Marketing Association, Inc.* v. *Bennett* (9th Cir., 1990) 916 F.2d 1451.

Retailer's use of teachers to solicit orders from students.—The taxpayer's use of teachers and school librarians to solicit sales from students constituted sufficient nexus to require the taxpayer to collect use taxes imposed on the students' purchases. Once the teachers and librarians undertook to solicit orders, they were acting under the taxpayer's authority as its agents and taxpayer owed tax measured by the selling price to the students. *Scholastic Book Clubs, Inc.* v. *State Board of Equalization* (1989) 207 Cal.App.3d 734.

Related corporation's liability for use tax collection.—A corporation who had no physical presence in California was not required to collect use tax under former subdivision (g) based on the physical presence of a related corporation in California. *Current, Inc.* v. *State Board of Equalization* (1994) 24 Cal.App.4th 382.

6203.5. **Worthless accounts.** (a) A retailer is relieved from liability to collect use tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the amount of the tax may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the amount of the tax shall be paid with the return. For purposes of this subdivision, the term ''retailer'' shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(b) (1) In the case of accounts held by a lender, a retailer or lender who makes a proper election under paragraph (4) shall be entitled to a deduction or refund of the tax that the retailer has previously reported and paid if all of the following conditions are met:

(A) No deduction was previously claimed or allowed on any portion of the accounts.

(B) The accounts have been found worthless and written off by the lender in accordance with the requirements of subdivision (a).

(C) The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The retailer remitted the tax on or after January 1, 2000.

(E) The party electing to claim the deduction or refund under paragraph (4) files a claim in a manner prescribed by the board.

(2) If the retailer or the lender thereafter collects in whole or in part any accounts, one of the following shall apply:

(A) If the retailer is entitled to the deduction or refund under the election specified in paragraph (4), the retailer shall include the amount collected in its first return filed after the collection and pay tax on that amount with the return.

(B) If the lender is entitled to the deduction or refund under the election specified in paragraph (4), the lender shall pay the tax to the board in accordance with Section 6451.

(3) For purposes of this subdivision, the term ''lender'' means any of the following:

(A) Any person who holds a retail account which that person purchased directly from a retailer who reported the tax.

(B) Any person who holds a retail account pursuant to that person's contract directly with the retailer who reported the tax.

(C) Any person who is either an affiliated entity, under Section 1504 of Title 26 of the United States Code, of a person described in subparagraph (A) or (B), or an assignee of a person described in subparagraph (A) or (B).

(4) Prior to claiming any deduction or refund under this subdivision, the retailer who reported the tax and the lender shall file an election with the board, signed by both parties, designating which party is entitled to claim the deduction or refund. This election may not be amended or revoked unless a new election, signed by both parties, is filed with the board.

History.—Added by Stats. 1959, p. 3263, in effect September 18, 1959. Adopted from former Section 6453.5, added by Stats. 1957, p. 1938, in effect September 11, 1957, except that Section 6203.5 applies solely to use tax, substitutes "retailer" for "seller," adds the provision for relief from liability, changes from a "credit . . . against the tax shown to be due on the return" to a "deduction," deletes the requirement that the credit be limited to accounts found to be worthless and actually charged off "during the period covered by the return," and rearranges wording for clarity. Stats. 1970, p. 1057, in effect November 23, 1970, added to first sentence, "or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.", and deleted "for income tax purposes" from the end of the second sentence. Stats. 2000, Ch. 600 (AB 599), in effect January 1, 2001, added subdivision letter designation (a) before first paragraph, substituted "that" for "which" after "collect use tax", deleted "subsequent to September 30, 1957" after "due and payable", substituted "that" for "which" after "by accounts", and added "by the retailer" after "tax purposes" therein; substituted "A retailer that" for "If the retailer" before "has previously", deleted ", he" after "of the tax", and added "by the retailer" after "charged off" in the second sentence; substituted "these" for "any such" after "If", deleted "so" after "the amount", substituted "the" for "such" after "return filed after" and substitued "shall be" for "thereon" after "of the tax" in the third sentence, and added the fourth sentence therein; and added subdivision (b).

6204. **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 by the retailer that it was tax constitutes debts owed by the retailer to this state.

History.—Stats. 1968, p. 1144, in effect November 13, 1968, added the clause "and any amount unreturned to the customer which is not tax but was collected from the customer under the representation by the retailer that it was tax."

6205. **Unlawful advertising.** It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

6206. **Separate statement of tax.** The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

6207. **Unlawful acts.** Any person violating Sections 6203, 6205, or 6206 is guilty of a misdemeanor.

Article 2. Registration

§ 6226. Registration of retailers.

6226. **Registration of retailers.** Every retailer selling tangible personal property for storage, use, or other consumption in this State shall register with the board and give the name and address of all agents operating in this State, the location of all distribution or sales houses or offices or other places of business in this State, and such other information as the board may require.

Article 3. Presumptions and Resale Certificates

§ 6241. Presumption of purchase for use; resale certificate.
§ 6242. Effect of certificate.
§ 6243. Form of certificate.
§ 6243.1. Lessors of mobile transportation equipment.
§ 6244. Liability of purchaser; accommodation loans.
§ 6244.5. Leases of qualifying manufacturing property; "cost price."
§ 6245. Resale certificate; fungible goods.
§ 6245.5. Exemption certificate; fuel purchases.
§ 6246. Presumption of purchase from retailer.
§ 6247. Presumption of use; out-of-state delivery.
§ 6248. Presumption of purchase for use; motor vehicles.
§ 6249. Exemption; member of armed services.

6241. **Presumption of purchase for use; resale certificate.** For the purpose of the proper administration of this part and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this State is sold for storage, use, or other consumption in this State until the contrary is established. The burden of proving the contrary 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.

6242. **Effect of certificate.** The certificate relieves the person selling the property from the duty of collecting the use 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 by Article 2 (commencing with Section 6066) of Chapter 2 of this part.

History.—Stats. 1966, p. 176, in effect July 1, 1967, substituted "the duty of collecting the use tax" for "the burden of proof", added reference to section 6066, and deleted the last clause providing "and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose."

6243. **Form of certificate.** The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the board may prescribe.

6243.1. **Lessors of mobile transportation equipment.** Notwithstanding any other provision of law, any person, other than a person exempt from payment of use tax in accordance with Section 6352, who leases mobile transportation equipment and who cannot otherwise properly issue a resale certificate may issue such a certificate for the limited purpose of reporting his use tax liability based on fair rental value as provided in subdivision (d) of Section 6094 and subdivision (d) of Section 6244.

With respect to matters arising out of mergers or acquisitions, the provisions of this section shall apply to any matters pending before the board on the effective date of this section.

History.—Added by Stats. 1979, Ch. 1161, operative January 1, 1980.

6244. **Liability of purchaser; accommodation loans.** (a) If a purchaser who gives a resale certificate or purchases property for the purpose of reselling it 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, the storage or use is taxable as of the time the property is first so stored or used.

(b) If such use is limited to the loan of the 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 the tax is the fair rental value of the property for the duration of each loan so made.

(c) If the property 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 the tax is the fair rental value of the property for the period of such other use or uses.

(d) If the property is mobile transportation equipment as defined in Section 6023, and the use is limited to leasing the equipment, the purchaser may elect to pay his use tax 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, or in such other manner as the board may prescribe. 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 the state. The election may not be revoked with respect to the equipment as to which it is made.

(e) As used in subdivision (d), the term ''fair rental value'' means the rentals required by the purchaser under the lease except where the board determines that such rentals are nominal. The term shall not include any reimbursement payments made by the lessee to the purchaser for such use tax.

History.—Stats. 1965, p. 5448 (First Extra Session), operative August 1, 1965, deleted last sentence providing, "If the sole use of the property, other than retention, demonstration, or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him." Stats. 1967, p. 2062, in effect November 8, 1967, added most of the language of (b). Stats. 1968, p. 2000, in effect November 13, 1968, divided the former section into subdivisions, added "or while property is being repaired for customers by the lender" to (b), and added (c). Stats. 1971, p. 3835, in effect December 16, 1971, operative January 1, 1972, added subdivision (d). Stats. 1978, Ch. 1211, effective January 1, 1979, deleted the last sentence in (d): "The purchaser's use tax liability may not be charged to the lessee as separately stated tax or tax reimbursement." Stats. 1980, Ch. 1352, effective September 30, 1980, added (e).

Special Test Equipment Purchased for Resale by Government Contractor.—In order for tax to apply under this section, the taxable ''use'' must occur while the purchaser is the owner, since the taxable use is that which is incident to ownership of the property. *Lockheed Aircraft Corp.* v. *State Board of Equalization; Aerojet General Corp.* v. *State Board of Equalization* (1978) 81 Cal.App.3d 257.

Use Tax Due is the Price Paid by Taxpayer.—When a taxpayer uses tangible personal property for purposes other than retention, demonstration or display it must pay use tax based on the price paid by the taxpayer for the goods rather than the cost to the manufacturer of the raw material used in the manufacture of the property involved. *Mercedes Benz* v. *State Board of Equalization* (1982) 127 Cal.App.3d 871.

6244.5. **Leases of qualifying manufacturing property; "cost price."** (a) Notwithstanding any other provision of law, a lessor of tangible personal property described in Section 17053.49 or 23649, who is the manufacturer of that property and who leases that property to a qualified taxpayer, as defined in Sections 17053.49 and 23649, in a form that is not substantially the same form as acquired, may, in lieu of reporting use tax measured by the rentals payable, elect to pay tax measured by his or her cost price of that property if the election is made on or before the due date of the return for the period in which the property is first leased. The election shall be made by reporting use tax measured by the cost price on the return 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 pursuant to this section shall thereafter be excluded from the terms ''sale'' and ''purchase.''

(b) ''Cost price,'' as used in subdivision (a), 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 paragraphs (1) to (3), inclusive.

History.—Added by Stats. 1996, Ch. 954, in effect September 26, 1996, but operative January 1, 1997.

6245. **Resale certificate; fungible goods.** If a purchaser gives a certificate with respect to the purchase of fungible goods, or purchases those

goods for resale in the regular course of business, and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold. Goods removed from the commingled mass for consumption shall be deemed to be consumption of goods not so purchased until a quantity of commingled goods equal to the quantity of goods not so purchased has been consumed.

History.—Stats. 1943, p. 2455, operative July 1, 1943, renumbered former provision as Section 6246 and added present provisions. Stats. 1983, Ch. 337, in effect January 1, 1984, added "or purchases . . . business" after the first "goods" in the first sentence and added the second sentence.

6245.5. **Exemption certificate; fuel purchases.** (a) A person qualified under subdivision (b) may issue a certificate to a retailer with respect to the amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 when purchasing fuel from the retailer.

(b) A person is qualified for purposes of this section if all of the following conditions are met:

(1) The person was entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel during the prior calendar year.

(2) The person's business remains substantially the same as during the prior calendar year whereby the person expects to be entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel.

(3) The person holds a valid California seller's permit.

(c) A person issuing a certificate for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 is liable for use tax on the amount of the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code if the person used fuel purchased under the certificate in a manner whereby the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.

(d) A person liable for the use tax under subdivision (c) of this section shall report and pay that use tax with the return for the reporting period in which the person uses the fuel in such a manner that the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

6246. **Presumption of purchase from retailer.** It shall be further presumed that tangible personal property shipped or brought to this State by the purchaser was purchased from a retailer on or after July 1, 1935, for storage, use, or other consumption in this State.

History.—Stats. 1943, p. 2455, operative July 1, 1943, added former provisions of Section 6245.

6247. **Presumption of use; out-of-state delivery.** On and after the effective date of this section, it shall be further presumed that tangible personal property delivered outside this State to a purchaser known by the retailer to be a resident of this State was purchased from a retailer for storage, use or other consumption in this State and stored, used or otherwise consumed in this State.

This presumption may be controverted by a statement in writing, signed by the purchaser or his authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside this State. This presumption may also be controverted by other evidence satisfactory to the board that the property was not purchased for storage, use, or other consumption in this State.

History.—Added by Stats. 1953, p. 3385, in effect September 9, 1953.

Out-of-state border stores do not have to collect use tax on over-the-counter credit sales.—A retailer otherwise engaged in business in California does not have to collect California use tax on over-the-counter credit sales at the retailer's stores in Klamath Falls, Oregon, and Reno, Nevada, to customers with charge accounts bearing a California address. *Montgomery Ward & Co.* v. *State Board of Equalization* (1969) 272 Cal.App.2d 728, cert. denied (1970) 396 U.S. 1040.

6248. **Presumption of purchase for use; motor vehicles.** On and after the effective date of this section there shall be a rebuttable presumption that any vehicle bought outside of this State which is brought into California within 90 days from the date of its purchase, and which is subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, was acquired for storage, use, or other consumption in this State.

History.—Added by Stats. 1963, p. 3834, operative October 1, 1963.

6249. **Exemption; member of armed services.** A member of the armed services on active duty who purchases a vehicle prior to the effective date of his discharge shall not be subject to the presumption established by Section 6248. He shall not be deemed to have purchased the vehicle for storage, use or other consumption in this State unless at the time of purchase he intended to use it in this State, such intent resulting from his own determination, rather than from official orders received as a member of the armed services transferring him to this State.

History.—Added by Stats. 1963, p. 3834, operative October 1, 1963.

Chapter 3.3. Vehicle Smog Impact Fee

§ 6261. Legislative finding and declaration. [Repealed.]
§ 6262. Vehicle smog impact fee. [Repealed.]
§ 6263. Vehicle emission control label.

6261. **Legislative finding and declaration.** [Repealed by Stats. 2000, Ch. 32 (SB 215), in effect June 8, 2000.]

6262. **Vehicle smog impact fee.** [Repealed by Stats. 2000, Ch. 32 (SB 215), in effect June 8, 2000.]

Smog Impact Fee is Unconstitutional.—The Court of Appeal held that the Smog Impact Fee was unconstitutional under the Commerce Clause of the United States Constitution and also violated Article XIX of the California Constitution. *Jordan* v. *Dept. of Motor Vehicles* (1999) 75 Cal.App.4th 449.

6263. **Vehicle emission control label.** No person, other than the manufacturer who has received authorization to sell the motor vehicle in California or a person authorized by the manufacturer, shall install a vehicle emission control label on any motor vehicle. No person shall remove, alter, deface, obscure, or destroy a vehicle emission control label or any label required to be affixed to any motor vehicle certified pursuant to the National Emissions Standards Act (42 U.S.C. Sec. 7521 et seq., and Subpart A (commencing with Sec. 86.078-3) of Part 86 of Title 40 of the Code of Federal Regulations). Any person who violates any provision of this section is guilty of a misdemeanor and is subject to a fine of not more than five thousand dollars ($5,000) or imprisonment in the county jail for not more than one year, or both that fine and imprisonment.

History.—Added by Stats. 1990, Ch. 1362, in effect September 27, 1980, operative October 15, 1990. Stats. 2000, Ch. 32 (SB 215), in effect June 8, 2000, deleted "for the purpose of avoiding payment of the fee required by Section 6262" after "Federal Regulations)" in the first sentence.

CHAPTER 3.5. VEHICLES, VESSELS, AND AIRCRAFT *

Article 1. Definitions. §§ 6271–6277.
2. Special Exemptions. §§ 6281–6285.
3. Auxiliary Collection Provisions. §§ 6291–6294.

Article 1. Definitions

§ 6271. Construction.
§ 6272. "Vehicle."
§ 6273. "Vessel."
§ 6274. "Aircraft."
§ 6275. Retailer of vehicle, vessel, or aircraft.
§ 6276. Presumption that sales price is market value. [Repealed.]
§ 6276.1. Mobilehomes; current value.
§ 6276.1. Mobilehomes; exclusions. [Repealed.]
§ 6277. Presumption on sale to lessee.

6271. **Construction.** Except where the context otherwise requires, the definitions given in this chapter govern the construction of this chapter.

6272. **"Vehicle."** "Vehicle" is as defined in Section 670 of the Vehicle Code and shall include off-highway motor vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

History.—Stats. 1971, p. 3923, in effect December 23, 1971, operative July 1, 1972, added, "and shall include off-highway motor vehicles subject to identification under Division 16.5 (commencing with section 38000) of the Vehicle Code."

6273. **"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

* Chapter 3.5 was added by Stats. 1965, p. 5443, operative August 1, 1965.

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 of eight feet or less in length of a type designed to be propelled by sail.

A motor or other component of a vessel, whether or not detachable, shall be deemed to be part of the vessel when sold therewith.

History.—Stats. 1971, p. 3526, operative January 1, 1972, completely revised (b).

6274. **"Aircraft."** ''Aircraft'' means any contrivance designed for powered navigation in the air except a rocket or missile.

History.—Stats. 1982, Ch. 1589, in effect January 1, 1983, deleted "powered" before "contrivance" and added "powered" before "navigation."

Replacement Parts.—''Aircraft'' is not to be interpreted to include replacement parts thereof. *National Aircraft Leasing, Ltd.* v. *State Board of Equalization* (1979) 90 Cal.App.3d 549.

6275. **Retailer of vehicle, vessel, or aircraft.** (a) Every person making any retail sale of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of a vessel or an aircraft as defined in this article, is a retailer for the purposes of this part of the vehicle, vessel or aircraft, regardless of whether he or she is a retailer by reason of other provisions of this part, unless another person is the retailer, as provided in subdivision (b).

(b) Every person, licensed or certificated under the Health and Safety Code or the Vehicle Code as a dealer, is the retailer of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code or of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, when a retail sale of the vehicle is made through him or her and that person provides to the Department of Housing and Community Development or the Department of Motor Vehicles a notice of transfer with respect to the vehicle pursuant to Section 18080.5 of the Health and Safety Code or Section 5901 or Section 38200 of the Vehicle Code. That person shall hold a seller's permit and remit tax to the board with respect to those sales in the same manner as a dealer licensed or certificated under the Vehicle Code and making sales on his or her own account. For purposes of this subdivision, ''sale'' does not include a lease.

History.—Stats. 1971, p. 3923, in effect December 23, 1971, operative July 1, 1972, added ''or subject to identification under Division 16.5 (commencing with section 38000) of the Vehicle Code.'' Stats. 1975, Ch. 711, in effect January 1, 1976, added phrase in (a) beginning ''unless another'' and subdivision (b). Stats. 1981, Ch. 975, in effect January 1, 1982, added ''of a mobilehome. . . . Safety Code, or'' after ''retail sale'' and ''or she'' after ''he'' in subdivision (a); added ''the

Health and Safety Code or" before the first "the Vehicle Code," "of a mobilehome. . . . Safety Code, or" after "retailer," "or her" after "him," substituted "that" for "such" before "person", added "Department of Housing and Community Development or the" before "Department of Motor Vehicles," and added "Section 18076.1 of the Health and Safety Code or" before "Section 5901" in the first sentence of; and, substituted "That" for "Such" before, and "shall" for "must" after "person", "those" for "such" before the first "sales", and added "or her" after "his" in the second sentence in subdivision (b). Stats. 1991, Ch. 236, in effect July 29, 1991, substituted "18080.5" for "18076.1" after "pursuant to Section" in subdivision (b). Stats. 2000, Ch. 861 (SB 2084), in effect September 29, 2000, added "or a vehicle . . . Vehicle Code" after "Vehicle Code" in subdivisions (a) and (b).

6276. **Presumption that sales price is market value.** [Repealed by Stats. 1991, Ch. 87, in effect June 30, 1991, operative August 1, 1991.]

6276.1. **Mobilehomes; current value.** (a) For purposes of Section 6276, "sales price" of a used mobilehome, as defined in Section 18014 of the Health and Safety Code shall be based on the current value of the used mobilehome as specified by a recognized value guide. 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. The State Board of Equalization shall approve the value guides for use within this state through regulation.

(b) For purposes of Section 6276, "sales price" of a mobilehome, whether new or used, shall exclude the amount of separately stated escrow fees on the sale of the mobilehome.

(c) For the purposes of this section, the "actual sales price" means the total contract price, including, but not limited to, the value of the mobilehome, its in place location value, awning, skirting, carport, patio, landscaping, shrubs, unattached furnishings, or other items not part of the mobilehome, and documentation fees.

History.—Added by Stats. 1979, Ch. 863, effective January 1, 1980. Stats. 1981, Ch. 975, in effect January 1, 1982, added "Sections 18008 and 18221 of the Health and Safety Code or" before "Sections 396" and "Health and Safety Code or the" before the second "Vehicle Code" in subdivision (a), and substituted "the" for "such" after "sale of" in subdivision (b). Stats. 1982, Ch. 1591, in effect September 30, 1982, operative January 1, 1983, deleted "or Sections 396 and 665 of the Vehicle Code" before "shall" and substituted "be based . . . regulation" for "exclude . . . Professions Code" after "shall" in subdivision (a), and added subdivision "(c)". Stats. 1984, Ch. 932, effective September 7, 1984, operative January 1, 1985. Deleted "18008" before "18014" and substituted "specified" for "determined" in first sentence in (a), added sentence "If . . . documents," before last sentence in (a). Stats. 1985, Ch. 1539, effective January 1, 1986, deleted "age" after "specify the", substituted "or" for "and" after "model," deleted "or if" after "mobilehome," and added "the value . . . is less" in subdivision (a), deleted repeal language and added "For the . . . documentation fees" in subdivision (c).

6276.1. **Mobilehomes; exclusions.** [Repealed by Stats. 1985, Ch. 1539, effective January 1, 1986.]

6277. **Presumption on sale to lessee.** There shall be a presumption 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.

History.—Added by Stats. 1976, Ch. 1284, operative March 23, 1977.

Article 2. Special Exemptions

§ 6281. Substantially same ownership after transfer.
§ 6282. Vehicles; manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer.
§ 6283. Vessels and aircraft; sellers.
§ 6284. Seller's permit requirements.
§ 6285. Family.

6281. **Substantially same ownership after transfer.** There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, a mobilehome or commercial coach required to be annually registered under the Health and Safety Code, or a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vessel or aircraft, when such property is included in any transfer of all or substantially all the property held or used in the course of business activities of the person selling the property and when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of that corporation or other entity.

History.—Stats. 1969, p. 999, in effect November 10, 1969, substituted "business activities" for "a business activity". Stats. 1971, p. 3923, in effect December 23, 1971, operative July 1, 1972 added, "or subject to identification under Division 16.5 (commencing with section 38000) of the Vehicle Code." Stats. 1981, Ch. 975, in effect January 1, 1982, added "a mobilehome . . . Safety Code, or" before "a vehicle" in the first sentence and substituted "that" for "such" after "property of" in the second sentence.

6282. **Vehicles; manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer.** There are exempted from the computation of the amount of the sales tax the gross receipts from sales of mobilehomes or commercial coaches required to be annually registered under the Health and Safety Code or vehicles required to be registered under the Vehicle Code when the retailer is other than a person licensed or certificated pursuant to the Health and Safety Code or the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code.

This exemption does not extend to the rentals payable under a lease of tangible personal property.

History.—Stats. 1966, p. 186, in effect April 18, 1966, operative July 1, 1966, added last sentence. Stats. 1976, Ch. 1284, operative March 23, 1977, changed "manufacturer, dealer, or dismantler" to "manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of Section 11615.5 of the Vehicle Code." Stats. 1981, Ch. 975, in effect January 1, 1982, added "mobilehomes . . . Safety Code, or" before "vehicles" and "the Health and Safety Code or" before "the second Vehicle Code" in the first sentence of the first paragraph. Stats. 1983, Ch. 1286, in effect January 1, 1984, added "remanufacturer" after "manufacturer" in the first paragraph.

6283. **Vessels and aircraft; sellers.** (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale in this state of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or of a vessel or of an aircraft when the retailer is other than a person required to hold a seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 by reason of the number, scope, and character of his or her sales of those vehicles, vessels, or of aircraft, as the case may be.

(b) The exemption provided in subdivision (a) shall not apply to either of the following:

(1) Any sale of a vehicle required to be identified under Division 16.5 (commencing with Section 38000) of the Vehicle Code when the retailer is a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, remanufacturer, dealer, or dismantler.

(2) Any sale of a vessel or an aircraft when a broker arranges the sale between two private parties and the broker collects sales tax reimbursement on the transaction.

History.—Stats. 1967, p. 2062, in effect November 8, 1967, substituted "required to hold" for "holding" and added all language following "Chapter 2 of this part." Stats. 1971, p. 3924, in effect December 23, 1971, operative July 1, 1972 added "vehicle subject to identification under Division 16.5 (commencing with section 38000) of the Vehicle Code or of a" following "from the sale of a". Stats. 1972, Ch. 973, effective August 16, 1972, added "(commencing with Section 6066)" to the first sentence, and added the second sentence. Stats. 1983, Ch. 1286, in effect January 1, 1984, deleted "of this part" after "Chapter 2," added "or her" after "his" and substituted "those" for "such" after "or sales" in the first sentence and added "remanufacturer" after "manufacturer" in the second sentence. Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letter designation (a) before first paragraph, and added "in this state" after "the sale" in the first sentence of subdivision (a); created new subdivision (b) with the former second sentence of subdivision (a) and substituted "The" for "This" before "exemption", substituted "provided in subdivision (a) shall" for "does" after "exemption", and substituted "either of the following" for "sales of vehicles" therein; created new pragraph (1) with the balance of the second sentence beginning with "required" and added "Any sale of a vehicle" before "required" therein; and added paragraph (2) to subdivision (b).

6284. **Seller's permit requirements.** If a person is engaged in the business of selling vehicles, mobilehomes, commercial coaches, vessels or aircraft he or she shall not be excused from the requirements of Article 2 (commencing with Section 6066) of Chapter 2 of this part, by reason of the exemptions provided in Sections 6282 and 6283.

History.—Stats. 1982, Ch. 1589, in effect January 1, 1983, added "mobilehomes, commercial coaches," after "vehicles," "or she" after "he," and "(commencing with Section 6066)" after "Article 2" in the first sentence.

6285. **Family.** There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code, or of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of a vessel or an aircraft, when either of the following occurs:

(a) The person selling the property is either the parent, grandparent, child, grandchild, or spouse, or the brother or sister if the sale between that brother or sister is between two minors related by blood or adoption, of the purchaser, and the person selling is not engaged in the business of selling the type of property for which the exemption is claimed.

(b) The sale is to a revocable trust in which all of the following occur:

(1) The seller has an unrestricted power to revoke the trust.

(2) The sale does not result in any change in the beneficial ownership of the property.

(3) The trust provides that upon revocation the property will revert wholly to the seller.

(4) The only consideration for the sale is the assumption by the trust of an existing loan for which the tangible personal property being transferred is the sole collateral for the assumed loan.

History.—Stats. 1969, p. 1348, in effect November 10, 1969, added "or the brother or sister . . . or adoption". Stats. 1971, p. 3924, in effect December 23, 1971, operative July 1, 1972, added, "or of a vehicle subject to identification under Division 16.5 (commencing with section 38000) of the Vehicle Code." Stats. 1981, Ch. 975, in effect January 1, 1982, added "a mobilehome . . . Safety Code, or of" after "state of" and substituted "that" for "such" before the second "brother" in the first sentence. Stats. 1982, Ch. 664, in effect January 1, 1983, added "grandchild" after "child" in the first sentence. Stats. 1993, Ch. 1109, in effect January 1, 1994, substituted "when the following occurs . . . for the assumed loan" for "when the person . . . exemption is claimed" following "aircraft" in the first paragraph. Stats. 2000, Ch. 861 (SB 2084), in effect September 29, 2000, added "or a Vehicle . . . Vehicle Code, or" after "Vehicle Code or" in the first paragraph.

Article 3. Auxiliary Collection Provisions

§ 6291. Due date; interest and penalties.
§ 6292. Registration; Department of Motor Vehicles.
§ 6293. Vehicle subject to identification; Department of Motor Vehicles.
§ 6294. Undocumented vessel subject to identification; Department of Motor Vehicles.

6291. **Due date; interest and penalties.** Notwithstanding Section 6451, the use taxes imposed by this part with respect to the storage, use or other consumption in this state of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code, or of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of a vessel or an aircraft as defined in this chapter are due and payable by the purchaser at the time the storage, use, or other consumption of the property first becomes taxable. Delinquency penalties and interest with respect to use tax for mobilehomes or commercial coaches registered annually with the Department of Housing and Community Development or for vehicles registered with the Department of Motor Vehicles shall be as provided in Section 6292. Delinquency penalties and interest with respect to use tax for vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code shall be as provided in Section 6293. Delinquency penalties and interest with respect to use tax for vessels and aircraft shall be imposed as if the due date of the tax were fixed by Section 6451.

History.—Stats. 1971, p. 3924, in effect December 23, 1971, operative July 1, 1972, added "or a vehicle subject to identification under Division 16.5 (commencing with section 38000) of the Vehicle Code." to first sentence, added provision for delinquency penalties and interest with respect to use tax for vehicles required to be identified under Division 16.5 (commencing with section 38000) of the Vehicle Code by reference to section 6293. Stats. 1981,Ch. 975, in effect January 1, 1982, substituted "a mobilehome . . . Safety Code, or of a vehicle" for "vehicles" after "state of" and "or of a vessel or an aircraft" for "and of vessels and aircraft" before "as defined" in the first sentence, and added "mobilehomes . . . Development or for" before "vehicles" in the second sentence. Stats. 2000, Ch. 861 (SB 2084), in effect September 29, 2000, added "or a vehicle . . . Vehicle Code" after "Vehicle Code or" in the first sentence, and added "or a vehicle . . . Vehicle Code" after "Vehicle Code" in the third sentence.

6292. **Registration; Department of Motor Vehicles.** (a) Except when the sale is by lease, when a mobilehome or commercial coach required to be registered annually under the Health and Safety Code or a vehicle required to be registered under the Vehicle Code is sold at retail by other than

a person licensed or certificated pursuant to the Health and Safety Code or the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle shall pay the use tax to the Department of Housing and Community Development acting for and on behalf of the board pursuant to Section 18123 of the Health and Safety Code or to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 4750.5 of the Vehicle Code.

(b) If the purchaser makes an application to either department which is not timely, and is subject to penalty because of delinquency in effecting registration or transfer of registration of the vehicle, he or she then becomes liable also for penalty as specified in Section 6591, but no interest shall accrue.

(c) Application to the appropriate department by the purchaser relieves the purchaser of the obligation to file a return with the board under Section 6452.

(d) 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 which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451).

History.—Stats. 1966, p. 186, in effect April 18, 1966, operative July 1, 1966, added "Except when the sale is by lease," to (a). Stats. 1976, Ch. 1284, operative March 23, 1977, changed "manufacturer, dealer, or dismantler" to "manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of Section 11615.5 of the Vehicle Code." Stats. 1977, Ch. 607, operative January 1, 1978, in paragraph (b) changed "does not make timely application to that department, but" to read "makes an application to that department which is not timely, and" and added new paragraph (d). Stats. 1981, Ch. 975, in effect January 1, 1982, added "a mobilehome . . . Safety Code or" before "a vehicle," "the Health and Safety Code or" before the second "the Vehicle Code," and "the Department of Housing . . . Safety Code or to" before "the Department of Motor Vehicles in subdivision (a); substituted "either" for "that" before "department", added "or she" after "he", and deleted "of this code" after "Section 6591" in subdivision (b); substituted "the appropriate" for "that" before "department" in subdivision (c); and, substituted "either" for "that" before "department" and deleted "of this part" after "Section 6451)" in subdivision (d). Stats. 1983, Ch. 1286, in effect January 1, 1984, added "remanufacturer" after "manufacturer" and substituted "shall" for "must" before "pay" in subdivision (a), and substituted "relieves" for "shall relieve" after the first "purchaser" in subdivision (c). Stats. 1991, Ch. 236, in effect July 29, 1991, substituted "18123" for "18076.15" after "pursuant to Section" in subdivision (a).

Purchases of vehicles subject to existing leases.—Leasing companies' purchases of vehicles subject to existing leases are taxable; consideration paid was the assumption of remaining unpaid liability for original purchase price. *Newco Leasing, Inc.* v. *State Board of Equalization* (1983) 143 Cal.App.3d 120.

6293. **Vehicle subject to identification; Department of Motor Vehicles.** (a) Except when the sale is by lease, when a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, is sold at retail by other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code, or a person required to hold a seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 by reason of the number, scope, and character of his or her sales of those vehicles, the retailer is not required or authorized to collect the use tax from the purchaser, but the

purchaser of the vehicle shall pay the use tax to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 38211 of the Vehicle Code.

(b) If the purchaser makes an application to that department which is not timely, and is subject to penalty because of delinquency in effecting identification or transfer of ownership of the vehicle, he or she then becomes liable also for penalty as specified in Section 6591 of this code, but no interest shall accrue.

(c) Application to that department by the purchaser relieves the purchaser of the obligation to file a return with the board under Section 6452.

(d) If the purchaser does not make application to that department, or does not pay the amount of use tax due, or files a return with the board under Section 6455 which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451).

History.—Added by Stats. 1971, p. 3925, in effect December 23, 1971, operative July 1, 1972. Stats. 1972, Ch. 973, effective August 16, 1972, inserted "licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer or dismantler or a person required to hold a seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of this part by reason of the number, scope, and character of his sales of such vehicles" in place of "holding a seller's permit issued under Section 6067." Stats. 1976, Ch. 1284, operative March 23, 1977, changed "manufacturer, dealer, or dismantler" to "manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of Section 11615.5 of the Vehicle Code." Stats. 1977, Ch. 607, operative January 1, 1978, changed "does not make timely application to that department, but" to read "makes an application to that department which is not timely, and", and added new paragraph (d). Stats. 1983, Ch. 1286, in effect January 1, 1984, added "remanufacturer" after "manufacturer," deleted "the provisions of" after "subject to" and "of this part" after "Chapter 2," added "or her" after "his," and substituted "those" for "such" after "sales of" in subdivision (a); added "or she" after "he" in subdivision (b); substituted "relieves" for "shall relieve" after the first "purchaser" in subdivision (c); and, deleted "of this part" after "Section 6451)" in subdivision (d). Stats. 2000, Ch. 861 (SB 2084), in effect September 29, 2000, added "or a vehicle . . . Vehicle Code" after "Vehicle Code" in subdivision (a).

6294. **Undocumented vessel subject to identification; Department of Motor Vehicles.** (a) When an undocumented vessel required to be registered under the Vehicle Code is sold at retail by other than a person holding a seller's permit and regularly engaged in the business of selling vessels, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vessel must 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.

(b) If the purchaser makes an application to the department which is not timely, and is subject to penalty because of delinquency in effecting registration or transfer of registration of the undocumented vessel, he or she then becomes liable also for penalty as specified in Section 6591, but no interest shall accrue.

(c) Application to the department by the purchaser shall relieve the purchaser of the obligation to file a return with the board under Section 6452.

(d) 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 which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451).

History.—Added by Stats. 1982, Ch. 665, in effect January 1, 1983.

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6351. **"Exempted from the taxes imposed by this part."** "Exempted from the taxes imposed by this part," as used in this article, means, in case of the sales tax, exempted from the computation of the amount of tax imposed.

6352. **Constitutional exemptions.** There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

Gross receipts from sales to federal land bank not taxable.—Gross receipts from sales made by a retailer of tangible personal property to the Federal Land Bank, the Federal Intermediate Credit Bank, the Bank of Cooperatives, and the Production Credit Corporation are not subject to sales tax, as the sales are to instrumentalities of the federal government. *M. G. West Co.* v. *Johnson* (1937) 20 Cal.App.2d 95. But see *Western Lithograph Co.* v. *State Board of Equalization* (1938) 11 Cal.2d 156, 777.

Gross receipts from sales by national park concessionaire subject to tax.—A private corporation operating in Yosemite National Park as a lessee and consessionaire of the United States Government is required to pay sales tax with respect to its retail sales made within the park. *Yosemite Park & Curry Co.* v. *Johnson* (1938) 10 Cal.2d 770.

Gross receipts from sales to banks subject to tax.—Retailers are required to pay sales tax upon their receipts from retail sales of tangible personal property to national banks, even though it be assumed that such banks are instrumentalities of the United States Government, and notwithstanding the provisions of Section 16 of Article XIII of the State Constitution, limiting and prescribing the extent to which and the methods by which banks may be taxed. *Western Lithograph Co.* v. *State Board of Equalization* (1938) 11 Cal.2d 156, 777.

Sales of fuel oil to interstate railroad.—Sales to railroad companies of fuel oil delivered to the railroad companies in California and transported outside of California by the purchasers for use outside of California are intrastate transactions the receipts from which are subject to sales tax. *Standard Oil Co.* v. *Johnson* (1942) 56 Cal.App.2d 411. For previous opinion to the contrary, see *Standard Oil Co.* v. *Johnson* (1939) 33 Cal.App.2d 430. The sales tax is not applicable to receipts from sales of fuel oil to a railroad company pursuant to a contract requiring delivery of the oil at points outside this state, the oil being delivered to the railroad in this state and shipped to the out-of-state points f.o.b. destination under standard bills of lading specifying such out-of-state destination with the buyer named as consignee and with freight charges prepaid by the seller. *Standard Oil Co.* v. *Johnson* (1944) 24 Cal.2d 40.

Property purchased for use in interstate commerce.—The application of the use tax to the storage or installation of equipment purchased for use in carrying on an interstate commerce business does not violate the commerce clause of the Federal Constitution. *Southern Pacific Co. vs. Gallagher* (1939) 306 U.S. 167; *Pacific Telephone & Telegraph Co.* v. *Gallagher* (1939) 306 U.S. 182.

The imposition of the California use tax upon switch engines purchased outside of the state and brought into the state for ultimate use in interstate commerce does not violate the commerce clause of the Federal Constitution. *Atchison, Topeka and Santa Fe Railway Co.* v. *State Board of Equalization* (1956) 139 Cal.App.2d 411.

Property taxed in the state of the first substantial use will not constitute multiple taxation by reason of previous formal use in two states, neither of which imposed such a tax. *Western Pacific RR Co.* v. *State Board of Equalization* (1963) 213 Cal.App.2d 20.

Use of property shipped in interstate commerce.—The imposition of the use tax on materials shipped to California by an Illinois corporation engaged in the manufacture of tanks, the materials being shipped and stored here preparatory to their use in the assembly of such tanks in California, does not constitute an unconstitutional burden on interstate commerce nor a regulation thereof. *Chicago Bridge and Iron Co.* v. *Johnson* (1941) 19 Cal.2d 162.

Educational institutions.—Educational institutions of collegiate grade, not conducted for profit, which purchase and use property exclusively for purposes of education, are not exempted by this section or Section 1a of Article XIII of the California Constitution, from payment of the use tax. *California Institute of Technology* v. *Johnson* (1942) 55 Cal.App.2d 856.

Sales for export.—The sales tax does not apply to a sale of oil to a foreign purchaser for shipment abroad, delivered to a vessel furnished by the purchaser and actually carried to a foreign destination, title and control of the oil passing to the foreign purchaser upon delivery, and no portion of the oil being used or consumed in the United States. *Richfield Oil Corp.* v. *State Board of Equalization* (1946) 329 U.S. 69.

The sale of an ocean-going vessel of American registry docked in a California port to an alien purchaser, including the change of registry and flag, for use in foreign commerce is exempt from sales tax by virtue of the import-export clause of the Federal Constitution. *Matson Navigation Co.* v. *State Board of Equalization* (1955) 136 Cal.App.2d 577; *Alaska Packers Ass'n* v. *State of California* (1955) 136 Cal.App.2d 586; *Pope and Talbot, Inc.* v. *State Board of Equalization* (1960) 181 Cal.App.2d 721.

Political subdivisions.—A levy by the state of a sales tax or use tax upon one of its political subdivisions is not invalid as a levy on public money. *People* v. *Imperial County* (1946) 76 Cal.App.2d 572.

Sales tax on interstate shipment.—The commerce clause of the Federal Constitution does not prohibit the imposition of a sales tax on a sale by a California retailer to a California consumer where the merchandise is ordered by the retailer from an out-of-state supplier and the supplier ships from a point outside California directly to the consumer in California, title passing at the destination point. *Meyer* v. *State Board of Equalization* (1954) 42 Cal.2d 376.

Where an Ohio manufacturer, maintaining permanent office, shop and service facilities in California, sold vaults and equipment to banks in California, title passing after delivery to buyer in California, the sales occurred in California and were not immune from taxation under the commerce clause. *Diebold, Inc.* v. *State Board of Equalization* (1959) 168 Cal.App.2d 628.

Property installed in this state.—If automatic control equipment is stored in this state and installed in a locomotive in this state prior to being used in interstate commerce, the subsequent use of the equipment as a permanent part of the locomotive operating solely in interstate commerce, both within and outside this state, and actual functional use of the equipment solely outside this state affords no basis for exemption from use tax on constitutional grounds. *Atchison, Topeka and Santa Fe Railway Co.* v. *State Board of Equalization* (1955) 131 Cal.App.2d 677.

Out-of-state use.—The imposition of sales or use tax upon tangible personal property purchased for use outside of the state does not violate the commerce clause of the United States Constitution, where the property is purchased, stored, and fabricated in California. *Levine* v. *State Board of Equalization* (1956) 142 Cal.App.2d 760.

Aircraft.—Aircraft purchased by an airline from the Federal Government both in this state and outside this state and brought to the airline's home base in this state without carrying a payload and retained at the home base for an indefinite period of time prior to being placed in service in interstate commerce are subject to use tax. *Flying Tiger Line Inc.* v. *State Board of Equalization* (1958) 157 Cal.App.2d 85.

Imports.—The import-export clause of the Federal Constitution does not prohibit application of use tax to the use in this state of a yacht purchased abroad, after its original import packaging is removed and it is put to the use for which it was imported. *Sugarman* v. *State Board of Equalization* (1958) 51 Cal.2d 361.

Exports.—Where goods are sold to a purchaser for export to and use in a foreign country and pursuant to the contract the retailer delivers the goods by truck to an export packer hired, directed and paid by the purchaser and after packing the export packer delivers the goods by truck to a pier from which they are loaded on a ship and transported to the foreign country and used there by the purchaser, the export process begins when the goods leave the retailer's warehouse and the import-export clause of the Federal Constitution therefore prohibits the application of sales tax to the sale. *Gough Industries, Inc.* v. *State Board of Equalization* (1959) 51 Cal.2d 746, cert. den. (1959) 359 U.S. 1011.

Foreign purchaser.—A sale of repair parts in connection with a contract to overhaul an airplane for a foreign airline is subject to sales tax where the airplane is redelivered to the owner in this state and the owner's crew flies the airplane from this state. *Flying Tiger Line, Inc.* v. *State Board of Equalization* (1958) 157 Cal.App.2d 85.

Insurance companies not exempted.—An insurance company is not relieved from its duty to collect or pay a use tax by virtue of § 6352, when it sells automobiles belonging to it to private individuals, since the use tax is imposed on the ultimate purchaser, not the insurance company. *Beneficial Standard Life Ins. Co.* v. *State Board of Equalization* (1962) 199 Cal.App.2d 18.

Sale outside state and leased back instate.—Where a California retailer sold two oil tankers with title and possession passing out of state and the vessels were immediately leased back to the retailer and were used in California in intrastate commerce, the imposition of use tax was not an undue burden on interstate commerce nor a violation of due process under the United States Constitution. *Union Oil Co.* v. *State Board of Equalization* (1963) 60 Cal.2d 441, appeal dismissed (1964) 377 U.S. 404.

Sales of bunker fuel to steamship lines.—Bunker fuel oil sold for consumption by vessels of foreign and domestic registry on voyages to foreign or domestic ports does not constitute an export or an interstate sale, and the application of sales tax is not prohibited by the export-import clause or the commerce clause of the United States Constitution. *Shell Oil Co.* v. *State Board of Equalization* (1966) 64 Cal.2d 713, appeal dismissed (1967) 386 U.S. 211.

Sales to national banks properly taxed.—The imposition of sales tax on sales to national banks was permitted by Congress when California did not impose another tax on a built-up rate in lieu of the sales tax. *United States* v. *State Board of Equalization* (1980) 639 F.2d 458.

Sales Tax Unconstitutional When Imposed on Nonprofit Religious Activities.—As a tax on privilege, sales tax could not constitutionally be imposed on nonprofit religious organization's sales of religious materials. However, use tax and collection of use tax may be imposed on the organization for those sales. *Institute in Basic Youth Conflicts, Inc.* v. *State Board of Equalization* (1985) 166 Cal.App.3d 1093.

Liquidation sales by trustees in bankruptcy.—A nondiscriminatory tax on a bankruptcy liquidation sale is not barred by the now discredited intergovernmental tax immunity doctrine, and there is no longer any constitutional impediment to imposition of a sales tax or a use tax on a bankruptcy liquidation sale. The sales and use tax does not discriminate against a bankruptcy trustee or those that they deal with, and the bankruptcy trustee is not so closely connected to the federal government that the two cannot be viewed as separate entities. *California State Board of Equalization* v. *Sierra Summit, Inc.* (1989) 490 U.S. 844.

Religious books, tapes and records.—Application of sales and use tax to the sales of religious books, tapes and records did not violate the Free Exercise Clause or Establishment Clause of the First Amendment. *Jimmy Swaggart Ministries* v. *Board of Equalization of California* (1990) 493 U.S. 378; 107 L.Ed.2d 796.

Sales for export.—A sale of aircraft parts to a Mexican airline to serve its planes is not subject to tax where the parts are shipped by a common carrier to a location on the U.S. Mexican border where an independent freight forwarder, with the assistance of the airline's employees, processed the property through U.S. and Mexican Customs and the parts were moved on a continuous and unbroken journey to the foreign destination other than for unavoidable delays that were incidental to their journey. *McDonnel Douglas Corporation* v. *State Board of Equalization* (1992) 10 Cal.App.4th 1413.

6353. **Gas, electricity, and water.** There are exempted from the taxes imposed by this part the gross receipts derived from the sales, furnishing, or service of and the storage, use, or other consumption in this state of, of all of the following:

(a) Gas, electricity, and water, including steam and geothermal steam, brines, and heat, when delivered to consumers through mains, lines, or pipes.

(b) (1) Liquefied petroleum gas, delivered to a qualified residence by the seller, that is sold for household use in the qualified residence, or liquefied petroleum gas that is purchased for use by a qualified person to be used in producing and harvesting agricultural products; provided, in either case, the liquefied petroleum gas is delivered into a tank with a storage capacity for liquefied petroleum gas that is equal to or greater than 30 gallons. This

subdivision may not be construed to provide any exemption from any tax levied by a city, county, or city and county pursuant to Section 7284.3, or any successor to that section.

(2) For purposes of this subdivision:

(A) ''Qualified residence'' means a primary residence, not serviced by gas mains and pipes.

(B) ''Qualified person'' means any person engaged in a line of business described in Codes 0111 to 0291, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition, and any other person that assists that person in the lines of business described in this paragraph in producing and harvesting agricultural products.

(c) Water when sold to an individual in bulk quantities of 50 gallons or more, for general household use in his or her residence if the residence is located in an area not serviced by mains, lines or pipes.

(d) Exhaust steam, waste steam, heat, or resultant energy, produced in connection with cogeneraton technology, as defined in Section 25134 of the Public Resources Code.

(e) The exemptions provided by subdivision (b) shall be effective starting September 1, 2001, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement these exemptions no later than October 1, 2001.

History.—Stats. 1972, Ch. 402, in effect October 1, 1972, added the household water exemption. Stats. 1978, Ch. 1010, effective January 1, 1979, added "and of exhaust steam, waste steam, heat, or resultant energy, produced in connection with cogeneration technology, as defined in Section 25134 of the Public Resources Code." to the last sentence. Stats. 1986, Ch. 420, in effect July 17, 1986, added reference to "steam and geothermal steam, brines, and heat". Stats. 2001, Ch. 156 (AB 426), in effect August 7, 2001, operative September 1, 2001, added "derived" after "gross receipts", added ", all of the following:" after "in this state of", in the first paragraph added subdivision letter designation (a) after "in this state of", substituted "Gas" for "gas" after "(a)" therein, added subdivision (b), added subdivision letter designation (c) after "or pipes, and" and substituted "Water" for "water" after "(c)" therein, added a comma after "gallons or more", added subdivision letter designation (d) after "or pipes, and of" therein, and substituted "Exhaust" for "exhaust" after "or pipes and of" therein, and added subdivision (e).

Note.—Stats. 1986, Ch. 420 expressed the intent of the Legislature that the provisions of this act codify the longstanding administrative practice of the State Board of Equalization which interprets Section 6353 of the Revenue and Taxation Code as exempting steam from sales and use taxation. Therefore, it is the intent of the Legislature that these provisions do not constitute a change in, but are declaratory of, the existing law.

Delivery of Liquefied Petroleum Gas by Hose from Vendor's Tank Truck to Buyer's Storage Tank is not Exempt. Delivery of Gas through Mains, Lines, or Pipes.—Plaintiff Standard Oil Company of California brought suit for refund of use tax which it had paid on liquefied petroleum gas (LPG) which it had used. The claim for refund was based on Revenue and Taxation Code Section 6353 which exempts from tax the use of ''gas, electricity, and water when delivered to consumers through mains, lines, or pipes.'' The Board has long construed this section as not including within its exemption from taxation, sales or use of substances emptied from vendor's vehicles by means of hoses.

The LPG was transported by the vendor's tank truck to plaintiff's storage facility and delivered by passing it from the truck to plaintiff's container through the vendor's flexible high pressure tube or hose. Plaintiff claimed that LPG was a gas, even though delivered in liquid form, and that the delivery from the truck to the storage tank was through a main, line, or pipe. The trial court upheld plaintiff's contention.

The District Court of Appeal reversed the judgment and upheld the Board's construction of the statute. The court first observed that the Board's construction was entitled to great weight and was not to be overturned unless clearly erroneous or unauthorized. Using dictionary definitions the court found that mains, lines, and pipes did not necessarily include hoses and that a later amendment of the statute indicated that the Legislature, in its use of the words ''mains, lines, or pipes,'' meant fixed ''mains, lines, or pipes'' as ordinarily service a geographical area with utility service. Further noting that statutes granting exemptions from taxation must be reasonably, but strictly, construed against the taxpayer, the court found that the Board's construction was neither clearly erroneous nor unauthorized.

The court distinguished a 1943 opinion of the Attorney General which exempted sales of gas through installations placed by a public utility on the premises of gas consumers. In that situation as many as 24 customers were connected with each installation by means of pipes owned by the customers, the tanks and their contents were owned by the utility, there was continuous ''delivery'' through the ''pipes'' from the tank, and the flow to the customer was through the utility's meter into the customer's pipe and gas consumption devices.

Since the court held that plaintiff's use of LPG, following its delivery under the circumstances of the appeal, was not exempted from taxation, it was unnecessary to determine whether the LPG, a liquid throughout its delivery by tank truck and hose, was a ''gas'' within the meaning of Secton 6353. *Standard Oil Company of California* v. *State Board of Equalization* (1974) 39 Cal.App.3d 765.

Geothermal steam exemption retroactive.—The 1986 legislation which expressly exempted geothermal steam was intended to have retroactive effect. The retroactive exemption was not a constitutionally prohibited gift of public funds since it served an important public purpose of promoting alternative energy. *County of Sonoma* v. *State Board of Equalization* (1987) 195 Cal.App.3d 982.

6354. **Gold.** There are exempted from the taxes imposed by this part, the gross receipts from the sales 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, and the storage, use, or other consumption in this state of commemorative ''California Gold'' medallions so produced and sold.

History.—Added by Stats. 1985, Ch. 1082, effective September 27, 1985 until January 1, 1988, and as of such date is repealed unless a later enacted statute, which is enacted before that date deletes or extends that date. Stats. 1987, Ch. 1095, in effect September 25, 1987, deleted second paragraph which provided, "This section shall remain in effect only until January 1, 1988, and as of that date is repealed unless a later enacted statute, which is enacted before that date deletes or extends the date."

6355. **Monetized bullion.** [Repealed by Stats. 1993, Ch. 977, in effect October 11, 1993.]

6355. **Monetized, nonmonetized bullion, and numismatic coins.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in bulk of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins that are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange and the storage, use, or other consumption in this state of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins so sold.

(b) (1) A sale in bulk, for purposes of this section, shall be deemed to have occurred if the amount of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in the transaction totals, in market value, the sum of one thousand dollars ($1,000) or more, or its equivalent.

(2) The board shall adjust the one thousand dollar ($1,000) amount specified in paragraph (1) as follows:

(A) On or before September 1, 1994, and on or before each September 1 of each year thereafter, the board shall multiply the amount applicable for the current calendar year by the inflation factor adjustment determined by the Franchise Tax Board pursuant to subdivision (h) of Section 17041, the resulting amount to be the applicable amount for the succeeding calendar year. The applicable amount shall be operative as an adjustment of the amount specified in paragraph (1) only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of five hundred dollars ($500), shall be operative for purposes of paragraph (1) beginning January 1 of the succeeding calendar year.

(C) For purposes of this paragraph, ''operative threshold'' means an amount that exceeds by a least five hundred dollars ($500), the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) ''Monetized bullion,'' for purposes of this section, 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. ''Monetized bullion,'' for purposes of this section, also means gold medallions struck under authority of the American Arts Gold Medallion Act (Title IV of Public Law 95-630).

(d) A sale of monetized bullion, nonmonetized gold or silver bullion, or numismatic coins, for purposes of this section, shall be deemed to be substantially equivalent to a transaction in securities or commodities through a national securities or commodities exchange, if 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.

History.—Added by Stats. 1973, Ch. 1019, operative January 1, 1974. Stats. 1980, Ch. 849, operative January 1, 1980, substituted the part of (d) following "through a person" for former wording. Stats. 1983, Ch. 1158, in effect September 28, 1983, added the second sentence in subdivision (c). Stats. 1985, Ch. 1128, effective January 1, 1986, until January 1, 1991, and as of such date is repealed unless a later enacted statute, which is enacted before that date deletes or extends that date. Upon repeal, section as it existed prior to enactment of this temporary provision shall have the same force and effect as if this temporary provision had not been enacted. Added "nonmonetized gold . . . numismatic coins" after "monetized bullion" in subdivisions (a), (b), and (d), substituted "market value" for "face amount" in subdivision (b), and deleted subdivision (e) and added new subdivision (e). Stats. 1990, Ch. 1042, in effect September 19, 1990, operative January 1, 1991, substituted "1994" for "1991" in the first sentence of subdivision (e), and deleted second sentence of subdivision (e), which provided, "If that date is not deleted or extended, then, on and after January 1, 1991, pursuant to Section 9611 of the Government Code, Section 6355 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 1158 of the Statutes of 1983, shall have the same force and effect as if this temporary provision had not been enacted." Stats. 1993, Ch. 977, in effect October 11, 1993, substituted "that" for "which" after "numismatic coins" in subdivision (9); added "(1)" after "(b)"; added paragraph (2) and subparagraphs (2)(A), (2)(B) and (2)(C) to subdivision (b); added subdivision (c); and deleted subdivision (e) which contained a sunset clause which would have repealed the section effective January 1, 1994. Stats. 1994, Ch. 146, in effect January 1, 1995, substituted "sale" for "sales" after "from the" in subdivision (a) .

Foreign Coins.—A sale of foreign coins is an exempt bulk sale if their market value is $1,000 or more in United States money. *Alan Van Vliet Enterprises, Inc.* v. *State Board of Equalization* (1977) 65 Cal.App.3d 964.

6356. **Vessels.** There are exempted from the sales tax the gross receipts from sales of vessels of more than 1,000 tons burden by the builders thereof.

History.—Added by Stats. 1941, Ch. 36, effective January 1, 1942. Stats. 1985, Ch. 591, effective January 1, 1986, substituted "sales tax" for "taxes imposed by this part", and deleted "and the . . . this State" after "thereof."

Purchase in state of ship over 1000 tons burden.—A ship purchased outside California or in interstate commerce for use in the state may be constitutionally taxed. Hence, the sale of a ship of more than 1000 tons burden within the state is not with the conditional exemption from the use tax, which exemption is applicable if the imposition of a similar tax as respects a vessel purchased outside of California or in interstate commerce would be unconstitutional. In re *Los Angeles Lumber Products Co., Ltd.* (1942) 45 F.Supp. 77.

6356.5. **Low-emission motor vehicles; retrofit devices.** [Repealed. Became inoperative January 1, 1995 pursuant to the provisions of Ch. 990, Stats. 1989.]

6356.5. **Farm equipment and machinery.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage and use of, or other consumption in this state of, farm equipment and machinery, and the parts thereof, purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products.

(b) For purposes of this section, both of the following shall apply:

(1) ''Qualified person'' means any person engaged in a line of business described in Codes 0111 to 0291, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition, and any other person that uses farm equipment and machinery to assist this person in the lines of business described in this paragraph in producing and harvesting agricultural products.

(2) ''Farm equipment and machinery'' means implements of husbandry, as defined in Section 411.

(c) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section does not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) Notwithstanding subdivision (a), the exemption established by this section does not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(d) The exemption provided by this section shall be effective starting September 1, 2001, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement the exemption provided by this section no later than October 1, 2001.

History.—Added by Stats. 2001, Ch. 156 (AB 426), in effect August 7, 2001, operative September 1, 2001.

6356.6. **Timber harvesting equipment.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage and use of, or other consumption in this state of, equipment and machinery designed primarily for off-road use in commercial timber harvesting operations, and the parts thereof, that is purchased for use by a qualified person to be used primarily in harvesting timber.

(b) The State Board of Equalization may adopt emergency regulations to specify equipment and machinery exempted by this section, and may revise those regulations from time to time.

(c) For purposes of this section, ''qualified person'' means any person engaged in commercial timber harvesting.

(d) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section

7251)), the exemption established by this section does not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) Notwithstanding subdivision (a), the exemption established by this section does not apply with respect to any tax levied pursuant to Section 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(e) The exemption provided by this section shall be effective starting September 1, 2001, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement the exemption provided by this section no later than October 1, 2001.

History.—Added by Stats. 2001, Ch. 156 (AB 426), in effect August 7, 2001, operative September 1, 2001.

6357. **Motor vehicle fuel.** There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of motor vehicle fuel used in propelling aircraft, except aircraft jet fuel, the distributions of which in this state are subject to the tax imposed by Part 2 (commencing with Section 7301) of this division and not subject to refund.

History.—Stats. 1957, p. 2020, in effect September 11, 1957, added "and the use tax when applicable to the storage, use or other consumption of such fuel" to second paragraph. Stats. 1959, p. 4570, operative October 1, 1959, added "and liquefied petroleum gas the use of which is subject to the tax imposed by Part 3 of this division,". Stats. 1969, p. 3226, in effect November 10, 1969, operative December 1, 1969, added ", except aircraft jet fuel," to the first paragraph. Stats. 1971, p. 2785, operative July 1, 1972, substituted "gross receipts from the sale of" for "gross receipts from the distributions of" in first sentence, added "used in propelling aircraft" in first sentence, deleted "and liquefied petroleum gas the use of which is subject to the tax imposed by Part 3 of this division", and limited the collection of sales and use tax by the controller to the tax on motor vehicle fuel used in propelling an aircraft which is subject to tax and refund under Part 2 of this division. Stats. 1972, Ch. 1408, effective December 27, 1972, rearranged the wording of the first paragraph and deleted the second paragraph.

6357.1. **Tax collection by Controller.** [Repealed by Stats. 1989, Ch. 1027, effective September 29, 1989, but operative January 1, 1990.]

6357.1. **Diesel fuel; farming business.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, diesel fuel used in farming activities and food processing. This section shall be implemented as soon as possible, but in no case later than September 1, 2001.

(b) For purposes of this section, "farming activities" has the same meaning as "farming business" as set forth in Section 263A of the Internal Revenue Code. "Farming activities" also includes the transportation and delivery of farm products to the marketplace.

(c) The exemption established by this section does not apply with respect to either of the following:

(1) A tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(2) A tax imposed under Section 6051.2 or 6201.2, or under Section 35 of Article XIII of the California Constitution.

History.—Added by Stats. 2001, Ch. 156 (AB 426), in effect August 7, 2001, operative September 1, 2001.

6357.2. **Tax repayment by Controller.** [Repealed by Stats. 1989, Ch. 1027, effective September 29, 1989, but operative January 1, 1990.]

6357.5. **Gasohol.** [Repealed. Became inoperative June 30, 1984 pursuant to the provisions of Ch. 1321, Stats. 1983.]

6357.5. **Fuel and petroleum products sold to air common carriers.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment in the conduct of its business as an air common carrier, on an international flight.

(b) To qualify for the exemption, the air common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(c) ''Immediate consumption or shipment,'' as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into an aircraft for consumption or transportation outside the United States and not for storage by the purchaser or any third party.

(d) ''International flight,'' as used in this section, is a flight whose final destination is a point outside of the United States.

(e) Any air common carrier claiming exemption under this section who is not required to hold a valid seller's permit, shall be required to register with the board and obtain a fuel exemption registration number, and shall be required to file returns as the board may prescribe, either if the board notifies the carrier that returns must be filed or if the carrier is liable for taxes based upon consumption or transportation of fuel or petroleum products erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(f) An air common carrier claiming an exemption under this section upon request, shall make available to the board 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 products on an international flight and the amount claimed as exempt. If the carrier fails to provide these records upon request, the board may revoke the carrier's fuel exemption registration number.

(g) The board may require any air common carrier claiming an exemption under this section and required to obtain a fuel exemption registration number, to place with it such security as the board may determine pursuant to Section 6701.

(h) Pursuant to this section, any use of the fuel and petroleum products by the purchasing carrier, other than that incident to the delivery of the fuel and petroleum products to the carrier and the consumption or transportation of the fuel and petroleum products by the carrier on an international flight for use in the conduct of its business as a common carrier, or a failure of the carrier to document its consumption or transportation of the fuel and petroleum products on an international flight, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(i) 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 section is repealed as of that date.

History.—Added by Stats. 1988, Ch. 1227, in effect September 23, 1988. Stats. 1991, Ch. 1091, in effect January 1, 1991, substituted "January 1, 1994" for "that date" after "which is chaptered before" in the first sentence and added "However," to the second sentence. Stats. 1992, Ch. 905, in effect September 25, 1992, operative January 1, 1993, substituted "an international flight" for "a flight whose first destination is a foreign destination" in subdivision (a); deleted former subdivision (c) which defined "Foreign destination"; relettered former subdivision (d) as subdivision (c); added subdivision (d); substituted "on an international flight" for "to a foreign destination" in subdivision (f) and for "to the foreign destination" twice in subdivision (h); deleted the former first and second sentences which provided operative and repeal dates, substituted "In" for "However, in" before "the event", deleted "prior to January 1, 1994" after "is repealed", deleted "also" after "this section is", and substituted "that" for "the", in subdivision (i).

6358. **Animal life; feed; seeds; plants; fertilizer.** There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of:

(a) Any form of animal life the products of which ordinarily constitute food for human consumption.

(b) Feed for any form of animal life the products of which ordinarily constitute food for human consumption, or are to be sold in the regular course of business.

(c) Seeds and plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(d) Fertilizer to be applied to land the products of which are to be used as food for human consumption or are to be sold in the regular course of business.

(e) On or after January 1, 1997, drugs or medicines, including oxygen, the primary purpose of which is the prevention or control of disease, that are administered to animal life the products of which ordinarily constitute food for human consumption.

History.—Stats. 1943, p. 2456, operative July 1, 1943, added (b), (c), and (d). Stats. 1947, p. 2028, operative July 1, 1947, substituted "Any form of animal life" for "Livestock and poultry" in (a) and (b). Stats. 1996, Ch. 954, in effect September 26, 1996, but operative January 1, 1997, substituted "the sale in this state of," for "sales of" after "receipts from", and added "in this state" after "consumption" in the first paragraph, and added subdivision (e). Stats. 1998, Ch. 323, in effect August 20, 1998, but operative January 1, 1999, deleted "annual" after "seeds and" in subdivision (c), and added "are to be" after "consumption or" in subdivision (d). Stats. 1999, Ch. 289, (SB 963), in effect September 1, 1999, but operative January 1, 2000, deleted "of a kind" after "animal life" in subdivisions (a), (b) and (e), and added "including oxygen" after "medicines" in subdivision (e).

6358.1. **Fuel; organic products and waste byproducts.** (a) There are exempted from taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of either of the following:

(1) Organic products grown expressly for fuel purposes.

(2) Waste byproducts from agricultural or forest products operations, municipal refuse, or manufacturing, which are used in an industrial facility as a fuel source in lieu of the use of either oil, natural gas or coal.

(b) In addition to subdivision (a), the exemption under this section shall include the use of still gas produced in the refining process from purchased crude oil.

History.—Added by Stats. 1980, Ch. 1248, operative January 1, 1981 until December 31, 1986 and as of such date is repealed, unless a later enacted statute, chaptered before December 31, 1986, deletes or extends such date. Stats. 1983, Ch. 1059, in effect January 1, 1984, deleted "delivered in bulk and are" after "which are" in subdivision (b) and added subdivision (c). Stats. 1986, Ch. 254, effective July 3, 1986, deleted the expiration date of the exemption.

Note.—Section 2 of Stats. 1983, Ch. 1059, provided, "Section 1 of this act, which amends Section 6358.1 of the Revenue and Taxation Code, does not constitute a change in, but is declaratory of, the existing law. It is the intent of the Legislature in enacting this act to clarify existing law.

Petroleum coke is waste by product.—The court agreed with the taxpayer that fuel-grade petroleum coke was tax exempt as a waste by product despite the fact that the coke was sold for use as fuel in a chemical manufacturing facility. The coke was a solid by product of taxpayer's crude oil refinery. *Union Oil* v. *State Board of Equalization* (1990) 224 Cal.App.3d 665.

6358.2. **Poultry litter.** There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of wood shavings, sawdust, rice hulls, or other products that are used as litter in poultry and egg production and that are ultimately resold as, or incorporated into fertilizer products.

History.—Added by Stats. 1993, Ch. 568, in effect September 28, 1993, but operative January 1, 1994. Stats. 1994, Ch. 146, in effect January 1, 1995, added "as," after "resold".

6358.4. **Medicated feed and drinking water.** There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, drugs or medicines administered to animal life as an additive to feed or drinking water, the primary purpose of which is the prevention and control of disease of food animals, or of nonfood animals which are to be sold in the regular course of business.

History.—Added by Stats. 1995, Ch. 620, in effect October 5, 1995, operative April 1, 1996.

6358.5. **Racehorse breeding stock.** (a) (1) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, any racehorse breeding stock.

(2) For purposes of this section "racehorse breeding stock" means a horse that is capable of reproduction and for which the purchaser states that it is the purchaser's sole intent to use the horse for breeding purposes.

(b) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section

7251)), the exemption established by this section does not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) The exemption established by this section does not apply with respect to any tax levied pursuant to either Section 6051.2 or 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(c) The exemption provided by this section shall be effective starting September 1, 2001, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement the exemption provided by this section no later than October 1, 2001.

History.—Added by Stats. 2001, Ch. 156 (AB 426), in effect August 7, 2001, operative September 1, 2001.

6359. **Food products.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, food products for human consumption.

(b) For the purposes of this section, ‘‘food products’’ include all of the following:

(1) Cereals and cereal products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, candy, gum, confectionery, coffee and coffee substitutes, tea, and cocoa and cocoa products.

(2) Milk and milk products, milkshakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and that require the use of milk or a milk product in their preparation.

(3) All fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including bottled water, but excluding spirituous, malt, or vinous liquors or carbonated beverages.

(c) For purposes of this section, ‘‘food products’’ do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

(d) None of the exemptions in this section apply to any of the following:

(1) When the food products are served as meals on or off the premises of the retailer.

(2) When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

(3) When the food products are 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 location, even though those 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.

(4) When the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, marinas, campgrounds, and recreational vehicle parks.

(5) When the food products are sold through a vending machine.

(6) When the food products sold are furnished in a form suitable for consumption on the seller's premises, and both of the following apply:

(A) Over 80 percent of the seller's gross receipts are from the sale of food products.

(B) Over 80 percent of the seller's retail sales of food products are sales subject to tax pursuant to paragraph (1), (2), (3), or (7).

(7) When the food products are sold as hot prepared food products.

(e) ''Hot prepared food products,'' for the purposes of paragraph (7) of subdivision (d), include a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in combination, such as a hot meal, a hot specialty dish or serving, a hot sandwich, or a hot pizza, including any cold components or side items. Paragraph (7) of subdivision (d) does not apply to a sale for a separate price of bakery goods or beverages (other than bouillon, consommé, or soup), or where the food product is purchased cold or frozen; ''hot prepared food products'' means those products, items, or components that have been prepared for sale in a heated condition and that are sold at any temperature that is higher than the air temperature of the room or place where they are sold.

(f) Notwithstanding paragraph (6) of subdivision (d), if the seller elects to separately account for sales of food products specified in subdivision (b), then the gross receipts from the sale of those food products shall be exempt under subdivision (a), provided that the separate accounting is fully documented in the seller's records. However, if the seller's records do not reflect the separate accounting of the gross receipts from sales of nontaxable food products, the seller's election under this subdivision shall be revoked.

History.—Stats. 1953, p. 1629, in effect September 9, 1953, added the former last paragraph. Stats. 1963, p. 4046, in effect September 20, 1963, deleted "milk and milk products" from first paragraph and completely revised the former next to last paragraph, making it the last paragraph; and the former last paragraph was made the third paragraph, with the words "milk and milk products" added and "which are purchased for consumption off the premises of the retailer" deleted. Stats. 1965, p. 2427, in effect September 17, 1965, added in the last paragraph "whether" and "or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others." Stats. 1969, p. 3127, in effect January 1, 1970, revised the fourth paragraph and added the fifth paragraph, and added (d) to the sixth paragraph. Stats. 1970, p. 1057, in effect November 23, 1970, rearranged wording of fourth paragraph. Stats. 1971, p. 3711, in effect December 14, 1971, operative January 1, 1972, deleted "other than candy and confectionery" from and added "non-medicated chewing gum", to second paragraph, and added (e). Stats. 1983, Ch. 323, in effect July 21, 1983, operative August 1, 1983, added a new subdivision "(e)" in the sixth paragraph, changed previous subdivision "(e)" to "(f)", and changed all references to previous subdivision "(e)" to "(f)". Stats. 1984, Ch. 930, effective January 1, 1985, changed subdivision letter and number designations, added all text in paragraph (6) of subdivision (d). Stats. 1985, Ch. 1197, by Section 1 of chapter, effective January 1, 1986, added "marinas, campgrounds, and recreational vehicle parks" in subdivision (d)(4), and substituted "paragraph" for "paragraphs" in subdivision (d)(5)(B). Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, in subparagraph (b)(1) added "other than candy or confectionery" after "sugar and sugar products" and after "cocoa and cocoa products", deleted "and nonmedicated chewing gum" after "cocoa and cocoa products", added "any of the following:" after "do not include", "(1)" before "Medicines", and paragraph (2), in subdivision (c) and added subdivision (f). Stats 1991, Ch. 88, in effect June 30, 1991, operative July 15, 1991, substituted "July 15" for "July 1" in subdivision (f). Prop. 163, Sec. 2, in effect December 1, 1992, deleted "other than" after "sugar and sugar products,", added ", gum," after "candy", deleted "or" before "confectionery", added "and" after "tea,", and deleted ", other than candy or confectionery" after "cocoa products" in subdivision (b)(1); substituted "including" for "except" after "liquid or frozen," and added "but excluding" after "bottled water," in subdivision (b)(3); substituted "do not include medicines" for "do not include any of the following: (1) Medicines"; deleted former subdivision (c)(2) which

defined snack foods; inserted a comma after "items" in the second sentence of subdivision (e); and deleted former subdivision (f) which stated that "The amendments to this section by the act adding this subdivision shall become operative on July 15, 1991.". Stats. 1995, Ch. 647, in effect October 6, 1995, operative April 1, 1996, added commas after "sale of" and "state of" in subdivision (a); substituted "that" for "which" after "product and" in paragraph (2) and added a comma after "malt" in paragraph (3) of subdivision (b); deleted "such" after "are sold in", deleted "or" after "serving," and added a comma after "sandwich" in the first sentence and substituted "that" for "which" throughout the second sentence of subdivision (e); and added subdivision (f). Stats. 1996, Ch. 124, in effect January 1, 1997, deleted "provided for" after "exemptions" in subdivision (d); substituted "those" for "such" after "even though" in paragraph (3) of subdivision (d); and substituted "does" for "shall" after "subdivision (d)" in the first sentence of subdivision (e).

Sandwiches as "meals"; "paper napkins" as facilities.—The sale of hot dog and hamburger sandwiches, even when served with beverages, from sandwich stands or booths where neither chairs nor tables are provided for customers, does not constitute a "meal" within this section. A "paper napkin" is not "tableware" within this section, since the rule of ejusdem generis is applicable. *Treasure Island Catering Co., Inc.* v. *State Board of Equalization* (1941) 19 Cal.2d 181.

Skinless sausage casings.—Cellulose sausage casings used in manufacture of skinless wieners but removed and destroyed prior to sale are not food or food products nor do they become an integral part of food products within the meaning of this section. *Luer Packing Co.* v. *State Board of Equalization* (1950) 101 Cal.App.2d 99.

Cardboard trays.—The trial court was sustained in its finding that the serving of sandwiches and beverages on nonreturnable cardboard trays constitutes serving meals and furnishing food for consumption from trays. *Hart's Drive-In Corp.* v. *State Board of Equalization* (1956) 145 Cal.App.2d 657.

Glacéd Fruits.—Glacéd fruits were properly classified as "candy or confectionery" under this section as operative prior to January 1, 1972. *Mission Pak Co.* v. *State Board of Equalization* (1972) 23 Cal.App.3d 120.

Revenue and Taxation Code Section 6359(c) Held Constitutional.—Certain restaurant owners, operators of drive-ins providing carhop services, sought to recover sales and use taxes paid by them on sales of "take out" orders. Such orders are taxable under subparagraph (c) of Section 6359 of the Revenue and Taxation Code when the food is purchased at a drive-in type of operation, whether it is consumed on the premises or not, although "take out" orders at conventional restaurants are exempt. The drive-in operators argued that subparagraph (c), and the Board's administration thereof, was unconstitutionally vague, and arbitrarily discriminated between drive-ins and conventional restaurants. The court, in holding the provision constitutional, found that the distinctions made in the statute had a rational basis in the Legislature's desire to equalize competition and tax burdens between conventional restaurants and newly evolving forms of eating establishments where food was consumed in a similar manner, whether inside one's own car or inside a restaurant. The court also found that the statute prescribed a standard sufficiently definite to be understandable to the average person desiring to comply therewith. *Henry's Restaurants of Pomona, Inc.* v. *State Board of Equalization* (1973) 30 Cal.App.3d 1009, hearing in Sup. Ct. den. May 16, 1973.

Subsidies to Cafeteria Operators.—Subsidies paid by employers to operators of employee cafeterias are not includable within the operators' gross receipts and not subject to tax. *Szabo Food Service, Inc. of California* v. *State Board of Equalization* (1975) 46 Cal.App.3d 268.

6359.1. **Hot prepared food products sold to air carriers.** There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and storage, use, or other consumption in this state, 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, and the gross receipts from the sale of and the 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.

History.—Added by Stats. 1974, Ch. 156, effective April 4, 1974.

6359.2. **Food products sold through vending machines.** [Repealed by Stats. 1983, Ch. 323, in effect July 21, 1983, operative August 1, 1983.]

6359.2. **Food products sold through vending machines.** (a) Except as otherwise provided in Sections 6359.4, 6359.45, 6363, and 6370, for the year beginning on January 1, 1988, and ending on December 31, 1988, 77 percent of the gross receipts of any retailer from the sale at retail of food products shall be subject to the tax imposed by Section 6051, when those food products are actually sold through a vending machine.

(b) Except as otherwise provided in Sections 6359.4, 6359.45, 6363, and 6370, for the year beginning on January 1, 1989, and ending on December

31, 1989, 55 percent of the gross receipts of any retailer from the sale at retail of food products shall be subject to the tax imposed by Section 6051, when those food products are actually sold through a vending machine.

(c) Except as otherwise provided in Sections 6359.4, 6359.45, 6363, and 6370, for the year beginning on January 1, 1990, and thereafter, 33 percent of the gross receipts of any retailer from the sale at retail of food products shall be subject to the tax imposed by Section 6051, when those food products are actually sold through a vending machine.

(d) The Legislature finds that 33 percent represents the statewide average of food products sold through vending machines which are subject to the tax imposed under this part. Therefore, the Legislature establishes this average as the measure of the tax with respect to vending machine sales to simplify tax auditing procedures and to provide for uniformity in the taxation of gross receipts derived from the sale of food products through vending machines.

The Legislature also finds that due to fiscal constraints, it is necessary to phase in the partial exemption for sales made through vending machines in the 1988 and 1989 calendar years.

(e) For purposes of this section, ''food products'' includes hot coffee, hot tea, and hot chocolate, when those hot beverages are actually sold through a vending machine for a separate price. ''Food products'' does not include other hot prepared food products, as defined in Section 6359.

History.—Added by Stats. 1987, Ch. 1300, in effect September 28, 1987, operative January 1, 1988. Stats. 1988, Ch. 1029, in effect January 1, 1989, deleted ''(other than hot prepared food products, as defined in Section 6359)'' following ''sale at retail of food products'' in subdivisions (a), (b) and (c); deleted ''cold'' following ''average of'' in subdivision (d); and added subdivision (e).

6359.3. **Nonprofit veterans' organization not retailer of flags.** Any nonprofit veterans' organization is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to flags of the United States of America which it sells, where the profits are used solely and exclusively in furtherance of the purposes of the nonprofit organization.

History.—Added by Stats. 1961, p. 1157, in effect September 15, 1961. Stats. 1963, p. 2790, in effect September 20, 1963, completely revised this section. Stats. 1964, p. 193 (First Extra Session), in effect May 8, 1964, again revised this section. Stats. 1970, p. 2012, operative October 1, 1970, added paragraph (c). Stats. 1971, p. 3712, in effect December 14, 1971, operative January 1, 1972, deleted all reference to other nonprofit organizations as consumers of candy or other confectionery.

6359.4. **Vending machine operator.** [Repealed by Stats. 1983, Ch. 323, in effect July 21, 1983, operative August 1, 1983.]

6359.4. **Vending machine operator.** (a) Any vending machine operator is a consumer of, and shall not be considered a retailer of, food products which sell at retail for fifteen cents ($0.15) or less and which are actually sold through a vending machine.

(b) Notwithstanding subdivision (a), any vending machine operator is a consumer of, and shall not be considered a retailer of, food products, other than beverages or hot prepared food products, which are 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 subdivision, ''bulk vending machine'' means a vending machine containing unsorted food products,

other than beverages or hot prepared food products which, upon insertion of a coin, dispenses those food products, including candy and confectionery, in approximately equal portions, at random, and without selection by the customer.

History.—Added by Stats. 1985, Ch. 1424, effective January 1, 1986. Stats. 1987, Ch. 1300, in effect September 28, 1987, operative January 1, 1988, added "(a)" before first paragraph and added paragraph (b). Stats. 1991, Ch. 236, in effect July 29, 1991, added ", including candy and confectionery," after "food products" in subdivision (a), added "including candy and confectionery" after "food products" in the first sentence and after "food products" in the second sentence of subdivision (a). Stats. 1993, Ch. 257, in effect January 1, 1994, deleted "including candy and confectionery" following "food products" in Subdivision (a) and in the first two references to food products in subdivision (b), and added commas preceding and following "including candy and confectionery" in the third reference in (b).

Paper cups in vending machines.—Although under Section 6359.4, plaintiff was a consumer of tangible property sold through its vending machines, plaintiff's paper cups containing beverages dispensed through its vending machines were nevertheless exempt nonreturnable containers under Section 6364(a). *Canteen Corp.* v. *State Board of Equalization* (1985) 174 Cal.App.3d 952.

6359.45. **Nonprofit, charitable, or education organization vending machine operator; photocopy machine in library.** (a) Any vending machine operator which is a nonprofit, charitable, or educational organization is a consumer of, and shall not be considered a retailer of, tangible personal property which sells at retail for fifteen cents ($0.15) or less and which is actually sold through a vending machine.

(b) any library district, municipal library, or county library and any vendor making sales pursuant to a contract with a library district, municipal library, or county library is a consumer of, and shall not be considered a retailer of, photocopies which it sells at retail and which are actually sold through a coin-operated copy machine located at a library facility.

History.—Added by Stats. 1983, Ch. 323, in effect July 21, 1983. Stats. 1984, Ch. 1468, effective January 1, 1985, added (a) and (b) designations, added all text of (b).

6359.5. **Candy, confectionery, and snack foods; nonprofit youth organizations.** [Repealed by Stats. 1993, Ch. 257, effective January 1, 1994.]

6359.7. **Ice or dry ice.** As incidental to the exemption provided for in Section 6359, there are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of ice or dry ice used or employed in packing and shipping or transporting food products for human consumption when the food products are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers.

History.—Added by Stats. 1985, Ch. 1045, effective September 27, 1985, operative January 1, 1986.

6359.8. **Carbon dioxide.** When fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers, as an incident to the exemption provided for in Section 6359, there are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state of, all of the following:

(a) Carbon dioxide used or employed in packing and shipping or transporting fruits or vegetables for human consumption, when those fruits or vegetables are not sold to the ultimate consumer in a package that contains the carbon dioxide.

(b) Any nonreturnable materials containing the carbon dioxide atmosphere.

History.—Added by Stats. 1994, Ch. 624, in effect September 19, 1994, but operative January 1, 1995.

6360. **Bracelets commemorating American prisoners of war.** Any organization formed and operated for charitable purposes and qualifying for the welfare exemption from property taxation under Section 214 is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to 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.

History.—Added by Stats. 1972, Ch. 1176, operative April 1, 1973.

6360.1. **"Buddy Poppy."** There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, a "Buddy Poppy" or any other symbolic, impermanent lapel pin that memorializes United States military veterans killed in foreign wars of the United States, by any corporation established by the Congress of the United States pursuant to Chapter 7A (commencing with Section 111) of Title 36 of the United States Code, or any of that corporation's subordinate state or territorial subdivisions, local chapters, posts, or auxiliaries.

History.—Added by Stats. 1995, Ch. 316, in effect August 3, 1995.

Note.—Stats. 1995, Ch. 316, expressed the Legislature's findings and declarations stating that the sale or use of Buddy Poppies is worthy of an exemption from sales and use taxation in recognition of the work done by the Veterans of Foreign Wars and others on behalf of disabled veterans. The Legislature also finds and declares that the "Buddy Poppy" program is one of the most successful and widely known fundraisers for disabled veterans. During 1993–94, 8,000,000 of the handcrafted flowers were sold, raising $1.6 million for veterans' rehabilitation, and children and youth programs nationwide.

6361. **Nonprofit youth organization.** (a) Any organization listed or described in subdivision (b) is a consumer and shall not be considered a retailer within the provisions of this part, of food products, nonalcoholic beverages, or other tangible personal property made or produced by members of the organization provided, however, that the organization's sales are made on an irregular or intermittent basis, and that the organization's profits from those sales are used exclusively in furtherance of the purposes of the organization.

(b) For purposes of this section, "organization" includes any of the following:

(1) Any nonprofit organization which meets all of the following conditions:

(A) The organization qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code.

(B) The organization's primary purpose is to provide a supervised program of competitive sports for youth, or to promote good citizenship in youth.

(C) The organization does not discriminate on the basis of race, sex, nationality, or religion.

(2) (A) Any youth group sponsored by or affiliated with a qualified educational institution, including, but not limited to, any student activity club, athletic group, or musical group.

(B) For purposes of this section, ''qualified educational institution'' means any of the following:

(i) Any public elementary, secondary or vocational-technical school providing education for kindergarten, grades 1 to 12, inclusive, and college undergraduate programs, or any part thereof, operated by state or local government.

(ii) Any nonprofit private educational institution providing education for kindergarten, grades 1 to 12, inclusive, and college undergraduate programs, or any part thereof, that meets the requirements of the State Department of Education for a school. ''Private educational institution'' means any entity providing education which satisfies the requirements of state and local laws pertaining to private educational institutions in effect on January 1, 1990, and which does not discriminate on the basis of race, sex, nationality, or religion.

(3) Little League, Bobby Sox, Boy Scouts, Cub Scouts, Girl Scouts, Campfire Inc., 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.

(c) For purposes of this section, ''irregular or intermittent,'' means associated directly with a particular event, such as fairs, galas, parades, scout-a-ramas, games, and similar activities. That term includes refreshment stands or booths that are utilized at scheduled events of organized leagues, but does not include storefront or mobile retail outlets which ordinarily require local business licenses.

History.—Added by Stats. 1974, Ch. 1421, operative January 1, 1975. Stats. 1985, Ch. 1153, effective January 1, 1986, added "youth group . . . in youth", deleted "whose primary . . . trustworthy adults", added "which qualifies . . . Revenue Code," deleted "and" before "nonalcoholic beverages", deleted "which it sells" and added "or other . . . intermittent basis" after "nonalcoholic beverages," and substituted "those" for "such" in the first paragraph, added second and third paragraphs, substituted "does" for "shall", and deleted "be construed to" before "include" in the last paragraph. Stats. 1986, Ch. 967 effective January 1, 1987, added the "Distributive Education Clubs of America, Future Business Leaders of America, Vocational Industrial Clubs of America, Collegiate Young Farmers, Boys' Clubs, and Girls' Clubs". Stats. 1988, Ch. 710, in effect August 29, 1988, operative January 1, 1989, added "Special Olympics, Inc., American Youth Soccer Organization, California Youth Soccer Association, North, California Youth Soccer Association, South, and Pop Warner Football." Stats. 1989, Ch. 654, in effect January 1, 1990, added subdivision letters (a), (b), (c) and (d), and substituted "501(c)" for "170(c)" in subdivision (a). Stats. 1990, Ch. 116, in effect June 1, 1990, deleted "nonprofit" after "(a) Any", deleted "youth group sponsored by a school district, or other organization the primary purpose of which is to provide a supervised program of competitive sports for youth, or to promote good citizenship in youth, which does not discriminate on the basis of race, sex, nationality, or religion, and which qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code," after "Any organization", added "listed or described in subdivision (b)" before "is a", deleted "of" after "consumer", deleted "with respect to" after "part", added "of" before "food", deleted "which it sells" after "the organization", added "provided, however, that the organization's sales are made" before "on an irregular", substituted "and" for "provided", added "organization's" before "profits", added "from those sales" after "profits", deleted "solely and" before "exclusively", substituted "the" for "those" after "furtherance of", added "of the organization" after "purposes" in subdivision (a); added subdivision (b); relettered former

subdivision (b) as subdivision (c); renumbered former subdivision (c) as paragraph (3) of subdivision (b); deleted "The organizations described in this section include only" before "Little League", substituted "football" for "Football" in paragraph (3) of subdivision (b); added "For purposes of this section,", substituted "irregular" for "Irregular", deleted "as used in this section" before "means"; substituted "That term includes" for "Included are" added "does" after "leagues, but", substituted "That term includes" for "included are", deleted ", or activities by any group that does not qualify for tax-exempt status under Section 501(c) of the Internal Revenue Code." after "licenses"; and deleted former subdivision (d) which stated, " 'Nonprofit organization', as used in this section, does not include the state or any of its political subdivisions".

6361.1. **Nonprofit youth organization.** [Repealed by Stats. 1990, Ch. 116, in effect June 1, 1990.]

6361.1. **Handcrafted Items.** (a) Any qualified organization is a consumer of, and shall not be considered a retailer of, tangible personal property 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 either individuals with developmental disabilities or 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).

(3) The qualified organizations's sales are made on an irregular or intermittent basis.

(4) The qualified organizations's profits from the sales are used exclusively in furtherance of the purposes of the organization.

(b) For purposes of this section, ''qualified organization'' means any organization that meets all of the following conditions:

(1) The organization is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) The primary purpose of the organization is to provide services to either individuals with developmental disabilities or children with severe emotional disturbances.

(3) The organization does not discriminate on the basis of race, sex, nationality, or religion.

History.—Added by Stats. 1993, Ch. 653, in effect October 1, 1993, but operative January 1, 1994. Stats. 1995, Ch. 290, in effect August 3, 1995, added "or artistic" after "handcrafted", added "either" after "made by" and added "or children . . . disturbances" after "disabilities" in paragraph (1) and substituted "twenty dollars ($20)" for "ten dollars ($10)" in paragraph (2) of subdivision (a); added "either" after "services to" and added "or children . . . disturbances" after "disabilities" in paragraph (2) of subdivision (b).

6361.5. **School yearbooks and catalogs.** Any public or private school, school district, county office of education, or student organization is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to yearbooks and catalogs prepared for or by it and distributed to students.

History.—Added by Stats. 1977, Ch. 921, operative January 1, 1978. Stats. 1988, Ch. 205, in effect June 23, 1988, operative October 1, 1988, added "county office of education."

6362.5. **Master tapes or master records.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale or lease of, and the storage, use, or other consumption in this state of, master tapes or master records embodying sound, except amounts subject to the taxes imposed by other provisions of this part paid by a customer in connection

with the customer's production of master tapes or master records to a recording studio for the tangible elements of such master records or master tapes.

(b) For purposes of this section:

(1) ''Master tapes or master records embodying sound'' means tapes, records, and other devices utilized by the recording industry in making recordings embodying sound.

(2) ''Amounts paid for the furnishing of the tangible elements'' shall not include any amounts paid for the copyrightable, artistic or intangible elements of such master tapes or master records, whether designated as royalties or otherwise including, but not limited to, services rendered in producing, fabricating, processing, or imprinting tangible personal property or any other services or production expenses in connection therewith which may otherwise be construed as constituting ''sale'' under Section 6006.

(3) ''Recording studio'' is a place where, by means of mechanical or electronic devices, voices, music, or other sounds are transmitted to tapes, records, or other devices capable of reproducing sound.

History.—Added by Stats. 1975, Ch. 1116, operative January 1, 1976. Stats. 1982, Ch. 951, in effect January 1, 1983, added the balance of subsection (2) of subdivision (b) after ''otherwise.''

Master sound tapes.—1982 amendment did not make 1975 enactment of section 6362.5 retroactive to years prior to enactment. Taxpayers' agreements with independent producers for master tapes were sales agreements, not employment contracts. Master tapes were physically useful in manufacturing process. Sales of master tapes may constitutionally be taxed differently than leases of movies. *Capitol Records, Inc.* v. *State Board of Equalization* (1984) 158 Cal.App.3d 582.

Master tapes are tangible personal property.—The true object of contracts between a record company and various artist companies was the production and acquisition of master tapes not the procurement of recording services. *A & M Records, Inc.* v. *State Board of Equalization* (1988) 204 Cal.App.3d 358.

6362.7. **Newspapers and periodicals distributed without charge.** [Repealed by Stats. 1992, Ch. 903, in effect September 25, 1992, operative November 1, 1992.]

6362.7. **Newspapers and periodicals distributed without charge; periodicals.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or component part of any newspaper or periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, and any such newspaper or periodical.

(b) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or a component part of any periodical regularly issued at average intervals not exceeding three months, and any such periodical, that is sold by subscription and delivered by mail or common carrier.

(c) For purposes of this section, ''periodical'' means any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, 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 with 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. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, 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.

History.—Added by Stats. 1992, Ch. 903, in effect September 25, 1992, operative November 1, 1992.

Classification of advertising publications as taxable.—Differential tax treatment of advertising publications was not content based discrimination that is prohibited by the first amendment. The presence of advertising as a basis for distinction is a constitutionally reasonable basis. *Redwood Publishing Co.* v. *State Board of Equalization* (1989) 207 Cal.App.3d 734.

6362.8. **Newspaper and periodicals distributed by nonprofit organizations.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property that becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three months, or any such newspaper or periodical.

(b) This section shall apply only with respect to any of the following:

(1) Any newspaper or periodical that is published or purchased by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is distributed to the members of the organization in consideration of payment of the organization's membership fee, or to the organization's contributors.

(2) Any newspaper or periodical that is published by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and does not receive revenue from, or accept, any commercial advertising.

(3) Any newspaper or periodical distributed by a nonprofit organization for which both of the following apply:

(A) Distribution is 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.

History.—Added by Stats. 1991, Ch. 461, in effect October 1, 1991, operative November 1, 1991. Stats. 1992, Ch. 903, in effect September 25, 1992, operative November 1, 1992, added "regularly issued at . . . months" after "periodical" in subdivision (a); substituted "and is distributed" for ", and to which any of the following apply: (A) Distribution" in paragraph (1) of subdivision (a), substituted "(2) Any . . . Code and" for "(B) The publication" in paragraph (2) of subdivision (b), and renumbered former paragraph (2) of subdivision (a) as paragraph (3).

6363. **Meals.** There are exempted from the taxes imposed by this part the gross receipts from 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 the students of a school by public or private schools, school

districts, student organizations, parent-teacher associations, and 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. The term ''food products'' as used in this section has the meaning ascribed to it in Section 6359.

The exemption provided by this section shall not apply when the meals or food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments.

History.—Added by Stats. 1943, p. 2456, operative July 1, 1943. Stats. 1947, p. 2029, operative July 1, 1947, added provisions respecting food products. Stats. 1955, p. 2104, in effect September 7, 1955, added provisions respecting blind persons, and rearranged wording. Stats. 1963, p. 3763, in effect September 20, 1963, deleted the provisions relating to "employers or employee organizations." Stats. 1965, p. 3131 in effect September 17, 1965, deleted "or teachers." Stats. 1970, p. 1059, in effect November 23, 1970, substituted reference to Welfare and Institutions Code for reference to Government Code, deleted wording following "in section 6359" from last sentence of first paragraph, and added second paragraph. Stats. 1971, p. 3713, in effect December 14, 1971, operative January 1, 1972, added the words "furnished or" preceding "served to students".

Construction of prior exemption.—This section constitutes a change in the law rather than a clarification of former Section 2(e) of the Retail Sales Tax Act, under which the tax did not apply to sales of meals served by employers or employee organizations exclusively to employees. An employer who served meals to its employees and the employees of subcontractors did not serve meals ''exclusively'' to its employees and was required to pay tax on the sale of the meals to employees and others. *Twaits v. State Board of Equalization* (1949) 93 Cal.App.2d 796.

6363.2. **Auctions; nonprofit organizations.** There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, tangible personal property that is sold to a successful bidder at an auction that is conducted by, or affiliated with, a nonprofit organization, if the purpose of that auction is to obtain revenue for the funding of a shelter for homeless individuals and families and those revenues obtained are actually expended for that purpose. For purposes of this section, ''nonprofit organization'' means an organization that is exempt from taxation under Section 23701d. This section shall not apply to any sale at an auction that is conducted more than once during any 12-month period.

History.—Added by Stats. 1994, Ch. 855, in effect September 27, 1994, but operative January 1, 1995.

6363.3. **Nonprofit thrift stores.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, used pieces of clothing, household items, or other retail items sold by thrift stores operated by a nonprofit organization if the purpose of that thrift store is to obtain revenue for the funding of medical, hospice, or social services to chronically ill individuals, and at least 75 percent of those net revenues are actually expended for the purpose of providing medical, hospice, or social services to the chronically ill. For purposes of this section, ''nonprofit organization'' means an organization that provides medical, hospice, or social services to individuals with a chronic, life-threatening illness, as defined in subdivision (c) of Section 1568.01 of the Health and Safety Code, and is exempt from taxation under Section 23701d.

(b) This section shall cease to be operative on January 1, 2007, and as of that date is repealed.

History.—Added by Stats. 1996, Ch. 781, in effect September 23, 1996, but operative January 1, 1997. Stats. 2001, Ch. 383 (AB 180), in effect October 1, 2001, substituted ", hospice or" for "and" after "of medical" twice in the first sentence, and in the second sentence of subdivision (a), and substituted "2007" for "2002" in subdivision (b).

6363.5. **Religious organization meals.** There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use or other consumption in this state 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 section, ''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.

History.—Added by Stats. 1961, p. 1588, in effect September 15, 1961. Stats. 1971, p. 3713, in effect December 14, 1971, operative January 1, 1972, added the words "furnished or" and "furnishing or" preceding "served" and "serving", respectively. Stats. 1976, Ch. 1079, effective January 1, 1977, changed "Section 1[1]" to "subdivision (f) of Section 3."

6363.6. **Meals served to residents or patients of institutions.** There are exempted from the taxes imposed by this part the gross receipts from 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 and consumed by residents or patients of the following:

(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.

(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 the 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 or institution 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.

(e) An alcoholism recovery facility, as defined in Section 11834.02 of the Health and Safety Code, that holds the license required by Section 11834.30 of the Health and Safety Code. This subdivision shall apply to meals served by the facility on or after January 1, 1985.

(f) A drug abuse recovery or treatment facility, as defined in Section 11834.02 of the Health and Safety Code, that holds the license required by Section 11834.30 of the Health and Safety Code.

History.—Added by Stats. 1968, p. 2555, in effect August 14, 1968, operative October 1, 1968. Stats. 1971, p. 3714, in effect December 14, 1971, operative January 1, 1972, added the words "furnished or" preceding "served" in the first paragraph of former section 6363.6. Stats. 1971, p. 3909 in effect December 17, 1971, relettered the section, corrected references to Welfare and Institutions Code, and added a subsection relating to certain patients released from state hospitals. Stats. 1971, p. 5143 (First Extra Session), operative January 1, 1972, repealed and reenacted the section and provided that it was the intent of the Legislature in enacting sections 22 and 23 of the act (applicable to section 6363.6) that the provisions of Stats. 1971, Ch. 1741 and Stats. 1971, Ch. 1807 of the 1971 Regular Session, both be given effect as they amend section 6363.6 of the Revenue and Taxation Code. Stats. 1974, Ch. 709, effective September 6, 1974, revised the exemptions and conformed the references to the Health and Safety Code. Stats. 1979, Ch. 1048, operative January 1, 1980, changed "patients and inmates" in first sentence to "residents and patients", added (c). Stats. 1987, Ch. 278, operative July 30, 1987, changed "residents and patients" in first sentence to "residents or patients", added (d) Stats. 1989, Ch. 919, in effect January 1, 1990, added subdivision (e). Stats. 1994, Ch. 702, in effect September 21, 1994, but operative January 1, 1995, substituted "the" for "such" after "placed by" in subdivision (b); added subdivision (c); relettered former subdivisions (c), (d), and (e) as (d), (e), and (f), respectively; and substituted "the" for "such" after "served by" in subdivision (d). Stats. 1995, Ch. 91, in effect January 1, 1996, added a comma after "use" and added "the following" after "patients of" in the first paragraph; substituted "11834.02" for "11834.11" after "Section", substituted "that" for "which" after "Code", and substituted "11834.30" for "11834.12" after "Section" in subdivisions (e) and (f).

Nonreusable hospital menus.—Paper menus used by hospital patients to order meals and returned to patients with meals are not exempt as component parts of those meals. *American Hospital Supply Corp.* v. *State Board of Equalization* (1985) 169 Cal.App.3d 1088.

6363.7. **Meals delivered to elderly and disabled.** There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, meals that are delivered to homebound elderly or disabled persons by a nonprofit volunteer home delivery meal provider.

History.—Added by Stats. 1995, Ch. 240, in effect August 1, 1995, operative January 1, 1996.

6363.8. **Nonprofit veterans' organizations.** There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption that are furnished or served by any nonprofit veterans' 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 those functions and activities.

History.—Added by Stats. 2003, Ch. 721 (AB 189), in effect October 9, 2003, but operative April 1, 2004.

6364. **Containers.** There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of and the storage, use, or other consumption in this state of:

(a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(b) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this part.

(c) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

(d) Containers, when sold or leased without the contents to persons who place food products for human consumption in the container for shipment,

provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged prior to sale.

(e) For purposes of this section, ''returnable containers'' means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are ''nonreturnable containers.''

History.—Added by Stats. 1943, p. 2456, operative July 1, 1943. Stats. 1943, p. 2620, operative July 1, 1943, added "or when resold for refilling" to end of (c). Stats. 1999, Ch. 758, (SB 1210), in effect October 10, 1999, but operative April 1, 2000, substituted "the sale in this state" for "sales" after "receipts from" and substituted "state" for "State" after "consumption in this" in subdivision (a); added subdivision (d); created new subdivision (e) from former last paragraph by substituting "(e) For purposes of this section," for "As used herein the term".

Sales of barrels and kegs.—Sales to a soft drink manufacturer of barrels and kegs used as containers of syrup sold to jobbers are exempt from sales tax as sales of nonreturnable containers when the manufacturer reserves no title in the containers, makes no separate charge for them and does not require a deposit or give a credit for their return. *Coca-Cola Co.* v. *State Board of Equalization* (1945) 25 Cal.2d 918.

Skinless sausage casings.—Cellulose sausage casings used in manufacture of skinless wieners but removed and destroyed prior to sale are not containers within the meaning of this section because the casings are not sold with the contents. *Luer Packing Co.* v. *State Board of Equalization* (1950) 101 Cal.App.2d 99.

Reused grocery cartons.—Cartons used to deliver groceries from supply centers to retail stores and then emptied and used to package and deliver groceries to customers are not exempt as nonreturnable containers. *Safeway Stores, Inc.* v. *State Board of Equalization* (1957) 148 Cal.App.2d 299.

Dry ice.—Dry ice packed with ice cream products in cardboard containers to delay melting does not constitute wrapping or packing material and is therefore not a container. *Good Humor Co.* v. *State Board of Equalization* (1957) 152 Cal.App.2d 873.

Containers for storage use only.—Original cans filled and used in this state to store tomato paste until further processing in another state are not exempt from sales and use tax as they are not purchased for resale and do not become an integral part of the finished product. *H. J. Heinz Co.* v. *State Board of Equalization* (1962) 209 Cal.App.2d 1.

Paper cups in vending machines.—Although under Section 6359.4, plaintiff was a consumer of tangible property sold through its vending machines, plaintiff's paper cups containing beverages dispensed through its vending machines were nevertheless exempt nonreturnable containers under Section 6364(a). *Canteen Corp.* v. *State Board of Equalization* (1985) 174 Cal.App.3d 952.

Reusable bottles.—The manufacturer of soft drinks is liable for use tax on its purchases of reusable bottles because the bottles were returned more than 50 percent of the time, were reused four times, and bore the taxpayer's trademark with the words ''return for deposit.'' The taxpayers primary purpose in purchasing the bottles was not to resell them but to fill them with its product. *Associated Beverage Company, Inc.* v. *State Board of Equalization* (1990) 224 Cal.App.3d 192.

6364.5. **Blood collection and pack units.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, any container used to collect or store human whole blood, plasma, blood products, or blood derivatives that are exempt from taxation pursuant to Section 33, including, but not limited to, blood collection units and blood pack units.

(b) For purposes of this section, ''blood collection units'' and ''blood pack units'' include all items that form an integral, interconnected package that, when sold to plasmapheresis centers and blood banks, are used to collect blood or blood components, which are then sold together with the bags and tubing in which they are contained. Blood pack units consist of a plastic bag or bags, tubing, and a needle. Blood collection units are either a manual system that includes a needle, multiple bags, a bag containing saline solution, tubing, filters, grommets, and a pooling bag or an automated system that consists of a needle, a bag of anticoagulant, tubing, a plastic bowl containing a stainless steel centrifuge and a pooling bag. Blood collection units and blood pack units also include plastic bags and tubing sold to plasmapheresis

centers when those centers use them to collect blood plasma or platelets and then sell the plasma or platelets together with the bags and tubing in which they are contained.

History.—Added by Stats. 1997, Ch. 773 (AB 993), in effect October 8, 1997, operative April 1, 1998.

6365. **Art works.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use or other consumption in this state of, original works of art, which are:

(1) Purchased by this state or any city, county, city and county, or other local governmental entity;

(2) Purchased by any nonprofit organization operating any public museum for, and pursuant to contract with, any such governmental entity;

(3) Purchased by any nonprofit organization which has qualified for exemption pursuant to Section 23701d for one or more museums regularly open to the public not less than 20 hours per week for not less than 35 weeks of the calendar year and operated by the purchaser of such art or operated by another nonprofit organization which has qualified for exemption pursuant to Section 23701d; or

(4) Purchased for donation and actually donated by delivery by the retailer pursuant to the instructions of the buyer to any such governmental entity, or nonprofit organization, and evidenced by a written transfer of title from the buyer to such governmental entity or nonprofit organization.

(b) The exemption provided by this section shall apply only to works of art purchased to become part of the permanent collection of any of the following:

(1) A museum.

(2) A nonprofit corporation which has qualified for exemption pursuant to Section 23701d; regularly loans not less than 85 percent of the value of its collection of works of art to one or more museums; and is required by its articles of incorporation to loan its works of art and is otherwise prohibited by its articles from making any private use of its works of art; provided, that the work of art for which the exemption is claimed pursuant to this section shall actually be placed on display at one or more museums in California for not less than 24 months during the three-year period commencing from the date of purchase.

(3) Any city, county, city and county, or other local governmental entity and this state which purchases or commissions public art for display to the public in buildings, parks, plazas, or other public places. These areas shall be open to the public not less than 20 hours per week for not less than 35 weeks of the calendar year.

(c) For purposes of this section, ‘‘work of art’’ means a work of visual art, including, but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, film, or photograph, a work of calligraphy, a work of graphic art (including, but not limited to, an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including, but not limited to, crafts in clay, textile, fiber, wood, metal, plastic, glass, and like materials), or

mixed media (including, but not limited to, a collage, assemblage, or any combination of the foregoing art media).

(d) For purposes of this section, a ''museum'' shall only include:

(1) A museum which has a significant portion of its space open to the public without charge; or

(2) A museum open to the public without charge for not less than six hours during any month the museum is open to the public; or

(3) A museum which is open to a segment of the student or adult population without charge.

(e) Any public entity or nonprofit organization claiming an exemption pursuant to this section shall maintain records, in such forms as prescribed by the board, sufficient to substantiate its claim. Such records shall include, but not be limited to, the date of purchase, the purchase price, the date the property was first brought into this state, and the dates and locations the work of art was on display at a museum.

History.—Added by Stats. 1978, Ch. 1019, operative January 1, 1979. Stats. 1979, Ch. 260, effective July 17, 1979, changed "a museum" in (a) (3) to "one or more museums", changed "a museum, as defined in Section 6366.4" in (b) following "permanent collection of" to present wording. Stats. 1987, Ch. 1266, in effect September 28, 1987, operative January 1, 1988, in paragraph (b), added "any of the following" after "collection of"; in (b)(1), deleted "; or" following "museum" and substituted a period; and added paragraph (e).

6366. **Aircraft sold to common carriers, foreign governments, and nonresidents.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, the following:

(1) Aircraft sold to any person using the aircraft as a common carrier of persons or property under authority of the laws of this state, of the United States, or of any foreign government, or sold to any foreign government for use by that government outside of this state, or sold to any person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.

(2) (A) A ground control station sold to any foreign government for use by that government outside of this state or sold to any person who is not a resident of this state and who will not use that ground control station in this state otherwise than in the removal of the ground control station from this state.

(B) A ''ground control station'' means a portable facility used to operate aircraft in the air without a pilot on board. The term includes controls, video equipment, computers, generators, and communications equipment, sold as an integral part of the station, and antennas used to control the aircraft. The term does not include trucks, tractor-trailers, or other devices solely used to transport the station.

(3) Tangible personal property that is purchased on or after October 1, 1996, and becomes a component part of any aircraft described in paragraph (1), as a result of the maintenance, repair, overhaul, or improvement of that aircraft in compliance with Federal Aviation Administration requirements,

and any charges made for labor and services rendered with respect to that maintenance, repair, overhaul, or improvement.

(b) With respect to aircraft sold on or after January 1, 1997, it shall be presumed that a person is not engaged in business as a common carrier 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. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the person is engaged in business as a common carrier. In no event shall ''gross receipts'' include compensation by the person or related parties for use of the aircraft as a common carrier.

History.—Added by Stats. 1947, p. 2216, in effect June 25, 1947. Stats. 1951, p. 2982, in effect September 22, 1951, added provision exempting sales to nonresidents whose only use of the aircraft in this State will be the removal thereof from this State. Stats. 1965, p. 3449, in effect September 17, 1965, deleted "certificated or licensed" inserting "common" and deleted "in interstate or foreign commerce." Also, "of this state" was added. Stats. 1986, Ch. 1361, effective January 1, 1987, added a rebuttable presumption regarding a person not engaged in business as a common carrier. Stats. 1996, Ch. 954, in effect September 26, 1996, but operative January 1, 1997, added "in this state" after "from the sale" and substituted "in this state of, the following:" for "of aircraft" after "other consumption" in subdivision (a); added "(1) Aircraft" before "sold to", substituted "any person" for "persons" after "sold to", substituted "the" for "such" after "using", added "of" after "States, or", substituted "that" for "such" after "use by", substituted "any person" for "person" after "or sold to", substituted "is" for "are" after "any person who", substituted "a resident" for "residents" before "of this state", substituted "that" for "such" after "will not use", substituted "the" for "such" after "removal of" in the former first paragraph of subdivision (a), and deleted former second paragraph of subdivision (a) which provided a rebuttable presumption regarding a person not engaged in business as a common carrier; added paragraph (2) to subdivision (a); added subdivision letter designation (b) and "With respect to . . . exceed 20" therein; substituted "fifty thousand dollars ($50,000)" for "twenty-five thousand dollars ($25,000)" after "or her, or"; added the second sentence in subdivision (b); and added second paragraph of subdivision (b); and added subdivision (c). Stats. 1997, Ch. 733 (SB 1101), in effect October 7, 1997, operative April 1, 1998, added "a" after "aircraft as" in paragraph (1) of subdivision (a) and in the second paragraph of subdivision (c); and added paragraph (2) and paragraph number designation (3) in subdivision (a). Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added "a" after "the aircraft as" in paragraph (1) of subdivision (a), and deleted former subdivision (c) which stated, "For purposes of this section, it shall be rebuttably presumed that the aircraft is not regularly used in the business of transporting for hire property or persons if the yearly gross receipts of the lessor from the lease of that aircraft to persons using that aircraft as common carriers of property or persons do not exceed 10 percent of the cost of the aircraft to the lessor, or twenty-five thousand dollars ($25,000), whichever is less."

Note.—Sec. 2, Stats. 1997, Ch. 733 (SB 1101), states the following: ''It is the intent of the Legislature that the State Board of Equalization administer the exemption for the sale and use of ground control stations provided by Section 1 of this act consistent with existing regulations administering the exemption for the sale and use of aircraft sold to a foreign government for use by that government outside of this state or sold to a person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.''

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15, of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

Separate purchase of extra equipment.—Assuming the other conditions for exemption are met, use tax does not apply to equipment which the Civil Aeronautics authority requires to be installed in an aircraft and which has been installed by the time the aircraft first enters this state, even though the carrier purchases the equipment from a seller other than the manufacturer of the aircraft but has the equipment delivered to the manufacturer of the aircraft for installation. *Pan American World Airways, Inc.* v. *State Board of Equalization* (1955) 131 Cal.App.2d 638.

Purchase of replacement parts.—This section exempts from use tax a purchase of ailerons outside this state by a certificated carrier where the carrier installs the ailerons on its aircraft outside this state and the aircraft is subsequently flown to this state and thereafter is placed in use in interstate commerce. *Flying Tiger Line, Inc.* v. *State Board of Equalization* (1958) 157 Cal.App.2d 85.

Resident.—Sales of aircraft to out-of-state corporations doing a substantial business in California were not exempt under the above section since the vendee corporations were residents due to the fact that they had a factual abode of some permanency in this state. *Garrett Corp.* v. *State Board of Equalization* (1961) 189 Cal.App.2d 504.

Six Months Principal Use Test.—In the absence of prior notice of its test by regulation or otherwise, the board may not deny the common carrier exemption of this section on the basis of the principal use of the aircraft during the first six months of ownership when records for a longer period are available. *Pacific Southwest Airlines* v. *State Board of Equalization* (1977) 73 Cal.App.3d 32.

6366.1. **Aircraft leased to common carriers, foreign governments, and nonresidents.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this state of aircraft which are leased, or are sold to persons for the purpose of leasing, to lessees using such aircraft as common carriers of persons or property under authority of the laws of this state, of the United States or any foreign government, or to any foreign government as lessees for use by such government outside the state, or to persons as lessees who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state.

(b) There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this state of tangible personal property sold to an aircraft manufacturer and incorporated into aircraft to be leased by the manufacturer under conditions set forth in subdivision (a) of this section.

(c) 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 in the business of transporting for hire property or persons if the lessor's yearly gross receipts from the lease of that aircraft to persons using the aircraft as common carriers of property or persons do not exceed 20 percent of the cost of the aircraft to the lessor, or fifty thousand dollars ($50,000), whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the aircraft is regularly used as a common carrier of property or persons.

In no event shall ''gross receipts'' include compensation by the lessor or related parties for use of the aircraft as a common carrier.

History.—Added by Stats. 1964, p. 276 (First Extra Session), in effect August 22, 1964. Stats. 1965, p. 3450, in effect September 17, 1965, substituted "common" carriers for "certificated or licensed" carriers, deleted "in interstate or foreign commerce" and added "of this state." Stats. 1986, Ch. 1361, effective January 1, 1987, added a rebuttable presumption regarding an aircraft not regularly used in the business of transporting for hire. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted "With respect to . . . it shall be" for "For purposes of this section, it shall be rebuttably" before "presumed that", added "lessor's" after "persons if the", deleted "of the lessor" after "gross receipts", substituted "the" for "that" after "persons using", substituted "20" for "10" after "do not exceed", substituted "fifty thousand dollars ($50,000)" for "twenty-five thousand dollars ($25,000)" after "the lessor, or" and added the second sentence in subdivision (c).

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15, of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

Tangible Personal Property Later Becoming Aircraft Parts.—Sales tax applies to sales of tangible personal property thereafter becoming component parts of aircraft which have already been sold, leased, or sold for the purpose of leasing, to persons using such aircraft as common carriers of persons or property. *National Aircraft Leasing, Ltd.* v. *State Board of Equalization* (1979) 90 Cal.App.3d 549.

6366.2. **New vehicles; foreign purchaser.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of any new motor vehicle sold to a purchaser who is a resident of a foreign country and who arranges for the purchase through an authorized vehicle dealer in the foreign country prior to arriving in the United States, if the following conditions are met:

(1) The purchaser is issued an in-transit permit pursuant to Section 6700.1 of the Vehicle Code.

(2) Prior to the expiration of the in-transit permit issued to the purchaser, the retailer ships or drives the motor vehicle to a point outside the United States by means of facilities operated by the retailer, or by delivery to a carrier, customs broker or forwarding agent for shipment to that point.

(b) For purposes of this section, ''carrier'' means a person or firm engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carrier. ''Forwarding agent'' means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

History.—Added by Stats. 1989, Ch. 762, operative January 1, 1990.

6366.3. **Museums.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use or other consumption in this state of tangible personal property purchased by the state or any local government as part of a public art collection which shall be considered a museum pursuant to paragraph (4) of subdivision (d) or a nonprofit museum regularly open to the public which is operated by or for a local or state government entity, or operated by a nonprofit organization which has qualified for exemption pursuant to Section 23701d, provided:

(1) The property is purchased to replace property which has been physically destroyed by fire, flood, earthquake, or other calamity;

(2) The property is purchased and used exclusively for display purposes within such museum; and

(3) The property is purchased within three years from the date the calamity occurred.

(b) The aggregate amount of the exemption provided by this section shall not exceed the value of the property destroyed on the date the calamity occurred.

(c) The exemption provided by this section extends only to items which have value as museum pieces and does not extend to display cases, shelving, lamps, lighting fixtures, or other items of tangible personal property utilized in the operation of a museum.

(d) For purposes of this section, a ''museum'' shall only include:

(1) A museum which has a significant portion of its space open to the public without charge; or

(2) A museum open to the public without charge for not less than six hours during any month the museum is open to the public; or

(3) A museum which is open to a segment of the student or adult population without charge.

(4) A public art collection if that art work is on display in a space which is open to the public without charge.

History.—Added by Stats. 1978, Ch. 1019, operative January 1, 1979. Stats. 1987, Ch. 1266, in effect September 28, 1987, operative January 1, 1988, in paragraph (a), added "the state or any local government . . . of subdivision (d) or" after "purchased by", and added subdivision (d)(4).

6366.4. **Museum pieces.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use or other consumption in this state of tangible personal property purchased by a nonprofit museum regularly open to the public that is operated by or for a local or state government entity, or operated by a nonprofit organization which has qualified for exemption pursuant to Section 23701d, provided the property is purchased and used exclusively for display purposes within the museum.

(b) The exemption provided by this section extends only to items that have value as museum pieces and does not extend to display cases, shelving, lamps, lighting fixtures, or other items of tangible personal property utilized in the operation of a museum. However, the exemption does include sprung instant structures used as temporary exhibit housing.

(c) For purposes of this section, a ''museum'' includes only any of the following:

(1) A museum that has a significant portion of its space open to the public without charge.

(2) A museum open to the public without charge for not less than six hours during any month the museum is open to the public.

(3) A museum that is open to a segment of the student or adult population without charge.

(d) This section applies only to the San Diego Aero-Space Museum and the California Science Center.

History.—Added by Stats. 1986, Ch. 1270, in effect September 29, 1986. Stats. 1988, Ch. 904, in effect September 14, 1988, operative January 1, 1989, substituted "includes only" for "shall only include" in subdivision (c) following "museum," substituted "applies" for "shall apply" following "section" and added "and the California Museum of Science and Industry" at the end of subdivision (d), and deleted subdivision (e) which said, "This section shall apply to sales and transactions occurring on or after November 24, 1985." Stats. 1992, Ch. 875, in effect September 23, 1992, added "However . . . exhibit housing." as the second sentence of subdivision (b). Stats. 1996, Ch. 841, in effect January 1, 1997, substituted "that" for "which" throughout text, and substituted "Science Center" for "Museum of Science and Industry" after "California" in subdivision (d).

6366.5. **Endangered and threatened animal and plant species.** There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, endangered or threatened animal and plant species, as defined in subdivision (b) of Section 6010.50 if both the seller and the purchaser are nonprofit zoological societies as defined in subdivision (c) of Section 6010.50.

History.—Added by Stats. 1989, Ch. 937, operative January 1, 1990. Stats. 1994, Ch. 771, in effect September 26, 1994, but operative January 1, 1995, deleted subdivision letter designation (a) before "There are", added "or threatened" after "endangered", added "as defined . . . 6010.50" after "species", added "as defined . . . 6010.50" after "societies", and deleted subdivision (b) which defined endangered animal and plant species.

6367. **Occasional sales.** There are exempted from the taxes imposed by this part the gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale. This exemption does not apply to the gross receipts from the sale of, or to the storage, use, or other consumption in this state of, a mobilehome or commercial coach required to be annually registered under the Health and Safety Code, a vessel or aircraft, as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part, or a vehicle required to be registered under the Vehicle Code or a vehicle required to be identified under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code. This section shall not preclude the exemption afforded under Section 6281.

History.—Added by Stats. 1947, p. 2030, in effect June 19, 1947. Stats. 1965, p. 5451, operative August 1, 1965, added second sentence. Stats. 1972, Ch. 973, in effect August 16, 1972, added "(commencing with Section 6271)" and "or a vehicle required to be identified under Division 16.5 (commencing with Section 38000) of the Vehicle Code." to the second sentence. Stats. 1982, Ch. 1589, in effect January 1, 1983, added "a mobilehome . . . Safety Code," before "a vessel" in the second sentence. Stats. 2000, Ch. 861 (SB 2084), in effect September 29, 2000, added "of the Vehicle . . . Section 5014.1" after "Section 38000)" in the second sentence.

Note.—See annotations following Section 6006.5.

6368. **Watercraft.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of watercraft and any sales of tangible personal property becoming a component part of that watercraft in the course of constructing, repairing, cleaning, altering, or improving the same, and charges made for labor and services rendered in respect to that constructing, repairing, cleaning, altering, or improving, if any of the following conditions are met:

(1) The watercraft is for use in interstate or foreign commerce involving the transportation of property or persons for hire.

(2) The watercraft is for use in commercial deep sea fishing operations outside the territorial waters of this state by persons who are regularly engaged in commercial deep sea fishing.

(3) The watercraft is functionally used 80 percent or more of the time in the transporting for hire of property or persons to vessels or offshore drilling platforms located outside the territorial waters of this state.

(b) For purposes of this section, it shall be rebuttably presumed that a person is not regularly engaged in the business of commercial deep sea fishing if the person has gross receipts from commercial fishing operations of less than twenty thousand dollars ($20,000) a year.

(c) For purposes of this section, it shall be rebuttably presumed that the watercraft is not regularly used in interstate or foreign commerce involving the transportation for hire of property or persons, if the yearly gross receipts of the person using that watercraft in the transportation of property or persons do not exceed 10 percent of the cost of that watercraft to him or her, or twenty-five thousand dollars ($25,000), whichever is less.

History.—Added by Stats. 1949, p. 2120, in effect October 1, 1949. Stats. 1979, Ch. 1161, operative January 1, 1980, added "by persons who are regularly engaged in commercial deep sea fishing" to first sentence and added (b). Stats. 1984, Ch, 1707, deleted "for use . . . deep sea fishing" after first "watercraft" in (a), substituted "that" for "such" before "constructing" in (a), added "if any . . . met" and (1), (2), and (3) before (b). Stats. 1986, Ch. 1361, effective January 1, 1987, added a rebuttable presumption regarding watercraft not regularly used in interstate or foreign commerce. Stats. 1991, Ch. 236, in effect July 29, 1991, substituted "twenty thousand dollars ($20,000)" for "five thousand dollars ($5,000)" after "of less than" in subdivision (b).

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15, of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

Primary Use of Watercraft-Interstate Commerce.—Taxpayer did not meet burden of showing the primary use of ferry boats was transportation of interstate passengers. *Campbell Industries* v. *State Board of Equalization* (1985) 167 Cal.App.3d 863.

6368.1. **Watercraft leased for use in interstate or foreign commerce or for commercial fishing.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this state of watercraft which are leased, or are sold to persons for the purpose of leasing, and any sales of tangible personal property becoming a component part of such watercraft in the course of constructing, repairing, cleaning, altering, or improving the same, and charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving, if any of the following conditions are met:

(1) The lessee uses the watercraft in interstate and foreign commerce involving the transportation of property or persons for hire.

(2) The watercraft is for use in commercial deep sea fishing operations outside the territorial waters of this state by persons who are regularly engaged in commercial deep sea fishing.

(3) The lessee functionally uses the watercraft 80 percent or more of the time in the transporting for hire of property or persons to vessels or offshore drilling platforms located outside the territorial waters of this state.

(b) For purposes of this section, it shall be rebuttably presumed that a person is not regularly engaged in the business of commercial deep sea fishing if the person has gross receipts from commercial fishing operations of less than twenty thousand dollars ($20,000) a year.

(c) For purposes of this section, it shall be rebuttably presumed that the watercraft is not regularly used in the business of transporting for hire property or persons, if the yearly gross receipts of the lessor from the lease of that watercraft to persons using that watercraft in the transportation of property or persons do not exceed 10 percent of the cost of that watercraft to the lessor, or twenty-five thousand dollars ($25,000), whichever is less.

History.—Added by Stats. 1965, p. 3177, in effect September 17, 1965. Stats. 1979, Ch. 1161, operative January 1, 1980, added "by persons who are regularly engaged in commercial deep sea fishing" to first sentence and added (b). Stats. 1984, Ch. 1707, deleted "to lessees using . . . deep sea fishing" after "purpose of leasing" in (a), added "if any . . . met" and (1), (2), (3) before (b). Stats. 1986, Ch. 1361, effective January 1, 1987, added a rebuttable presumption regarding watercraft not regularly used in interstate or foreign commerce. Stats. 1991, Ch. 236, in effect July 29, 1991, substituted "twenty thousand dollars ($20,000)" for "five thousand dollars ($5,000)" after "of less than" in subdivision (b).

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15, of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

6368.2. **Diesel fuel used in watercraft in commercial deep sea fishing.** [Repealed by Stats. 1987, Ch. 1352, effective September 29, 1987, operative January 1, 1988.]

6368.2. **Diesel fuel used in watercraft in commercial deep sea fishing.** [Repealed. Became inoperative January 1, 1989 pursuant to the provisions of Ch. 1352, Stats. 1987.]

6368.5. **Rail freight cars.** There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of rail freight cars for use in interstate or foreign commerce.

History.—Added by Stats. 1963, p. 1763, in effect September 20, 1963.

6368.7. **Passenger transportation vehicles.** There are exempted from the taxes imposed by this part, the gross receipts from the sale and the storage, use, or other consumption of passenger transportation vehicles, including, but not limited to, rail passenger cars, locomotives, other rail vehicles, bus and van fleets, and ferryboats, sold or leased to the Department of Transportation by a person who received title to the property from the Department of Transportation pursuant to Article 4 (commencing with Section 14060) of Chapter 1 of Part 5 of Division 3 of Title 2 of the Government Code.

History.—Added by Stats. 1984, Ch. 1510, effective September 28, 1984.

6368.8. **Sale and leaseback; public transportation equipment.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified equipment, provided all of the following conditions are satisfied:

(1) The qualified equipment is sold or leased by a qualified person.

(2) The qualified person has paid sales tax reimbursement or use tax with respect to the qualified person's purchase or acquisition of the qualified equipment.

(3) The qualified equipment is sold or leased by the qualified person and the qualified equipment is leased back to the qualified person.

(b) For purposes of this section:

(1) ''Qualified person'' means an entity that qualifies as a claimant, as defined in Section 99203 of the Public Utilities Code, eligible to receive allocations under the Transportation Development Act (commencing with Section 99200 of the Public Utilities Code).

(2) ''Qualified equipment'' means a vehicle or vessel and any related equipment used in the provision of public transportation services, including, but not limited to, bus and van fleets, ferry boats, rail passenger cars, locomotives, other rail vehicles, train control equipment, fare collection equipment, communication systems, global positioning systems, and other systems and accessories related to the operation of a vehicle or vessel used in the provision of public transportation services.

(c) The exemption provided by this section also applies to subsequent purchases of qualified equipment by a qualified person at the end of the term of a lease or sublease of qualified equipment, provided the provisions of paragraphs (1), (2), and (3) of subdivision (a) are met.

(d) The Legislative Analyst, in consultation with the State Board of Equalization and the Franchise Tax Board, shall conduct a study on the impact of the exemption authorized under this section and shall report to the Legislature, by January 1, 2008, on the following:

(1) The number of persons utilizing the exemption.

(2) The fiscal impact of the exemption, including the total exemption amount and any depreciation claimed for qualified equipment.

(3) The impact, if any, of federal law, including, but not limited to, Revenue Ruling 99–14, on the utilization of the exemption.

(4) The impact of the exemption on California's public transit sector.

(5) A recommendation as to whether the exemption should be continued, and if the continuation of exemption is recommended, recommendations on modifications to the existing exemption provisions that should be implemented.

(6) The impact, if any, on the California personal income and corporation taxes, based on the information provided in subdivisions (e) and (f).

(e) No later than five business days after the closing of any transaction executed pursuant to paragraph (3) of subdivision (a), the qualified person shall provide to the Franchise Tax Board, the Legislative Analyst, the Department of Transportation, the Senate Committee on Revenue and Taxation, and the Assembly Committee on Revenue and Taxation, the following documents: (1) Copies of the consent letter obtained by the qualified person from the Federal Transit Administration (FTA) within the United States Department of Transportation, authorizing the transaction under FTA Circular 7020.1: Cross-Border Leasing Guidelines.

(2) Copies of the appropriate Internal Revenue Service Form 8264: Application for Registration of a Tax Shelter, that is related to the transaction.

(3) A report describing how the qualified person is using the benefits derived from the lease-leaseback transaction, and, where available, the division between the qualified persons and the purchasers, including equity partners, of the lease or sublease of the qualified equipment.

(f) The Franchise Tax Board, every other year, shall review the information it is provided by qualified persons pursuant to subdivision (e), and, based on the apportionment of income between the qualified persons and the purchasers of the lease or sublease of the qualified equipment, including the equity partners, assess the revenue loss to the state, if there is any. The board shall report its assessment to the Legislative Analyst, the Senate Committee on Revenue and Taxation, and the Assembly Committee on Revenue and Taxation.

(g) This section shall remain in effect only until January 1, 2009, and as of that date is repealed.

History.—Added by Stats. 2001, Ch. 592 (AB 984), in effect October 9, 2001, operative November 1, 2001. Stats. 2003, Ch. 597 (SB 760), in effect September 20, 2003, but operative January 1, 2004, substituted "2008" for "2004" after "January 1," in subdivision (d); substituted "continued, and . . . recommended," for "extended beyond the January 1, 2004 expiration date, and if it is recommended that the exemption should be extended," in paragraph (5) of subdivision (d), and added paragraph (6) to subdivision (d); added subdivisions (e) and (f); and added subdivision letter designation (g) before "This section shall", and substituted "2009" for "2004" in subdivision (g).

6368.9. **Public transportation equipment; option to purchase exemption.** (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified equipment purchased by a qualified person at the end of the term of a lease or sublease of qualified equipment pursuant to any exercise of a purchase option under the lease or sublease, provided the following conditions are satisfied:

(1) As of the date the lease or sublease was entered into, the qualified person and qualified equipment were otherwise eligible for exemption under Section 6368.8, as that section read on that same date.

(2) The lease or sublease was entered into before the repeal date of Section 6368.8.

(b) For purposes of this section, "qualified equipment" and "qualified person" have the same meanings as defined in Section 6368.8, as that section read on the date the lease or sublease was entered into.

(c) This section shall only become operative if Section 6368.8 is repealed and, in that event, shall become operative on the date that section is repealed.

History.—Added by Stats. 2003, Ch. 597 (SB 760), in effect September 20, 2003, but operative January 1, 2004.

6369. **Prescription medicines.** [Repealed by Stats. 1982, Ch. 1589, in effect January 1, 1983.]

6369. **Prescription medicines.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in this state of, and the storage, use, or other consumption,in this state of, medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law.

(2) Furnished by a licensed physician and surgeon, dentist, or podiatrist to his or her own patient for treatment of the patient.

(3) Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, or podiatrist.

(4) Sold to a licensed physician and surgeon, podiatrist, dentist, or health facility for the treatment of a human being.

(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.

(6) Furnished without charge by a pharmaceutical manufacturer or distributor to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or furnished by a pharmaceutical manufacturer or distributor without charge to an institution of higher education for instruction or research, provided that the exemption provided in this paragraph is limited to medicines of a type that can be dispensed only (A) for the treatment of a human being and (B) pursuant to prescriptions issued by persons authorized to prescribe medicines. The exemption provided in this paragraph shall include the materials used to package, and the constituent elements and ingredients used to produce, the medicines described in this paragraph and is intended to preclude any imposition of tax pursuant to Section 6094 or 6095 with respect to those materials, elements, and ingredients.

(b) ‘‘Medicines’’ as used in this section, 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 commonly recognized as a substance or preparation intended for that use. However, ‘‘medicines’’ does not include any of the following:

(1) Any auditory, prosthetic, ophthalmic, or ocular device or appliance.

(2) Articles that 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.

(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).

(c) Notwithstanding subdivision (b), ‘‘medicines’’ as used in this section means and includes any of the following:

(1) Sutures, whether or not permanently implanted.

(2) Bone screws, bone pins, pacemakers, and other articles, other than dentures, permanently implanted in the human body to assist the functioning of any natural organ, artery, vein, or limb and which remain or dissolve in the body.

(3) (A) Orthotic devices, other than orthodontic devices, designed to be worn on the person of the user as a brace, support, or correction for the body structure, and replacement parts for these devices. However, orthopedic shoes and supportive devices for the foot are not exempt unless they are custom-made biomechanical foot orthoses or are an integral part of a leg brace or artificial leg.

(B) For purposes of this paragraph, ''custom-made biomechanical foot orthoses'' means an individually prescribed foot orthosis which is custom fabricated over a neutral or near neutral subtalar joint with a pronated midtarsal joint position positive plaster model of the patient's foot, which model, when the cast is modified to support the osseous position of the forefoot in relationship to the rearfoot, embodies the angular osseous relationships of the anterior and posterior portions of the foot.

(4) Prosthetic devices, and replacement parts for those devices, designed to be worn on or in the person of the user to replace or assist the functioning of a natural part of the human body, other than auditory, opthalmic, and ocular devices or appliances, and other than dentures, removable or fixed bridges, crowns, caps, inlays, artificial teeth, and other dental prosthetic materials and devices.

(5) Artificial limbs and eyes, or their replacement parts, for human beings.

(6) Programmable drug infusion devices to be worn on or implanted in the human body.

(d) ''Health facility'' as used in this section has the meaning ascribed to it in Section 1250 of the Health and Safety Code, and also includes ''clinic'' as defined in Section 1200 of the Health and Safety Code.

(e) Insulin and insulin syringes furnished by a registered 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 this section.

(f) Orthotic and prosthetic devices, and replacement parts for these devices, furnished pursuant to the written order of a physician or podiatrist, shall be deemed to be dispensed on prescription within the meaning of paragraph (1) of subdivision (a), whether or not the devices are furnished by a registered pharmacist.

(g) Mammary prostheses, and any appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste, shall be deemed to be dispensed on prescription within the meaning of this section.

History.—Added by Stats. 1961, p. 2273, operative January 1, 1962. Stats. 1962, p. 12, in effect April 23, 1962, added a provision concerning the furnishing of medicine by a physician and surgeon or podiatrist, or a county or other licensed hospital, dispensed by a registered pharmacist, pursuant to Sections 4051 or 4052.1 of the Business and Professions Code; and added the second paragraph. Stats. 1963, p. 1723, in effect September 20, 1963, renumbered the section, deleted the reference to Section 4031 of the Business and Professions Code, deleted the second paragraph, and added (5), (b), (c), and (d). Stats. 1970, p. 2999, operative July 1, 1971, included ''dentist'' as person whose furnishing and purchases of prescription medicines is exempt, renumbered former (5)(c) and (5)(d) as (5)(d) and (5)(e) respectively and added new (5)(c). Stats. 1972, Ch. 877, operative October 1, 1972, added the words ''other than dentures,'' and ''and artificial limbs or their replacement parts, for human beings.'' to part (c). Stats. 1977, Ch. 1245, operative October 1, 1977 through December 31, 1982, changed ''hospital'' to ''health facility'' in paragraphs (a)(3) and (a)(4); deleted ''prosthetic'' in paragraph (b) following ''(1) any auditory''; in paragraph (c) added ''shall'' before ''mean'', added a colon and ''(1)'' following ''include'' and before ''sutures''; added a semicolon and ''(2)'' following ''implanted''; added a semicolon

following "in the body"; added subparagraphs (3), (4), and added "(5)". In paragraph (d) changed "Hospital" to "Health facility", and Section "1401" to "1250", and added paragraph (f). Stats. 1978, Ch. 229, operative August 1, 1978 through December 31, 1982, added "prosthetic" following "auditory" to (b) (1) added "other than orthodontic devices," following "orthotic devices" added "and replacement parts for such devices" following "body structure" to (c) (3) added "and replacement parts for such devices" following "prosthetic devices" rearranged wording and added rest of sentence following "other than dentures" to (c) (4) added new (f) and changed former (f) to (g). Stats. 1982, Ch. 1589, in effect January 1, 1983, added "(6)" in subdivision (c), and added "and insulin syringes" after "insulin" in subdivision (e). Stats. 1987, Ch. 384, in effect September 3, 1987, at the end of (a)(1), (a)(2), (a)(3), deleted ", or" and substituted a period; in (a)(2) added "or her" after "him", in (b) changed "section mean and include" to "section, means and includes" and changed "intended for such use; provided that 'medicines' do not include" to "intended for that use. However, 'medicines' does not include any of the following", ended (b)(1) and (b)(2) with periods and deleted the commas, in subdivision (c) changed "shall mean and include" to "means and includes any of the following", at the end of (c)(1), (c)(2), (c)(3), (c)(4), replaced semicolons with periods, in (c)(3), changed "for such devices; provided, that" to "for these devices. However, " added "custom-made biomechanical foot orthoses or" before "an integral part" and added a definition for "custom-made biomechanical foot orthoses", in (c)(5) deleted "and" before "(6)", in paragraph (f) substituted "these" for "such", added "or podiatrist" following "physician", and changed "paragraph (a)(1) of this section" to "(1) of subdivision (a)." Stats. 1994, Ch. 857, in effect September 27, 1994, but operative January 1, 1995, added "in this state of" after "sale,", deleted a comma after "consumption", and added a comma after "state of" in subdivision (a); added paragraph (6) to subdivision (a); deleted "and includes" after "means", added a comma after "treatment", and deleted "which is" after "disease and" in subdivision (b); added a comma after "opthalmic" in paragraph (1) of subdivision (b); substituted "that" for "which" after "Articles" in paragraph (2) of subdivision (b); added a comma after "possession" in paragraph (3) of subdivision (b); added paragraph letter designation (A) after "(3)" and added a comma after "support" in paragraph (3) of subdivision (b); created new paragraph (B) in subdivision (c) with the former third sentence of paragraph (3) therein; substituted "those" for "such" after "parts for", and added commas after "opthalmic" and "teeth" in paragraph (4) of subdivision (c). Stats. 2001, Ch. 706 (AB 646), in effect October 11, 2001, operative April 1, 2002, added ", and also includes . . . Safety Code" after "and Safety Code" in subdivision (d).

Antiseptic sudsing skin scrub.—Antiseptic skin cleanser used by hospitals on patients and for preoperative scrubbing by operating personnel and hand cleansing by hospital personnel caring for patients was found to be a tax-exempt medicine since the cleanser, in all such uses, is applied to the human body in the mitigation and prevention of disease. The application of the cleanser by hospital personnel to their own bodies benefits the patient and constitutes a critical component of the patient's treatment. *Purdue Frederick Co.* v. *State Board of Equalization* (1990) 218 Cal.App.3d 1021.

6369.1. **Hemodialysis products.** There are exempted from the taxes imposed by this part the gross receipts from the sale, and the storage, use or other consumption, in this state of hemodialysis products supplied to a patient on order of a licensed physician and surgeon pursuant to Section 4050.7 or 4227 of the Business and Professions Code and which constitute medicines as defined in Section 6369.

History.—Added by Stats. 1972, Ch. 1336, effective December 22, 1972.

6369.2. **Prescription wheelchairs, crutches, canes, quad canes, and walkers.** There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of wheelchairs, crutches, canes, quad canes, white canes used by the legally blind, and walkers, and replacement parts for these devices, when sold to an individual for the personal use of that individual as directed by a physician.

History.—Added by Stats. 1977, Ch. 1245, effective October 1, 1977, in effect until January 1, 1983, and as of such date repealed, unless a later enacted statute, which is chaptered before January 1, 1983 revises such date. Stats. 1978, Ch. 229, operative August 1, 1978 through December 31, 1982, added "and replacement parts for such devices," following "walkers". Stats. 1992, Ch. 622, in effect September 14, 1992, added "white canes . . . blind," after"quad canes"; substituted "these" for "such" after "parts for".

6369.4. **Vehicles for physically handicapped persons.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale, and the storage, use, or other consumption, in this state of items and materials when used to modify a vehicle for physically handicapped persons.

(b) In the case of the sale of a modified vehicle described in subdivision (a) to a disabled person who is eligible to be issued a distinguishing license plate or placard for parking purposes pursuant to Section 22511.5 of the Vehicle Code, there are exempted from the taxes imposed by this part the

gross receipts from the sale, and the storage, use, or other consumption attributable to that portion of the vehicle which has been modified for physically handicapped persons.

History.—Added by Stats. 1978, Ch. 959, operative January 1, 1979. Stats. 1987, Ch. 1471, in effect September 30, 1987, operative January 1, 1988, added "(a)" before first paragraph, added subdivision (b).

6369.5. **Medical oxygen delivery systems.** There are exempted from the taxes imposed by this part the gross receipts from the sale, and the storage, use, or other consumption, in this state of any medical oxygen delivery system, including, but not limited to, liquid oxygen containers, high pressure cylinders, and regulators, when sold, leased, or rented to an individual for the personal use of that individual as directed by a physician.

History.—Added by Stats. 1982, Ch. 1423, in effect September 27, 1982, operative January 1, 1983. Stats. 1984, Ch. 1450, effective September 26, 1984, deleted "(a)" designation, deleted subdivision (b).

6370. **Parent-teacher associations.** (a) This section applies to each of the following:

(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 parent cooperative nursery schools.

(3) Nonprofit associations commonly called The 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.

(b) An organization described in subdivision (a) is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, tangible personal property which it sells, if the profits are used exclusively in furtherance of the purposes of the organization.

(c) This section shall not be applicable to the state or any of its political subdivisions.

History.—Added by Stats. 1978, Ch. 39, operative July 1, 1978. Stats. 1979, Ch. 765, operative January 1, 1980, added (2). Stats. 1987, Ch. 1213, effective September 27, 1987, operative January 1, 1988, in paragraph (a) added "each of the following" after "to", substituted "Parents, Teachers, and Students", for "P.T.A." renumbered former (2) as (3), and added new (2), in paragraph (b) substituted "if" for "provided".

6370.5. **Auxiliary services to museums.** (a) This section applies to nonprofit associations and equivalent organizations performing auxiliary services to any city or county museum in the state, which are authorized to operate within the museum by the governing authority of the museum and have held an annual rummage sale for at least five consecutive years immediately preceding the sale referred to in subdivision (b).

(b) An organization described in subdivision (a) is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, tangible personal property which it sells at an annual rummage sale; provided, the profits are used exclusively in furtherance of the purposes of the organization.

(c) This section shall not be applicable to the state or any of its political subdivisions.

History.—Added by Stats. 1982, Ch. 1168, in effect January 1, 1983.

6371. **Medical identification tags.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption of, medical identification tags furnished by an organization which is exempted from taxes under Section 23701.

(b) For purposes of this section, ''medical identification tags'' includes any tag worn by a person for the purpose of alerting other persons that the wearer of the tag has a medical disability or allergic reaction to certain treatments.

History.—Added by Stats. 1978, Ch. 878, operative January 1, 1979, in effect until September 19, 1980, and as of such date repealed, unless a later enacted statute, which is chaptered before September 19, 1980, revises such date. Stats. 1980, Ch. 222, effective June 25, 1980, extended the September 19, 1980 repeal date indefinitely. Stats. 1993, Ch. 88, in effect January 1, 1994, substituted "identification" for "alert" after "medical" in subdivisions (a) and (b), and substituted "the" for "such" after "wearer of" in subdivision (b).

6373. **Food stamp coupons.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of tangible personal property the gross receipts of which are received in the form of food stamp coupons acquired by the purchaser pursuant to the Food Stamp Act of 1977 (Public Law 95-113), including subsequent amendments thereto.

(b) When the gross receipts from a sale of tangible personal property are received partly in the form of cash and partly in the form of food stamp coupons, the amount of the food stamp coupons shall be attributed first to gross receipts which would have been subject to the taxes imposed by this part if payment were not received in the form of food stamps.

(c) A retailer shall not add to the sale price of tangible personal property any amount designated as sales tax, use tax, or sales tax reimbursement when the sale is exempt pursuant to this section.

(d) In lieu of separately accounting for gross receipts which are exempt pursuant to this section and taking a deduction on sales tax returns for the exact amount of those gross receipts, the board may provide, for the efficient administration of this part, an alternative method that retailers may use to compute the allowable deduction for the total amount of food stamp coupons redeemed during the period for which the return is filed, provided that method results in a deduction the amount of which is at least equal to 2 percent of the total amount of food stamp coupons redeemed.

(e) This section is repealed on the first day of the first calendar month immediately following the effective date of any federal act which repeals those provisions which prohibit any state from participating in the food stamp program if sales taxes are imposed within that state on purchases made with food stamp coupons.

History.—Added by Stats. 1987, Ch. 1103, in effect September 25, 1987, operative October 1, 1987. Stats. 1992, Ch. 902, in effect September 25, 1992, operative January 1, 1993, substituted "the board may . . . deduction for" for "a retailer may take a deduction on each sales tax return equal to two percent of" and added ", provided that . . . coupons redeemed" in subdivision (d).

6374. **Meals served to low-income elderly persons.** There are exempted from the taxes imposed by this part the gross receipts from 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.

History.—Added by Stats. 1972, Ch. 877, operative October 1, 1972.

6375. **Sales by charitable organizations.** There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of, tangible personal property made, prepared, assembled, or manufactured by organizations formed and operated for charitable purposes qualifying for the exemption provided by Section 214 known as the ''welfare exemption,'' which are engaged in the relief of poverty and distress, and make the sales and donations as a matter of assistance to the purchasers and donees.

History.—Added by Stats. 1959, p. 3582, in effect September 18, 1959. Stats. 1989, Ch. 1447, operative January 1, 1990, substituted "state" for "State", added comma after "assembled", deleted "of the Revenue and Taxation Code" after "Section 214", added "and donations" after "sales", and added "and donees" after "purchasers".

Exemption not applicable when sales made to general public.—Charitable organization did not qualify for charitable sales exemption because it did not sell goods at discounted prices to distressed or needy purchasers. Charitable organization cannot be denied sales tax exemption solely because it has insufficient property to qualify for property tax exemption. *Good Shephard Lutheran Home* v. *State Board of Equalization* (1983) 139 Cal.App.3d 876.

6375.5. **Sales of new children's clothing to a nonprofit organization.** There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, new children's clothing which is sold to a nonprofit organization for its distribution without charge to elementary school children.

For purposes of this section, ''nonprofit organization'' means an organization which meets all of the following criteria:

(a) Is organized and operated for charitable purposes.

(b) Has exempt status under Section 23701d.

(c) Is engaged in the relief of poverty and distress.

(d) Distributes new children's clothing principally as a matter of assistance to recipients in distressed financial conditions.

History.—Added by Stats. 1982, Ch. 708, in effect September 8, 1982, operative January 1, 1983.

6376. **Construction contracts.** [Repealed by Stats. 1968, p. 2602, in effect August 15, 1968, as affected by Stats. 1971, p. 2783, operative July 1, 1972; and by Stats. 1972, Ch. 1406, effective December 26, 1972.]

Note.—See note following Section 6051.

No Exemption for Equipment and Supplies Used In Construction Contract Entered Into for Fixed Price Prior to August 1, 1967.—Plaintiff was awarded a lump-sum fixed price contract with the State Department of Water Resources for the construction of a dam. Subsequent thereto, the state Legislature increased the sales and use tax rate by 1 percent, effective August 1, 1967, and also added Section 6376 to the law providing an exemption from the increase for the sale and use of material and fixtures obligated pursuant to an engineering construction contract entered into for a fixed price prior to the effective date of the rate increase. The Board took the position that the exemption was applicable only to ''materials'' and ''fixtures'' as those terms had previously been defined in the Board's Ruling 11 ''Construction Contractors.'' This interpretation excluded from the exemption other tangible personal property such as construction equipment and supplies. Plaintiff sought declaratory relief that the Section 6376 exemption covered equipment and supplies and other alternative relief against the state as a party to the contract. Plaintiff subsequently paid approximately $102,000 in additional taxes, unsuccessfully sought a refund from the Board, and filed a suit for refund. In the consolidated actions, the trial court found that Section 6376 did not exempt the transactions in dispute and denied plaintiff

relief against the state as a party to the contract. In affirming the judgment of the lower court denying plaintiff's claim for refund of tax, the court held that the words "materials and fixtures" did not include construction equipment and supplies. The court found that it was reasonable to assume that the Legislature used the words "material and fixtures" advisedly and in the sense which had been given them by long standing administrative ruling and by judicial decision. Even without reference to the administrative ruling, the court observed, by no stretch of the imagination could construction equipment and supplies be considered either "fixtures" or "materials." Further, both the language of Section 6376 and the post enactment history of the section strongly supported the interpretation urged by the Board. The court further held that the construction contract did not provide for additional compensation on account of the increased tax burden, and that plaintiff was not subject to any unconstitutional impairment of its contract with the Department of Water Resources as a result of any additional burden falling on it by virtue of the increased tax. *Western Contracting Corp.* v. *State Board of Equalization* (1974) 39 Cal.App.3d 341.

6376. **Fixed price contracts.** [Repealed by Stats. 1991, Ch. 1091, in effect January 1, 1992.]

6376.1. **Fixed price contracts exemption.** (a) On and after July 15, 1991, there are exempted from the taxes imposed by this part an amount equal to an amount that is attributable to a ¼ percent rate of tax with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in this state of the following:

(A) Tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(B) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to July 15, 1991.

(C) For purposes of this section, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

(b) From July 15, 1991, to the date on which the taxes imposed by Sections 6051.2 and 6201.2 cease to be operative pursuant to subdivision (b) of Section 6051.2 or subdivision (b) of Section 6201.2, there are exempted from the taxes imposed by this part an amount equal to an amount that is attributable to a one-half of 1 percent rate of tax with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in this state of the following:

(A) Tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(B) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to July 15, 1991.

(C) For purposes of this section, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

(c) From July 15, 1991, to the date the taxes imposed by Sections 6051.5 and 6201.5 cease to be operative, there are exempted from the taxes imposed by this part an amount equal to an amount that is attributable to a ½ percent rate of tax with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in the state of the following:

(A) Tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(B) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to July 15, 1991.

(C) For purposes of this section, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

(d) On and after July 15, 1991, there are exempted from the taxes imposed by this part an amount equal to the tax imposed by this part on July 14, 1991, with respect to the sale or purchase of any tangible personal property that was exempt prior to the enactment of the act adding this section, with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in the state of tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property

for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or leased has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

History.—Added by Stats. 1991, Ch. 85, in effect June 30, 1991. Stats. 1991, Ch. 88, in effect June 30, 1991, substituted "July 15, 1991" for "July 1, 1991" in subdivision (a), paragraphs (1) and (2) of subdivision (a), subdivision (b), paragraphs (1), (2) and (3) of subdivision (b), subdivision (c), paragraphs (1), (2) and (3) of subdivision (c), subdivision (d), and paragraphs (1), (2) and (3) of subdivision (d). Stats. 1991, Ch. 236, in effect July 29, 1991, added "the following:" after "in this state of" in subdivisions (a), (b) and (c), substituted "(A) Tangible" for "tangible" before "personal property" in paragraph (1) of subdivisions (a), (b) and (c), and substituted "July 14, 1991" for "June 30, 1991" after "by this part on" in subdivision (d).

6376.2. **Fixed price contracts exemption.** From July 1, 1993, to the date on which the taxes imposed by Sections 6051.6 and 6201.6 cease to be operative, there are exempted from the taxes imposed by this part an amount equal to an amount that is attributable to a ½ percent rate of tax with respect to the following:

(a) The gross receipts from the sale of, and the storage, use, or other consumption in this state of, the following:

(1) Tangible personal property, if the seller is obligated to furnish or the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to July 1, 1993.

(2) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to July 1, 1993.

For purposes of this subdivision, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(b) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 1, 1993. For purposes of this subdivision, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(c) The possession of, or the exercise of, any right or power over tangible personal property pursuant to a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 1, 1993. For purposes of this subdivision, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease

for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

History.—Added by Stats. 1993, Ch. 73, in effect June 30, 1993.

6376.5. **Meals served to elderly condominium residents.** There are exempted from the taxes imposed by this part the gross receipts from 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.

History.—Added by Stats. 1980, Ch. 645, operative January 1, 1981.

6377. **Property used in manufacturing and related activities.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(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 any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(2) Tangible personal property purchased for use by a qualifed person to be used primarily in research and development.

(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 paragraph (1) or (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.

This exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing.

(b) For purposes of this section:

(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 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.

(3) ''Primarily'' means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) ''Process'' means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer 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 taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer'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 the materials and labor necessary to modify or change the characteristics of property.

(6) ''Qualified person'' means any person that is both of the following:

(A) A new trade or business. In determining whether a trade or business activity qualifies as a new trade or business, the following rules shall apply:

(i) 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 entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new 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 exceed 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the person (or any related person). For purposes of this subparagraph only, the following rules shall apply:

(I) 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.

(II) Any acquired assets that constituted property described in Section 1221 (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(1) of the Internal Revenue Code in the hands of the acquiring person (or related person).

(ii) In any case 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 (''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 a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the person's (or any related person's) current or prior trade or business activities in this state.

(iii) In any case 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) after December 31, 1993 (other than by purchase or other acquisition described in clause (i)), the trade or business activity shall be treated as a new business.

(iv) 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 under the rules of clause (i).

(v) ''Related person'' means any person that is related to that person under either Section 267 or 318 of the Internal Revenue Code.

(vi) ''Acquire'' includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(B) Engaged in those 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.

(7) Notwithstanding paragraph (6), ''qualified person'' shall not include any person who has conducted business activities in a new trade or business for three or more years.

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

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

(10) ''Tangible personal property'' does not include any of the following:

(A) Consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (10).

(B) Furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(C) Any property for which a credit is claimed under either Section 17053.49 or 23649.

(11) ''Tangible personal property'' includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(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, 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.

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

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

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

(F) Property used in recycling.

(c) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery or equipment that is exempt pursuant to subdivision (a).

(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property which, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(2) Notwithstanding subdivision (a), on or after January 1, 1995, the exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(f) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax,

and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(g) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report annually to the Legislature with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, ''total employment'' means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(h) This section applies to leases of tangible personal property classified as ''continuing sales'' and ''continuing purchases'' in accordance with Sections 6006.1 and 6010.1. The exemption established by this section shall apply to the rentals payable pursuant to such a lease, provided the lessee is a qualified person and the property is used in an activity described in subdivision (a). Rentals which meet the foregoing requirements are eligible for the exemption for a period of six years from the date of commencement of the lease. At the close of the six-year period from the date of commencement of the lease, lease receipts are subject to tax without exemption.

History.—Added by Stats. 1993, Ch. 881, in effect October 6, 1993, but operative January 1, 1994. Stats. 1994, Ch. 751, in effect September 23, 1994, but operative January 1, 1995, substituted "and" for "or" after "sale of" and substituted "any" for "all" after "state of," in subdivision (a); deleted "that is organized or formed and first commences business activity in this state on or after January 1, 1994. Notwithstanding the preceding sentence, the term "qualified person" does not include any trade or business after it has been in existence for three years or any trade or business that was used in any predecessor trade or business conducted by the taxpayer or any other taxpayer related to the taxpayer (within the meaning of Sections 267 and 318 of the Internal Revenue Code)." after "business", added second sentence in the first paragraph of subparagraph (A) of paragraph (5) of subdivision (b), and added subsections (i), (ii), (iii), (iv), (v), and (vi) therein; added paragraph (6), and renumbered former paragraphs (6), (7), (8), and (9) as (7), (8), (9), and (10), respectively, in subdivision (b); substituted "(10)" for "(9)" after "paragraph" in subparagraph (A) of former paragraph (8) of subdivision (b); substituted "this state . . . this state" for "the State Air Resources Board or the Water Resources Control Board" in subparagraph (C) of former paragraph (9) of subdivision (b); added paragraph designation (1) after "(e)" in subdivision (e) and substituted "either" for "(1)" after "purchase, is", deleted comma after "California" and deleted (2) after "or" therein; added paragraph (2) to subdivision (e); and added "The department . . . sentence." after "1994." in subparagraph (A) of paragraph (2) of subdivision (g). Stats. 1995, Ch. 91, in effect January 1, 1996, substituted "Engaged" for "That is engaged" before "in those lines" in subparagraph (B) of paragraph (5) of subdivision (b). Stats. 1996, Ch. 954, in effect September 26, 1996, but operative January 1, 1997, added new paragraph (4) to subdivision (b) and renumbered former paragraphs (5), (6), (7), (8), (9), and (10) therein as (6), (7), (8), (9), (10), and (11), respectively; substituted "'Related person' means" for "The term 'related person' shall mean" in section (v), substituted "'Acquire' includes" for "The term 'acquire' shall include" in section (vi) of subsection (iii), substituted "2011" for "2000" after "Codes" in subparagraph (B) of paragraph (6), substituted "(6)" for "(5)" after "paragraph" in paragraph (7) of subdivision (b); and added subdivision (h).

6378. **Property used in teleproduction and postproduction activities.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in teleproduction or other postproduction services.

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

(b) This exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing.

(c) For purposes of this section:

(1) ''Primarily'' means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(2) ''Qualified person'' means any person that is primarily engaged in teleproduction or other postproduction activities that are described in Code 512191 of the North American Industry Classification System Manual published by the United States Office of Management and Budget, 1997 edition.

(3) ''Teleproduction or other postproduction services'' means services for film or video that include editing, film and video transfers, transcoding, dubbing, subtitling, credits, close captioning, audio production, special effects (visual or sound), graphics, or animation.

(4) ''Tangible personal property'' includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts.

(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, together with 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 taxpayers or another party.

(5) ''Tangible personal property'' does not include furniture, inventory, or equipment used to store products.

(d) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery and equipment that is exempt pursuant to subdivision (a).

(e) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section

7251)), the exemption established by the section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of these laws.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(3) The exemption established by this section shall not apply to any sale or use of property that, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(f) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

History.—Added by Stats. 1998, Ch. 323, in effect August 20, 1998, but operative January 1, 1999.

6378.1. **Rural investment tax exemption.** (a) On and after January 1, 2001, and before January 1, 2006, there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, tangible personal property purchased by eligible entities, as defined in subdivision (f).

(b) The exemption provided under this part shall be termed the Rural Investment Tax exemption.

(c) The California Infrastructure and Economic Development Bank (CIEDB) board shall develop a program that determines who is eligible to receive this exemption, monitor entities for compliance with the requirements of this section, and notify the State Board of Equalization, as provided in this section. The CIEDB shall determine the amount of the exemption available to each entity.

(d) Entities wishing to qualify for this exemption shall apply to the CIEDB board in a manner prescribed by the CIEDB board. The CIEDB board shall provide all applicants written notification stating the eligibility of the applicant to receive an exemption under this section.

(e) The annual amount of exemptions that may be granted pursuant to this section shall not exceed five million dollars ($5,000,000) per year. The CIEDB board shall not authorize any exemption that would cause the total amount of exemptions authorized with respect to any calendar year under this section to exceed five million dollars ($5,000,000).

(f) For purposes of this section:

(1) ''Eligible entity'' means an entity that complies with all of the following:

(A) The entity shall locate or expand a business in 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.

(B) The entity shall make a new investment of at least one hundred fifty million dollars ($150,000,000) in the county in which the entity locates its business and shall maintain this level of investment for a period of at least 24 months after the CIEDB board certifies that the entity has become an eligible entity.

(C) The entity shall employ at least 500 new full-time equivalent employees in the county, including employees who are employed directly by the entity and employees who are hired by supporting industries. Employees shall be employed for at least 24 months after the CIEDB certifies that the entity has become eligible. At least 175 of the new full-time equivalent employees shall be directly employed by the entity.

(2) ''New full-time equivalent employees'' means employees hired by the entity seeking the exemption allowed under this part and not employees moved, transferred, or displaced from other places of business of the entity within this state.

(3) ''Tangible personal property'' means machinery and equipment, including component parts.

(4) ''Tangible personal property'' does not include any of the following:

(A) 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.

(g) Prior to claiming an exemption under this section, the eligible entity shall apply to the State Board of Equalization for an exemption certificate and shall include a copy of the written notification from the CIEDB board stating that the entity applying for the exemption certificate is eligible to receive an exemption under this section. No exemption shall be allowed under this section unless the eligible entity furnishes the retailer with an exemption certificate, completed in accordance with any instruction or regulations as the State Board of Equalization may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery and equipment that is exempt pursuant to subdivision (a).

(h) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section

7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of these laws.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(3) The exemption established by this section shall not apply to any sale or use of property that, within one year from the date of purchase, is either removed from a California county as described in subparagraph (A) of paragraph (1) of subdivision (f), or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(i) (1) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside a California county as described in subparagraph (A) of paragraph (1) of subdivision (f), or (2) converts that property for use in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(2) The purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property if the purchaser does not achieve the level and duration of employment and investment pursuant to subdivision (f) within three years from the date the entity first uses an exemption under this section. The CIEDB board may extend this time period by a maximum of 12 months for reasonable cause.

(j) (1) The CIEDB board shall determine if entities have fulfilled the requirements necessary in order to keep this exemption and shall report to the State Board of Equalization on entities that have not fulfilled these requirements.

(2) Notwithstanding Section 6902, the State Board of Equalization shall, within one year after being notified by the CIEDB board that an entity has not fulfilled the requirements of this section, examine the books and records of the entity, and issue a determination of any liabilities due.

(k) The CIEDB board shall provide a report to the Legislature, the Department of Finance, and the State Board of Equalization no later than January 15 following each fiscal year the program is in operation. The report shall include, at a minimum, all of the following:

(1) The entities that have been provided the exemption established by this section and the amount of the exemption authorized by the CIEDB board to each entity.

(2) The number of new persons employed by each entity.

(3) The amount of investment made by each entity.

(4) A description of the economic development provided by each entity receiving the exemption.

(5) A description of each entity that has fulfilled the requirements of paragraph (1) of subdivision (f).

(6) A description of each entity that has not fulfilled the requirements of paragraph (1) of subdivision (f).

(*l*) (1) This section shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

(2) This section shall remain in effect only until January 1, 2006, and as of that date is repealed.

History.—Added by Stats. 2000, Ch. 107 (AB 511), in effect July 10, 2000.

6379. **Sale of used mobilehomes.** There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of any used mobilehome, as defined in Section 18014 of the Health and Safety Code, which is subject to property tax pursuant to Part 13 (commencing with Section 5800) of Division 1, or any used floating home, defined and subject to tax pursuant to Section 229.

History.—Added by Stats. 1979, Ch. 1180, effective January 1, 1980. Stats. 1980, Ch. 285, operative July 1, 1980, substituted "sale of" for "resale of", "any used mobilehome" for "mobilehomes" and substituted the part of sentence following "Code" for former wording. Stats 1982, Ch. 1589, in effect January 1, 1983, substituted "Section 18014" for "Sections 18008 and 18211" after "defined in". Stats. 1986, Ch. 308, effective January 1, 1987, added reference to floating homes.

6379.5. **Printed sales messages for goods and services printed to the special order of the purchaser.** There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser and 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 to any other person at no cost to that person who becomes the owner thereof.

History.—Added by Stats. 1986, Ch. 1515, operative on January 1, 1987.

Note.—Stats. 1986, Ch. 1515, required that on or after January 1, 1991, the Legislative Analyst shall conduct a study of the effects of the exemption provided by this act on the state's printing industry during the four preceding years. The study shall include an estimate of the revenue effect, a discussion of whether the exemption has assisted the California printing industry in increasing its share of the direct mail and catalog market, and recommendations for any necessary modifications in the governing statute. The Legislative Analyst shall report to the Legislature on the results of this study no later than June 30, 1991.

6379.8. **Mailing lists.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, mailing lists, if the contract regarding that mailing list restricts the purchaser to a single use of the mailing list.

(b) For purposes of this section, ''mailing list'' means a written or printed list, series, set, group, or aggregation of names and addresses of, and occasionally, other information concerning persons, including, but not limited to, potential customers or donors, that is intended for use in

circulating material by mail. A mailing 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. ''Mailing list'' also includes a magnetic tape or similar device used to produce written or printed names and addresses by electronic or mechanical means.

History.—Added by Stats. 1993, Ch. 498, in effect September 27, 1993, but operative January 1, 1994.

6380. **Space flight property.** (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, qualified property for use in space flight.

(b) For purposes of this section:

(1) ''Qualified property'' means any of the following:

(A) Tangible personal property that has space flight capability, including, but not limited to, an orbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind, and any component thereof.

(B) Tangible personal property to be placed or used aboard any facility, system, vehicle, satellite, or station described in subparagraph (A), regardless of whether that property is to be ultimately returned to this state for subsequent use, storage, or other consumption.

(C) Fuel of a quality that is not adaptable for use in ordinary motor vehicles, but is produced, sold, and used exclusively for space flight.

(2) ''Space flight'' means any flight designed for suborbital, orbital, or interplanetary travel by a space vehicle, satellite, space facility, or space station of any kind.

(c) The exemption established by this section shall not be denied by reason of a failure, postponement, or cancellation of a launch of a space vehicle, satellite, space facility, or space station of any kind, or the destruction of any launch vehicle or any component thereof, but the exemption shall not apply to any material that is not intended to be launched into space.

History.—Added by Stats. 1993, Ch. 881, in effect October 6, 1993, but operative January 1, 1994. Stats. 1998, Ch. 323, in effect August 20, 1998, but operative January 1, 1999, deleted ", and originating at Vandenberg Air Force Base" after "of any kind" in paragraph (2) of subdivision (b), and deleted former subdivision (d) which provided a sunset date of January 1, 2004.

Article 2. Exemptions from Sales Tax

§ 6381. United States.
§ 6381.5. United States; leases to. [Repealed.]
§ 6383. Silver bullion. [Repealed.]
§ 6384. United States contractors.
§ 6385. Common carriers.
§ 6386. Out-of-state contractors.
§ 6387. Delivery to export packers.
§ 6388. New or remanufactured vehicles purchased from out-of-state dealer.
§ 6388.2. New camp trailers or housecars purchased from out-of-state dealer. [Repealed.]
§ 6388.3. Purchaser affidavit forms.
§ 6388.5. New or remanufactured trailers purchased for out-of-state or interstate commerce use.
§ 6390. Rentals included in use tax or outside state.
§ 6391. Prior leases.
§ 6395. Cargo containers. [Repealed.]
§ 6396. Interstate shipments.

6381. **United States.** There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

(a) The United States, its unincorporated agencies and instrumentalities;

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;

(c) The American National Red Cross, its chapters and branches.

History.—Stats. 1943, p. 2456, operative July 1, 1943, reworded (a) and added (b) and (c). Stats. 1965, p. 5451, operative August 1, 1965, added the last sentence. Stats. 1986, Ch. 308, effective January 1, 1987, deleted reference to rentals payable under a lease as excluded from the exemption.

Contracts for the Improvement of Real Property.—Property sold to and purchased by United States contractors for use in constructing improvements to real property in this state is not exempt from tax under this section. Such property is consumed by the contractor rather than resold to the United States and sales of such property to and purchases by the contractor are thus subject to tax under Section 6384 of the Revenue and Taxation Code. *Chula Vista Electric Co.* v. *State Board of Equalization* (1975) 53 Cal.App.3d 445.

Incidence of the Sales Tax for Federal Purposes is on the Purchaser.—Tax cannot be applied to rentals payable under a lease of tangible personal property to the United States, since the incidence of the tax falls upon the United States and it would violate the constitutional immunity of the United States from state taxation. *United States* v. *State Board of Equalization* (1976) 536 F.2d 294.

Special Test Equipment Purchased for Resale by U.S. Government Contractors.—Tax does not apply to special test equipment manufactured or purchased by defense contractors and used in the performance of their obligations under defense contracts with the federal government. Legal title and the right to control such equipment passed to the federal government as soon as the equipment was ready for use, the special test equipment was not purchased by the taxpayers at retail but purchased for resale in the regular course of business to the federal government, and any use or storage of the equipment thereafter was that of the federal government in which title immediately vested. *Lockheed Aircraft Corp.* v. *State Board of Equalization; Aerojet General Corp.* v. *State Board of Equalization* (1978) 81 Cal.App.3d 257.

Transmission Lines are Improvements to Real Property.—Transmission lines and supporting installations are properly classified as improvements to real property. Taxpayers, as users of the materials consumed in the performance of the contract to improve real property, were required to pay the use tax. *Fischbach & Moore, Inc.* v. *State Board of Equalization* (1981) 117 Cal.App.3d 627.

Leases to U.S. Contractors.—Use tax imposed on leases to private contractors designated as agents of United States was constitutional. Legal incidence of the tax fell on contractors, not United States. *United States* v. *California State Board of Equalization* (1982) 683 F.2d 316.

Overhead materials in contracts.—The Board improperly relied on Regulation 1618 in assessing sales and use taxes against aerospace company on supplies and materials the company obtained to perform a research and development contract with the federal government. The court rejected the Board's interpretation of Regulation 1618, which ignored terms of the contract and required proof of allocation of overhead materials to a specific contract in order for title to such materials to vest in the federal government. *Aerospace Corporation* v. *State Board of Equalization* (1990) 218 Cal.App.3d 1300.

Tax on leases to United States unconstitutional.—California sales tax scheme manifests a legislative intent that the lessee pay the sales tax. It places the legal incidence of the tax on the United States and violates the United States' immunity from state taxation. *United States* v. *State Board of Equalization* (1981) 650 F.2d 1127, aff'd (1982) 456 U.S. 901.

6381.5. **United States; leases to.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

6383. **Silver bullion.** [Repealed by Stats. 1979, Ch. 1150, operative July 1, 1980.]

6384. **United States contractors.** Notwithstanding any other provision of law the tax imposed under this part shall apply to the gross receipts from the sale of any tangible personal property to contractors purchasing such property either as the agents of the United States or for their own account and subsequent resale to the United States for use in the performance of contracts with the United States for the construction of improvements on or to real property in this State.

History.—Stats. 1955, p. 1396, in effect September 7, 1955, added "in this State".

Note.—See also Section 6007.5.

Application of different rules to United States contractors not invalid.—Where the Board distinguishes between contractors generally and United States government contractors in the application of tax, such differences are not invalid because the United States government has a unique tax status. *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 907.

Constitutionality.—California has the constitutional power to impose sales and use taxes on contractors in relation to work performed at Federal facilities located in California because Congress has expressly consented to such tax in the Buck Act (4 U. S. C. 105) and has thereby waived the sovereign immunity of the United States. *C. R. Fedrick, Inc.* v. *State Board of Equalization* (1974) 38 Cal.App.3d 385, *cert. denied* (1975) 42 L.Ed.2d 820.

Electrical Transmission Line.—A contract with the United States to replace cable as a component of an electrical transmission line is a contract for the construction of improvements to real estate. Sales of materials to and purchases of materials by contractors for use under such contracts are subject to tax. *Chula Vista Electric Co.* v. *State Board of Equalization* (1975) 53 Cal.App.3d 445.

Federal contractors as consumers.—Sales and Use Tax Law does not levy a direct tax on United States, where tax is imposed on transfer of property between supplier and federal contractor. Board regulation classifying federal contractors as consumers of materials and fixtures is consistent with sections 6007.5 and 6384 and does not discriminate between federal contractors and other federal suppliers. *Howell, In re* (1984) 731 F.2d 624, cert. den._U.S._.

Modification of facilities for separation and distribution of petroleum and natural gas.—Tank settings, pipelines and compressor stations used by a contractor in reconditioning a naval petroleum facility for the United States were taxable fixtures because they were essential to the structure and of a permanent nature. The term ''machinery and equipment'' excludes ''fixtures'' as defined under property tax law. *C. R. Fedrick, Inc.* v. *State Board of Equalization* (1988) 204 Cal.App.3d 252.

Taxes on Federal Government contractors.—Federal Government contractors are not immune from state taxes simply because the government reimburses all of the contractors' state tax expenditures. Immunity from state taxation is appropriate only when the levy falls directly on the United States itself or on an agency or instrumentality so closely connected to the Federal Government that the two cannot realistically be viewed as separate entities. Also, contrary to its argument that it was not bound by the state's statutes of limitations, the United States, as subrogee of its contractor, is bound by California's statutory claims procedures. *(United States* v. *California* (1993) 507 U.S. 746, 123 L.Ed.2d 528.)

Text of section operative January 1, 2003 through March 31, 2004

6385. **Common carriers.** (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as

a copy of a bill of lading, and air waybill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) ''Common carrier,'' as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) ''Foreign air carrier,'' as used in this section, means a foreign air carrier as defined in Section 1301 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(f) This section shall become operative on January 1, 2003.

History.—Added by Stats. 1992, Ch. 905 (AB 2396), in effect September 25, 1992, operative January 1, 1998. Stats. 1997, Ch. 615 (AB 366), in effect October 3, 1997, operative January 1, 2003, substituted "2003" for "1998" in subdivision (f).

Note.—Section 3 of Stats. 1997, Ch. 615 (AB 366), requires the Legislative Analyst's Office to report to the Legislature on or before January 1, 2001, on the effect on bunker fuel sales of the sales tax exemption for the sale of fuel and petroleum products to a water common carrier provided by Section 6385 of the Revenue and Taxation Code for the period beginning on and after January 1, 1993, as compared to the period beginning on July 1, 1991, and ending January 1, 1993, when no exemption was allowed for those sales.

Text of section operative April 1, 2004 through January 1, 2014

6385. **Common carriers** (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the

seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, and air waybill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of fuel and petroleum products to a water common carrier, for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination. To qualify for the exemption the common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt which is to be consumed after reaching the first out-of-state destination. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(d) ''First out-of-state destination,'' as used in this section, means the first point reached outside this state by a 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.

''First out-of-state destination,'' as used in this section, 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.

(e) ''Common carrier,'' as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(f) ''Foreign air carrier,'' as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(g) ''Immediate shipment,'' as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into a ship for transportation outside this state and not for storage by the purchaser or any third party.

(h) Any common carrier claiming exemption under subdivision (c) who is not required to hold a valid seller's permit shall be required to register with the board and obtain a fuel exemption registration number and shall be required to file returns as the board may prescribe if either the board notifies the carrier that returns must be filed or the carrier is liable for taxes based upon consumption of fuel erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the board 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. If the carrier fails to provide these records upon request, the board may revoke the carrier's fuel exemption registration number.

(j) The board may require any carrier claiming an exemption under this section and required to obtain a fuel exemption registration number to place with it that security as the board may determine pursuant to Section 6701.

(k) Pursuant to subdivisions (a), (b), and (c), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to the first out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to the first out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(*l*) On December 31, 2005, the Legislative Analyst's Office (LAO) shall submit a report to the Governor and the Legislature that evaluates the economic impact of the partial sales tax exemption regarding bunker fuel.

(m) This section shall remain in effect only until January 1, 2014, and as of that date is repealed.

History.—Added by Stats. 1943, p. 2457, operative July 1, 1943. Stats. 1963, p. 2272, in effect September 20, 1963, added the last sentence of the first paragraph. Stats. 1979, Ch. 400, effective January 1, 1980, added (b), (c), and (d). Stats. 1985, Ch. 1028, effective September 27, 1985, substituted "the sale" for "sales" after "receipts from", added "other . . . products" after "personal property", added "facilities" after "carrier's", and deleted last sentence in subdivision (a), added "facilities" after "carriers", and substituted "The" for "Such" before "certificates shall" in subdivision (b), deleted subdivision (c) and added new subdivision (c), added (d) and (e), renumbered former subdivision (d) to become subdivision (f); added subdivision (g), (h), (i), (j), and (k). Stats. 1989, Chapter 230, in effect January 1, 1990, deleted "timely" before "furnish" in second sentence of subdivision (b), substituted third sentence for "Acceptance in good faith of such a certificate shall relieve the seller from liability for the sales tax" in subdivision (b). Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, substituted "required" for "described" after "manner" in the second sentence of subdivision (b); added the fourth sentence in subdivision (b); deleted former subdivision (c) which provided an exemption from sales tax the gross receipts from the sale of fuel and petroleum products to a water, air or rail common carrier; deleted former subdivision (d) which provided a definition of "first out-of-state destination"; relettered former subdivisions (e) and (f) as (c) and (d) respectively; deleted former subdivisions (g), (h), (i) and (j) which provided a definition for "immediate shipment" and specified the requirements for common carriers claiming an exemption for exempt sales of fuel and petroleum products; relettered former subdivision (k) as (e); substituted "and" for a comma after "subdivisions (a)", deleted "and (c)" after "b", substituted "an" for "the first" after "carrier to", and substituted "an" for "the first" after "property to" in subdivision (e). Stats. 1992, Ch. 905 (AB 2396), in effect September 25, 1992, operative January 1, 1993, added subdivisions (c), (d), (g), (h), (i), and (j); relettered former subdivisions (c), (d), and (e) as subdivisions (e), (f), and (k), respectively; substituted "(a), (b), and (c)," for "(a) and (b)," after "Pursuant to subdivisions", and "the first" for "an" after "by the carrier to" and "transporting the property to", in subdivision (k) and added subdivision (*l*). Stats. 1997, Ch. 615 (AB 366), in effect October 3, 1997, substituted "2003" for "1998" in subdivision (*l*). Stats. 2003, Ch. 712 (SB 808), in effect October 8, 2003, but operative April 1, 2004, substituted "40102" for "1301" after "defined in Section" in subdivision (f); added new subdivision "*l*" and relettered former subdivision (*l*) as (m), and substituted "2014" for "2003" after "until January 1," therein.

Note.—Section 3 of Ch. 615 (AB 366), of Stats. 1997, requires the Legislative Analyst's Office to report to the Legislature on or before January 1, 2001, on the effect on bunker fuel sales of the sales tax exemption for the sale of fuel and petroleum products to a water common carrier provided by Section 6385 of the Revenue and Taxation Code for the period beginning on and after January 1, 1993, as compared to the period beginning on July 1, 1991, and ending January 1, 1993, when no exemption was allowed for those sales.

Note.—Section 14 of Ch. 88, Stats. 1991, amended Section 20 of Ch. 85, Stats. 1991, to change the effective date for the amendments made to Section 6385 by Chapter 85 from July 1, 1991 to July 15, 1991.

Freight charges collect.—The statement "freight charges collect" on the bill of lading was sufficient to comply with the exemption even though there were no actual freight charges except as a matter of form. *H-R Truck & Equipment Co.* v. *State Board of Equalization* (1958) 166 Cal.App.2d 378.

Technical compliance insufficient.—The purchasing carrier, in unloading freight car wheels at its shops in California, mounting the wheels onto axles owned by it and reloading the wheel-axle units for shipment to the out-of-state destinations named in the bills of lading, had exercised sufficient dominion over the wheels in California so as to transform its capacity from common carrier to that of buyer. *Southern Pacific Equipment Co.* v. *State Board of Equalization* (1971) 16 Cal.App.3d 302.

Place of delivery determines exemption.—Bill of lading must show seller as consignor and show consignment to interstate common carrier at out-of-state destination; exemption does not apply when interstate common carrier takes possession of goods in state as purchaser, not as carrier. *Satco, Inc.* v. *State Board of Equalization* (1983) 144 Cal.App.3d 12.

Offset of fuel tax overpayment.—Validity of Regulation 1621 upheld against challenge by taxpayer, a common carrier whose claim for refund of a sales tax overpayment on aircraft fuel was denied because the offset against other underpayments was not claimed in a timely manner, as required by the regulation. Taxpayer, as real party in interest, had standing to bring the action for refund, even though the tax was paid by the vendors of the fuel. *Delta Air Lines, Inc.* v. *State Board of Equalization* (1989) 214 Cal.App.3d 518.

Tax liablitity based on actual usage, not estimated.—Although estimated bills of lading may be issued initially, corrected bills must be issued. Since taxpayer failed to do so, it was proper for the Board to assess tax for underpayments of tax based on actual fuel used without offsetting overpayments of tax. *Lykes Bros. Steamship Co., Inc.* v. *State Board of Equalization* (1994) 23 Cal.App.4th 1421.

Text of section operative January 1, 2014

6385. **Common carriers.** (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(f) This section shall become operative on January 1, 2014.

History.—Added by Stats. 2003, Ch. 712 (SB 808), in effect October 9, 2003, but operative January 1, 2014.

6386. **Out-of-state contractors.** There are exempted from the computation of the amount of the sales tax the gross receipts from the sale in this state of tangible personal property to a holder of a valid seller's permit issued under Section 6067 when the property is used by the purchaser outside of this state in his performance of a contract to improve real property and, as a result of such use, is incorporated into and becomes a part of real property located outside of this state. This exemption shall apply only if the purchaser certifies in writing to the seller, in such form as the board may prescribe, that the property will be used in a manner and for a purpose herein specified.

History.—Added by Stats. 1955, p. 588, in effect April 13, 1955. Stats. 1970, p. 1058, in effect November 23, 1970, substituted "Section 6067" for "Section 6068".

6387. **Delivery to export packers.** There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal property purchased for use solely outside this State and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof.

History.—Added by Stats. 1955, p. 2746, in effect September 7, 1955.

Sales for export.—A sale of aircraft parts to a Mexican airline to service its planes is not subject to tax where the parts are shipped by a common carrier to a location on the U.S. Mexican border where an independent freight forwarder, with the assistance of the airline's employees, processed the property through U.S. and Mexican Customs and the parts were moved on a continuous and unbroken journey to the foreign destination other than for unavoidable delays that were incidental to their journey. *McDonnel Douglas Corporation* v. *State Board of Equalization* (1992) 10 Cal.App.4th 1413.

6388. **New or remanufactured vehicles purchased from out-of-state dealer.** Where a new or remanufactured truck, truck tractor, semitrailer, or trailer, any of which has an unladen weight of 6,000 pounds or more, or a new or remanufactured trailer coach or a new or remanufactured auxiliary dolly, is purchased from a dealer located outside this State for use without this state and is delivered by the manufacturer or remanufacturer to the purchaser within this state, and the purchaser drives or moves the vehicle from the manufacturer's or remanufacturer's place of business in this state to any point outside this state within 30 days from and after the date of the delivery, there are exempted from the taxes imposed by this part the gross receipts from the

sale of and the storage, use or other consumption of the vehicle within the state, if the purchaser furnishes the following to the manufacturer or remanufacturer:

(a) Written evidence of an out-of-state registration for the vehicle.

(b) The purchaser's affidavit attesting that he or she is not a resident of California and that he or she purchased the vehicle from a dealer at a specified location without the state for use outside this state.

(c) The purchaser's affidavit that the vehicle has been moved or driven to a point outside this state within 30 days of the date of the delivery of the vehicle to him or her.

History.—Added by Stats. 1959, p. 4191, in effect September 18, 1959. Stats. 1963, p. 4016, in effect September 20, 1963, added "new truck, new truck tractor, new semi-trailer, or new trailer, any of which has an unladen weight of 6,000 pounds or more," and "new auxiliary dolly". Stats. 1983, Ch. 1286, in effect January 1, 1984, included "remanufacturers" within the scope of the exemption and made numerous grammatical corrections throughout.

Note.—Stats. 1970, p. 2871, operative July 1, 1971, to December 31, 1974, provides in part, Notwithstanding Section 6388 of the Revenue and Taxation Code, where a new truck trailer with an unladen weight of 6,000 pounds or more is purchased for use without this state and is delivered by the manufacturer to the purchaser within this state, and such purchaser drives or moves such vehicle from the manufacturer's place of business in this state to any point outside this state within 30 days from and after the date of delivery, there are exempted from the taxes imposed by Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code the gross receipts from the sale of and the storage, use or other consumption of such vehicle within the state, provided that the purchaser furnishes the following to the manufacturer:

(a) Written evidence of an out-of-state license and registration for such vehicle.

(b) The purchaser's affidavit attesting that he purchased such vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate commerce.

(c) The purchaser's affidavit that such vehicle has been moved or driven to a point outside this state within 30 days of the date of the delivery of the vehicle to him.

6388.2. **New camp trailers or housecars purchased from out-of-state dealer.** [Repealed by Stats. 1974, Ch. 1010, effective June 30, 1978.]

6388.3. **Purchaser affidavit forms.** The State Board of Equalization shall prepare and distribute a standard form or forms for the purchaser affidavit required by Sections 6388 and 6388.5.

History.—Added by Stats. 1985, Ch. 1152, effective January 1, 1986.

6388.5. **New or remanufactured trailers purchased for out-of-state or interstate commerce use.** Notwithstanding Section 6388, whenever a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more that has been manufactured or remanufactured outside this state is purchased for use without this state and is delivered by the manufacturer, remanufacturer or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 30 days from and after the date of delivery, or whenever a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more that has been manufactured or remanufactured in this state is purchased for use without this state and is delivered by the manufacturer, remanufacturer, or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 75 days from and after the date of delivery, there are exempted from the taxes imposed by Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251) the gross

receipts from the sale of and the storage, use or other consumption of the vehicle within the state, if the purchaser or the purchaser's agent furnishes the following to the manufacturer, remanufacturer, or dealer:

(a) (1) Written evidence of an out-of-state license and registration for the vehicle.

(2) In cases where the vehicle is subject to the permanent trailer identification plate program under Section 5014.1 of the Vehicle Code and is used exclusively in interstate or foreign commerce, or both, written evidence of the purchaser's or lessee's United States Department of Transportation number or Single State Registration System filing may be substituted for the written evidence described in paragraph (1).

(b) The purchaser's affidavit attesting that he or she purchased the vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate or foreign commerce, or both.

(c) The purchaser's affidavit that the vehicle has been moved or driven to a point outside this state within the appropriate period of either 30 days or 75 days of the date of the delivery of the vehicle to him or her.

History.—Added by Stats. 1974, Ch. 1406, effective January 1, 1975. Stats. 1982, Ch. 1223, in effect September 22, 1982, added "which has been manufactured outside this state" before "is purchased," "or dealer" after the first "manufacturer," "or whenever . . . delivery" after the first "delivery," "and" before "Part 1.6," deleted "and Part 17 . . . 37001" after "Section 7251)," and added "or dealer" after the third "manufacturer" in the first sentence; added "or she" after "he" and "or foreign" after "interstate" in subdivision (b); added "the appropriate period of either" after "within", "or 75 days" after "30 days," and "or her" after "him" in subdivision (c); and substituted "the" for "such" before "vehicle" in five places throughout the section. Stats. 1983, Ch. 1286, in effect January 1, 1984, included "remanufacturers" within the scope of the exemption and substituted "if" for "provided that" before the fifth "the purchaser" in the first sentence. Stats. 2001, Ch. 826 (AB 1472), in effect January 1, 2002, substituted "that" for "which" after "pounds or more" twice, and added "or the purchaser's agent" after "if the purchaser" in the first paragraph; added paragraph designation (1) before "Written evidence", and added paragraph (2) in subdivision (a).

Note.—This section was preceded by an uncodified exemption enacted by Stats. 1970, Ch. 1456.

6390. **Rentals included in use tax or outside state.** There are exempted from the computation of the amount of the sales tax the rentals payable under a lease of tangible personal property (a) when such rentals are required to be included in the measure of the use tax or (b) when such property is situated outside this state.

History.—Added by Stats. 1965, p. 5451, operative August 1, 1965.

6391. **Prior leases.** There are exempted from the computation of the amount of the sales tax the rentals payable under a lease of tangible personal property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to August 1, 1965, and the lessor did not elect under Sections 6094 or 6244 to pay use tax measured by the amount of the rental charge. The lessor shall be deemed not to be obligated for any period of time for which he has the unconditional right to terminate the lease upon notice, whether or not the right is exercised.

History.—Added by Stats. 1965, p. 5451, operative August 1, 1965. Stats. 1967, p. 2257, in effect November 8, 1967, deleted "unconditionally" preceding "obligated" and added the second sentence.

6395. **Cargo containers.** [Repealed by Stats. 1979, Ch. 1150, operative July 1, 1980.]

6396. **Interstate shipments.** There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property which, 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: (a) facilities operated by the retailer, or (b) 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.

For purposes of this section, the term ''carrier'' shall mean a person or firm engaged in the business of tranporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term ''forwarding agent'' shall mean a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

History.—Added by Stats. 1970, p. 2872, in effect September 19, 1970.

Actual out-of-state delivery required.—Exemption does not apply where seller delivered vehicles to carrier and obtained buyers' certificates of out-of-state delivery, but delivery actually occurred in state. *Engs Motor Truck Co.* v. *State Board of Equalization* (1987) 189 Cal.App.3d 1458.

Forwarding agent's in-state deliveries taxable.—When the deliveries of mobilehomes were made to purchasers in California, the transactions were subject to sales tax, even though the contract of sale required shipment out of state, the seller first delivered the mobilehomes to a forwarding agent, and the purchasers removed the mobilehomes out of state. *Pope* v. *State Board of Equalization* (1988) 202 Cal.App.3d 73.

Completion of manufacture and sale by second retailer.—Under particular facts of this case, the change in contractors prior to completion of the full contract did not constitute delivery in California where the second contractor delivered the property out of state by common carrier as the original contract required. *Chevron U.S.A. Inc.* v. *State Board of Equalization* (1997) 53 Cal.App.4th 289.

Article 3. Exemptions from Use Tax

§ 6401. Sales tax applicable.
§ 6402. Property purchased from United States.
§ 6403. Property donated by retailers.
§ 6404. Property loaned to educational institutions.
§ 6405. Property purchased in a foreign country.
§ 6406. Credit for tax paid to another jurisdiction.
§ 6407. Prior leases.
§ 6408. Medical health information.
§ 6409. Health and safety materials.
§ 6410. Trailers and semitrailers.
§ 6411. Railroad equipment parts purchased outside this state.

6401. **Sales tax applicable.** The storage, use, or other consumption in this state of property, the gross receipts from the sale of which the purchaser establishes to the satisfaction of the board were included in the measure of the sales tax, is exempted from the use tax; provided, however, that this exemption does not extend to the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease.

History.—Stats. 1965, p. 5451, operative August 1, 1965, added all after the semicolon. Stats. 1978, Ch. 1211, effective January 1, 1979, deleted "are required to be" following "sale of which" and substituted "the purchaser establishes to the satisfaction of the board were".

6402. **Property purchased from United States.** The storage, use or other consumption in this State of property purchased from any unincorporated agency or instrumentality of the United States, except (a) any property reported to the Surplus Property Board of the United States, or to any agency succeeding to the functions of that board, as surplus property by

any owning agency and (b) any property included in any contractor inventory, is exempted from the use tax.

"Surplus property," "owning agency," and "contractor inventory" as used in this section have the meanings ascribed to them in that act of the Congress of the United States known as the "Surplus Property Act of 1944."

History.—Added by Stats. 1945, p. 1725, operative July 1, 1945. Stats. 1947, p. 2029, operative July 1, 1947, added "or to any agency succeeding to the functions of that board," to the first paragraph.

6403. **Property donated by retailers.** The storage, use, or other consumption in this state of property donated by any seller to any organization described in Section 170(b)(1)(A) of the Internal Revenue Code and located in California, is exempt from the use tax. A museum shall not be a qualifying donee organization under this section unless the museum is a nonprofit museum described in subdivision (c) of Section 6366.4, and uses the donated property exclusively for display purposes within a museum.

History.—Added by Stats. 1988, Ch. 905, in effect September 14, 1988, operative January 1, 1989. Stats 1989, Ch. 1387, in effect October 2, 1989, substituted "seller" for "retailer" in first sentence and added second sentence.

6404. **Property loaned to educational institutions.** (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 University of California or to the California State University for the exclusive use in an approved driver education teacher preparation certification program conducted by the university or the state 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.

(e) If the retailer makes any other use of the property except retention, demonstration, or display while holding it for sale in the regular course of business, the use is taxable to the retailer under Chapter 3 (commencing with Section 6201) as of the time the property is first so used, and the sales price of the property to the retailer is the measure of the tax.

History.—Added by Stats. 1956, p. 141, in effect July 3, 1956. Stats. 1967, p. 1906, in effect November 8, 1967, reworded the section to make applicable to all tangible personal property loaned to a school district for an educational program. Stats. 1970, Ch. 1546, in effect September 2, 1970, divided former section into paragraphs (a) and (e) and added new paragraphs (b), (c) and (d). Identical amendments were made by Stats. 1970, p. 3141, in effect September 20, 1970. Stats. 1983, Ch. 143, in effect January 1, 1984, substituted "University of California or to the California State University" for "California State Colleges or the University of California" after "to the" and "university or the state university" for "state college or university" in subdivision (b), and deleted "of this part" after "Section 6201" in subdivision (e).

6405. **Property purchased in a foreign country.** Notwithstanding Section 6246, the storage, use, or other consumption in this state of the first four hundred dollars ($400) of tangible personal property purchased in a foreign country by an individual from a retailer and personally hand carried

into this state from the foreign country within any 30-day period is exempt from the use tax. This section shall not apply to property sent or shipped to this state.

History.—Added by Stats. 1990, Ch. 1533, in effect September 30, 1990.

6406. **Credit for tax paid to another jurisdiction.** A credit shall be allowed against, but shall not exceed, the taxes imposed on any person by Chapter 3 (commencing with Section 6201) of this part, by any ordinance enacted pursuant to Part 1.5 (commencing with Section 7200), by any ordinance enacted pursuant to Part 1.6 (commencing with Section 7251), and by any ordinance enacted pursuant to Article 2 (commencing with Section 37021) of Part 17 of this division by reason of the storage, use, or other consumption of tangible personal property in this state to the extent that the person 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 the storage, use, or other consumption of that property in this state. The credit shall be apportioned to the taxes against which it is allowed in proportion to the amounts of those taxes.

A credit, otherwise permitted by the foregoing provisions of this section, shall not be allowed against taxes which are measured by periodic payments made under a lease, to the extent that the taxes imposed by any other state, political subdivision thereof, or the District of Columbia were also measured by periodic payments made under a lease for a period prior to the storage, use, or other consumption of the property in this state.

History.—Added by Stats. 1966, p. 176, in effect July 1, 1967. Stats. 1967, p. 2062, in effect November 8, 1967, added the second paragraph. Stats. 1968, p. 1796, in effect November 13, 1968, added the provision relating to "Article 2 (commencing with Section 37021) of Part 17." Stats. 1969, p. 117, in effect November 10, 1969, added the provision relating to "Part 1.6 (commencing with Section 7251)".

6407. **Prior leases.** The possession of, or the exercise of any right or power over, tangible personal property under a lease of such property is exempt from the use tax for any period of time for which the lessee is obligated to lease the property for an amount fixed by the lease prior to August 1, 1965. The lessee shall be deemed not to be obligated for any period of time for which he has the unconditional right to terminate the lease upon notice, whether or not the right is exercised.

History.—Added by Stats. 1967, p. 2257, in effect November 8, 1967.

6408. **Medical health information.** 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 (known as the ''welfare exemption''), which is engaged in the dissemination of medical health information, is exempted from the use tax; provided, however, that such purchases are made from a national office, or another branch of that national office, of the same organization.

History.—Added by Stats. 1978, Ch. 26, effective March 3, 1978.

6409. **Health and safety materials.** 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 (known as the ''welfare exemption''), which is engaged in the dissemination of health and safety information, is exempted from the use tax; provided, however, that such purchases are made from a national office or another branch or chapter of such national office of the same organization.

History.—Added by Stats. 1978, Ch. 26, effective March 3, 1978.

6410. **Trailers and semitrailers.** The storage, use, or other consumption in this state of new or used trailers or semitrailers which involves the moving or operation laden of those trailers or semitrailers in accordance with a one-trip permit issued pursuant to Section 4003.5 of the Vehicle Code is exempted from the use tax.

History.—Added by Stats. 1986, Ch. 715, effective September 15, 1986.

6411. **Railroad equipment parts purchased outside this state.** (a) The storage, use, or other consumption in this state of tangible personal property becoming a component part of any railroad equipment in the course of repairing, cleaning, altering, or improving that railroad equipment outside of this state, and charges made for labor and services rendered with respect to that repairing, cleaning, altering, or improving, are exempt from the use tax.

(b) For purposes of this section, ''railroad equipment'' includes locomotives, freight and passenger cars, maintenance of way equipment, and any other equipment riding on flanged wheels and owned or used by a common carrier engaged in interstate or foreign commerce, or by any person for the purpose of leasing that equipment to a common carrier engaged in interstate or foreign commerce.

History.—Added by Stats. 1996, Ch. 550, in effect September 16, 1996.

Article 4. Exemption Certificates

§ 6421. Liability of purchaser.
§ 6422.1. Vehicles; exemption certificates.
§ 6423. Exemption certificate; federal excise tax on diesel fuel.

6421. **Liability of purchaser.** (a) 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 exempted by this chapter from the computation of the amount of 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 tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the gross receipts from such retail sale. The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.

(b) For purposes of this section, ''use'' is the same as defined in Section 6009 without the exclusion defined in Section 6009.1.

History.—Added by Stats. 1953, p. 2722, in effect September 9, 1953. Stats. 1977, Ch. 607, lettered existing first paragraph as (a), added "The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith." and added new paragraph (b). Stats. 1989, Ch. 654, in effect January 1, 1990, deleted "in the first paragraph of" before "Section 6009.1" in subdivision (b).

Buyers' certificates of out-of-state delivery.—Where buyers certified trucks they purchased were delivered out of state, but trucks were actually delivered in state, sales tax liability was not shifted to the buyers under Section 6421 because the buyers only certified that they took delivery out of state, not that they used the property for an exempt purpose following delivery. *Engs Motor Truck Co.* v. *State Board of Equalization* (1987) 189 Cal.App.3d 1458.

6422.1. **Vehicles; exemption certificates.** The board may provide for exemption certificates and other tax clearance certificates to be issued by it or by retailers selling vehicles as defined in Article 1 (commencing with Section 6271) of Chapter 3.5, commercial coaches as defined in Section 18001.8 of the Health and Safety Code or mobilehomes as defined by Section 18008 of the Health and Safety Code. The certificates shall be used to allow a completion of registration of a vehicle by the Department of Motor Vehicles or a commercial coach or mobilehome by the Department of Housing and Community Development. The certificates may indicate that the board finds that no use tax is due or is likely to become due with respect to the storage, use, or other consumption of the vehicle, commercial coach, or mobilehome, or that the tax has been paid or is to be paid in a manner not requiring the withholding of a registration or transfer of registration. The certificates shall be in such form as the board may prescribe and shall be executed, issued and accepted for clearance of registration on such conditions as the board may prescribe. The issuance, alteration, forgery, or use of any such certificate in a manner contrary to the requirements of the board constitutes a misdemeanor.

History.—Added by Stats. 1965, p. 5452, operative August 1, 1965. Stats. 1981, Ch. 975, in effect January 1, 1982, added "or mobilehomes . . . Safety Code" after "part" in the first sentence, "or a mobilehome . . . Development" after "Vehicles" in the second sentence, and "or mobilehome" after "vehicle" in the third sentence. Stats. 1982, Ch. 1589, in effect January 1, 1983, added, "commercial coaches . . . Code" before "or mobilehomes" in the first sentence, "commercial coach or" before "mobilehome" in the second sentence, and "commercial coach" before "or mobilehome" in the third sentence. Stats. 1984, Ch. 144, effective January 1, 1985, added "(commencing with Section 6271)" after "Article 1," added "of this part" after "Chapter 3.5."

6423. **Exemption certificate; Federal excise tax on diesel fuel.** (a) A purchaser certifying under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 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 shall do so in a form prescribed by the board.

(b) If the purchaser provides the certificate referred to in subdivision (a) and uses the fuel in a manner that does not entitle the purchaser to a direct refund or credit against his or her income tax for the federal excise tax paid or if the purchaser does not receive such a refund or credit, the purchaser shall be liable for sales or use 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. The certificate shall relieve the seller from liability for any sales or use tax due only if it is taken in good faith.

(c) Any person, including any officer or employee of a corporation, who certifies under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of

Section 6012 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 on fuel when that person knows at the time of purchase that he or she shall not be entitled to the refund or credit is liable to the state for the amount of sales or use tax that would be due if he or she had not so certified. In addition to the tax, interest, and other penalties, the person shall be liable to the state 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.

(d) Any person, including any officer or employee of a corporation, who, for the purpose of evading payment to the seller of a portion of the tax applicable to the transaction, certifies under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 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 on fuel when that person knows at the time of purchase that he or she is not entitled to such a refund or credit is guilty of a misdemeanor punishable as provided in Section 7153.

History.—Added by Stats. 1988, Ch. 500, in effect August 22, 1988, operative January 1, 1989. Stats. 1989, Ch. 654, in effect January 1, 1990, deleted "diesel" before "fuel" in subdivisions (b), (c) and (d).

Chapter 5. Determinations

Article 1. Returns and Payments. §§ 6451–6459.
1.1. Prepayment. §§ 6470–6479.
1.2. Payment by Electronic Funds Transfer. §§ 6479.3–6479.5.
1.5. Prepayment of Sales Tax on Motor Vehicle Fuel Distributions. §§ 6480–6480.8.
1.6. Prepayment of Sales Tax on Fuel. §§ 6480.10–6480.23. [Repealed.]
2. Deficiency Determinations. §§ 6481–6488.
3. Determinations if No Return Made. §§ 6511–6515.
4. Jeopardy Determinations. §§ 6536–6539.
5. Redeterminations. §§ 6561–6566.
6. Interest and Penalties. §§ 6591–6596.

Article 1. Returns and Payments

§ 6451. Due date.
§ 6451.5. Qualified use tax due date.
§ 6452. Return.
§ 6452.1. Election to report use tax on California income tax return.
§ 6453. Contents of return.
§ 6454. Filing return.
§ 6455. Return periods.
§ 6456. Relief of spouse.
§ 6457. Lessor and lessee.
§ 6459. Extension of time.

6451. **Due date.** The taxes imposed by this part are due and payable to the board quarterly on or before the last day of the month next succeeding each quarterly period.

History.—Stats. 1947, p. 1556, operative July 1, 1947, substituted "last " for "fifteenth."

Payment of tax by administrator.—An administrator operating the business of a deceased retailer is under a duty to pay the sales tax promptly. The probate court should, accordingly, direct the immediate payment of all sales taxes which are due. *Estate of Morris* (1940) 37 Cal.App.2d 155. See also Section 6756, which specifically provides for priority under certain circumstances.

6451.5. **Qualified use tax due date.** (a) Notwithstanding Section 6451, the use taxes imposed by this part with respect to the storage, use, or other consumption in this state of tangible personal property are due and payable by the purchaser on or before the 15th day of the fourth month following the taxable year in which the storage, use, or other consumption of the property first becomes taxable.

(b) For purposes of this section, "taxable year" means the calendar year or the fiscal year upon the basis of which the taxable income is computed pursuant to the Personal Income Tax Law (Part 10 (commencing with Section 17001)) or the Corporation Tax Law (Part 11 (commencing with Section 23001)). If no fiscal year has been established, "taxable year" means the calendar year.

(c) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the board pursuant to this part, or to any person with purchases subject to use tax that exceed ten thousand dollars ($10,000) during any calendar quarter of the taxable year for which the return is filed.

(d) This section shall not apply to use tax due from the sale of, or the storage, use, or other consumption in this state of the following:

(1) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code.

(2) Use tax that applies to a vessel or aircraft, as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

(3) Use tax that applies to a vehicle required to be registered under the Vehicle Code, a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(4) Use tax imposed on a lessee of tangible personal property.

History.—Added by Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004.

6452. **Return.** (a) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) For purposes of the sales tax, a return shall be filed by every seller and also by every person who is liable for the sales tax under this part. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax.

(c) Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor punishable as provided in Section 7153.

History.—Stats. 1947, p. 1557, operative July 1, 1947, substituted "last" for "fifteenth" in first paragraph. Stats. 1963, p. 1491, in effect September 20, 1963, substituted "engaged in business" for "maintaining a place of business"; changed "the State" to "this State." Stats. 1978, Ch. 827, effective January 1, 1979, added "and also by every person who is liable for the sales tax under this part" following "seller" in the first sentence of the second paragraph. Stats. 1986, Ch. 1361, effective January 1, 1987, added (c), providing a penalty for failing or refusing to file a return. Stats. 1993, Ch. 1109, in effect January 1, 1994, substituted "the" for "such" before "form" in subdivision (a), added "(1)" following "(b)", added "or her" following "his" in the second sentence of subdivision (b), and added "If a return . . . that information" in paragraph (2) to subdivision (b). Stats. 1994, Ch. 903, in effect January 1, 1995, added "or federal . . . number" after "security number" in the fourth sentence of paragraph (1) of subdivision (b). Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000, substituted "prescribed by . . . media" for "the board may prescribe" after "the form as" in subdivision (a), and relettered former subparagraphs (A) and (B) as "(a)" and "(b)" in paragraph (2) of subdivision (b). Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added second sentence in subdivision (a); deleted former subparagraph designation (1) in subdivision (b), and deleted former second, third and fourth sentences therein, which stated, "Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath. If a return is prepared by a paid preparer, that preparer shall enter his or her name, social security number or federal employee identification number, and business name and address in the space provided on the return. Any paid preparer who fails to provide the information specified by the preceding sentence shall be subject to a fifty dollar ($50) fine for each failure to provide that information."; and deleted former subparagraph (2) of subdivision (b), which stated, "(2) For purposes of paragraph (1), "paid preparer" means any person who for compensation prepares, or employs one or more persons to prepare, any sales and use tax return required to be filed under this part. For purposes of this paragraph, the preparation of a substantial portion of any sales and use tax return required to be filed under this part shall be considered the equivalent of preparing that return in its entirety. A person is not a "paid preparer" as defined in this paragraph solely by reason of doing any of the following: (a) Furnishing typing, reproduction, or other mechanical assistance. (b) Preparing in a fiduciary capacity a return for any other person."

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

6452.1. **Election to report use tax on California income tax return.** (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other consumption of which is subject to qualified use tax, as defined in subdivision (b), that is otherwise required to report and remit that tax pursuant to this part, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) In the case of a married individual filing a separate California personal income tax return, an election may be made to report either one-half of the qualified use tax or the entire qualified use tax on his or her separate California personal income tax return.

(B) If an individual elects to report one-half of the qualified use tax, that election will not be binding with respect to the remaining one-half of the qualified use tax owed by that individual and that individual's spouse.

(c) An election to report qualified use tax on an acceptable tax return shall be irrevocable. An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) "Acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(2) (A) Except as provided in subparagraph (B), "qualified use tax" means the use tax imposed under this part, Section 35 of Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) "Qualified use tax" does not include:

(i) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax that applies to a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lessee of tangible personal property.

(e) If a person elects to report qualified use tax on an acceptable tax return, that person shall comply with all of the following:

(1) The qualified use tax shall be reported on and remitted with an acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted with an acceptable tax return in accordance with the provisions of this section.

(g) Notwithstanding a person's election to remit and to report qualified use tax on an acceptable tax return, the State Board of Equalization is not

precluded from making any determinations for understatements of qualified use tax against that person in accordance with Part 5 (commencing with Section 6451).

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18041).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, and as of that date becomes inoperative, unless a later enacted statute extends the operation of this section.

(3) Notwithstanding this section becoming inoperative as described in paragraph (2), any provisions in this section or Section 18510 relating to collection activities attributable to qualified use taxes reported prior to the inoperative date of this section shall continue in the same manner as if this section were still operative.

History.—Added by Stats. 2003, Ch. 718 (SB 1009), in effect January 1, 2004.

6453. **Contents of return.** For purposes of the sales tax, the return shall show the gross receipts of the seller during the preceding reporting period and, in the case of a person who is liable for the sales tax and is not a seller, the gross receipts of such person for the period in which the liability was incurred. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him or her, the storage, use, or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him or her, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period.

The return shall also show the amount of the taxes for the period covered by the return and any other information which the board deems necessary for the proper administration of this part.

History.—Stats. 1978, Ch. 827, effective January 1, 1979, added the phrase commencing with "and in the case of . . ." to the first sentence. Stats. 1980, Ch. 1326, effective September 30, 1980, added "the information required by Section 25377 of the Public Resources Code, if required by the board,". Stats. 1983, Ch. 337, in effect January 1, 1984, added "or her" after "him" in both instances of occurrence in the second sentence of the first paragraph, deleted "the information required by Section 25377 of the Public Resource Code, if required by the board" after "return," and substituted "any" for "such" before "other" and "which" for "as" after "information" in the second paragraph.

6454. **Filing return.** Except as provided in Section 6479.3 and 6479.31, a person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the board.

History.—Stats. 1991, Ch. 473, in effect January 1, 1992, substituted "Except as provided in Section 6479.3, a" for "The" before "person". Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000, added "and 6479.31" after "Section 6479.3".

6455. **Return periods.** (a) The board if it deems it necessary in order to insure payment to or facilitate the collection by the State of the amount of taxes, may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters depending upon the principal place of business of the seller, retailer or purchaser as the case may be, or for other than quarterly periods.

(b) On or before the last day of the month following each designated period, a return for the preceding designated period shall be filed with the board in such form as the board may prescribe.

(c) Any retailer or other person who fails or refuses to furnish any return required by law to be made, or who fails or refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor punishable as provided in Section 7153.

History.—Stats. 1986, Ch. 1361, effective January 1, 1987, added (b) and (c), to provide a designated period for filing a return, and penalties for failing or refusing to file a return.

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

6456. **Relief of spouse.** (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), ''reason to know'' means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, ''attributable to one spouse'' may be determined by whether a spouse rendered substantial service as a retailer of taxable items to which the understatement is attributable. If neither spouse rendered substantial services as a retailer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

History.—Added by Stats. 1993, Ch. 181, in effect January 1, 1994. Stats. 1996, Ch. 1087, in effect January 1, 1997, deleted former paragraph (1) of subdivision (a) which stated, ''On the application for a seller's permit described in Section 6066, both spouses names appear as applicants,'' renumbered former paragraphs (2), (3), and (4) of subdivision (a) as (1), (2), and (3), respectively, deleted ''or'' after ''this part,'' and added ''or any . . . one spouse,'' after '';spouse'' in new paragraph (1); added ''or the nonpayment'' after ''understatement'' in paragraph (4) and added ''or nonpayment'' after ''understatement'' twice in paragraph (4) of subdivision (a) and in subdivisions (b) and (d); added ''is more than . . . or that'' after ''quarter that'', deleted ''a statute of limitations,'' after ''closed by'', and substituted ''whichever is later'' for ''or otherwise'' after ''res judicata'','' in subdivision (c); and substituted ''(2)'' for ''(3)'' after ''paragraph'' in subdivision (d). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added ''a'' after ''understated by'' in paragraph (1) of subdivision (a), and added subdivision (f).

6457. **Lessor and lessee.** Section 6453 shall not be applicable with respect to a lease of tangible personal property, but the lessor shall report the rentals paid by the lessee during the preceding reporting period; a lessee shall report the rentals payable in the preceding reporting period upon which tax has not been paid to his lessor required to collect the tax. The return shall also show the amount of the taxes for the period covered by the return and such other information as the board deems necessary for the proper administration of this part.

History.—Stats. 1965, p. 5453, operative August 1, 1965, amended prior Section 6457 which required reporting of gross receipts from rentals and leases of tangible personal property in accordance with such rules and regulations as the board may prescribe.

6459. **Extension of time.** (a) The board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at

any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment.

(b) The board may grant an extension for more than one month if both of the following conditions occur:

(1) A budget for the state has not been adopted by July 1.

(2) The person requesting the extension is a creditor of the state who has not been paid because of the state's failure to timely adopt a budget.

Any extension granted under this subdivision shall expire no later than the last day of the month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later.

Any person to whom an extension has been granted, under this subdivision shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment. However, no interest shall be due on that portion of the payment equivalent to the amount due to the person from the state on the due date of the payment.

History.—Stats. 1945, p. 1001, operative July 1, 1945, added second sentence to first paragraph, and changed rate of interest from 6 percent per annum to one-half of 1 percent per month, or fraction thereof. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate of . . . thereof" in the first sentence of the second paragraph. Stats. 1983, Ch. 10 (1X), in effect February 17, 1983, added "and by the method" after "rate" and substituted "on" for "of" before "which" in the second paragraph. Stats. 1984, Ch. 1020, operative July 1, 1985, in second paragraph added "modified" before "adjusted," deleted "annual" before "rate," substituted "per month, or fraction thereof" for "and by the method", substituted "Section 6591.5" for "Section 19269." Stats. 1993, Ch. 324, in effect January 1, 1994, added subdivision letter (a) and added subdivision (b).

Article 1.1. Prepayment *

§ 6470. Application of article.
§ 6471. Prepayment. [Repealed.]
§ 6471. Prepayment. [Repealed.]
§ 6471. Prepayment.
§ 6471.4. Prepayment exception.
§ 6471.5. Prepayment.
§ 6472. Prepayment form; when due. [Repealed.]
§ 6472. Prepayment form; when due. [Repealed.]
§ 6472. Prepayment form; when due.
§ 6472.5. Prepayment form; when due.
§ 6473. Credit for prepayment.
§ 6474. Determination of estimated measure of tax liability. [Repealed.]
§ 6474. Determination of estimated measure of tax liability.
§ 6474.5. Determination of estimated measure of tax liability.
§ 6476. Penalty for late prepayment.
§ 6477. Penalty for failure to prepay when timely quarterly return filed.
§ 6478. Negligence penalty.
§ 6479. Notification.

6470. **Application of article.** The provisions of this article do not apply to persons filing returns for other than quarterly periods. The

* Article 1.1 was added by Stats. 196, p. 185, in effect April 18, 1966, operative July 1, 1966.

provisions of this article apply to taxes imposed under ordinances adopted pursuant to Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), or Article 2 (commencing with Section 37021) of Part 17 of this division in the same manner and to the same extent that the provisons of this article apply to taxes imposed under this part.

History.—Stats. 1967, p. 3905, operative October 1, 1967, reworded section to make prepayments applicable to taxes imposed pursuant to Part 1.5. Stats. 1968, p. 1796, in effect November 13, 1968, added "or Article 2 (commencing with Section 37021) of Part 17." Stats. 1969, p. 118, in effect November 10, 1969, added "Part 1.6 (commencing with Section 7251)".

6471. **Prepayment.** [Repealed by Stats. 1982, Ch. 327, in effect June 30, 1982.]

6471. **Prepayment.** [Repealed by Stats. 1985, Ch. 106, effective January 1, 1986.]

6471. **Prepayment.** (a) Upon written notification by the board, any person whose estimated measure of tax liability under this part averages seventeen thousand dollars ($17,000) or more per month, as determined by the board, shall, without regard to the measure of tax in any one month make prepayments as prescribed in this section.

(1) In the first, third, and fourth calendar quarters, the person shall prepay not less than 90 percent of the amount of state and local tax liability for each of the first two monthly periods of each quarterly period.

(2) In the second calendar quarter, the person shall make a first prepayment of 90 percent of the amount of state and local tax liability for the first monthly period of the quarterly period and a second prepayment of either of the following:

(A) Ninety percent of the amount of state and local tax liability for the second monthly period of the quarterly period, plus 90 percent of the amount of state and local tax liability for the first 15 days of the third monthly period of the quarterly period.

(B) Ninety percent of the amount of state and local tax liability for the second monthly period of the quarterly period, plus 50 percent of 90 percent of the amount of state and local tax liability for the second monthly period of the quarterly period.

(b) Persons engaged in their present business during all of the corresponding quarterly period of the preceding year, or persons who are successors to a business that was in operation during all of that quarterly period, may satisfy the above monthly prepayment requirements for the first, third, and fourth calendar quarters by payment of an amount equal to one-third of the measure of tax liability reported on the return or returns filed for that quarterly period of the preceding year multiplied by the state and local tax rate in effect during the month for which the prepayment is made. These persons may satisfy their prepayment requirements for the second calendar quarter by making a first prepayment of an amount equal to one-third of the measure of tax liability reported, and a second prepayment of an amount equal to one-half of the measure of tax liability reported, on the return or

returns filed for that quarterly period of the preceding year multiplied by the state and local tax rate in effect during the month for which the prepayment is made.

Prepayments shall be made during the quarterly periods designated by the board and during each succeeding quarterly period until further notified in writing by the board.

History.—Added by renumbering former Section 6471.5 by Stats. 1985, Ch. 106, effective January 1, 1986. Stats. 1999, Ch. 484, (AB 384), in effect January 1, 2000, substituted "Ninety" for "Ninety-five"in subparagraphs (A) and (B), and substituted "90" for "95" in paragraph (2), and subparagraphs (A) and (B) therein in subdivision (a); and substituted "that" for "which" after "to a business" in subdivision (b). Stats. 2000, Ch. 135 (AB 2539), in effect January 1, 2001, added a comma after "month" in subdivision (a), substituted "make" for "prepay" after "the person shall", and substituted "the" for "each" after "monthly period of" in subparagraph (2) of subdivision (a); substituted "state and local" for "the" after "the amount of" in subsection (b) of subparagraph (2) of subdivision (a); substituted "These" for "The" after "payment is made." in the second paragraph of, and substituted "periods" for "period" after "succeeding quarterly" in the third paragraph of, subdivision (b).

6471.4. **Prepayment exception.** Any person required to make prepayment pursuant to Article 1.5 (commencing with Section 6480) may not be required to make additional prepayment pursuant to this article, provided that more than 75 percent of the gross receipts of that person are from the retail sale of motor vehicle fuel, diesel fuel, aircraft jet fuel, or any combination of those fuels.

History.—Added by Stats. 1986, Ch. 214, operative on July 1, 1986. Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002, substituted "may" for "shall" after "Section 6480)" and added ", diesel fuel . . . those fuels" after "motor vehicle fuel".

6471.5. **Prepayment.** [Renumbered as Section 6471 by Stats. 1985, Ch. 106, effective January 1, 1986.]

6472. **Prepayment form; when due.** [Repealed by Stats. 1982, Ch. 327, in effect June 30, 1982.]

6472. **Prepayment form; when due.** [Repealed by Stats. 1985, Ch. 106, effective January 1, 1986.]

6472. **Prepayment form; when due.** Except in the case of persons required to remit amounts due in accordance with Article 1.2 (commencing with Section 6479.3), for purposes of Section 6471, a prepayment shall be accompanied by a report of the amount of the prepayment in a form prescribed by the board and shall be made to the board as follows:

(a) In the first, third, and fourth calendar quarters, on or before the 24th day next following the end of each of the first two monthly periods of each quarterly period.

(b) In the second calendar quarter, as follows:

(1) The first prepayment on or before the 24th day next following the end of the first monthly period of the quarterly period.

(2) The second prepayment on or before the 24th day of the third monthly period of the quarterly period for the second monthly period and the first 15 days of the third monthly period of the quarterly period.

History.—Added by renumbering former Section 6472.5 by Stats. 1985, Ch. 106, effective January 1, 1986. Stats. 1987, Ch. 56, effective January 1, 1988, deleted "6471.5" in the first sentence and substituted "6471". Stats. 1991, Ch. 473, in effect January 1, 1992, added "Except in the . . . Section 6479.3)," before "for", and substituted "for" for "For" before "purposes" in the first paragraph. Stats. 1999, Ch. 484, (AB 384), in effect January 1, 2000, substituted "24th" for "23rd" after "on or before the" in paragraph (2) of subdivision (b). Stats. 2000, Ch. 135 (AB 2539), in effect January 1, 2001, added a comma after "quarter" in subdivision (b); and substituted "the" for "each" after "monthly period of" in subparagraph (1) of, and twice in subparagraph (2) of, subdivision (b).

6472.5. **Prepayment form; when due.** [Renumbered as Section 6472 by Stats. 1985, Ch. 106, effective January 1, 1986.]

6473. **Credit for prepayment.** The amount of the prepayment shall constitute a credit against the amount of the taxes due and payable for the quarterly period in which the prepayment became due.

6474. **Determination of estimated measure of tax liability.** [Repealed by Stats. 1982, Ch. 327, in effect June 30, 1982.]

6474. **Determination of estimated measure of tax liability.** [Repealed by Stats. 1985, Ch. 106, effective January 1, 1986.]

6474. **Determination of estimated measure of tax liability.** In determining whether a person's estimated measure of tax liability averages seventeen thousand dollars ($17,000) or more per month for purposes of Section 6471.5, the board may consider tax returns filed pursuant to this part as well as any information in the board's possession or which may come into its possession.

History.—Added by renumbering former Section 6474.5 by Stats. 1985, Ch. 106, effective January 1, 1986.

6474.5. **Determination of estimated measure of tax liability.** [Renumbered as Section 6474 by Stats. 1985, Ch. 106, effective January 1, 1986.]

6476. **Penalty for late prepayment.** Any person required to make a prepayment pursuant to Section 6471 who fails to make a timely prepayment but makes such prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due, shall also pay a penalty of 6 percent of the amount of prepayment.

6477. **Penalty for failure to prepay when timely quarterly return filed.** Any person required to make a prepayment pursuant to Section 6471 or Section 6471.5 who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for the quarterly period in which the prepayment became due shall pay a penalty of 6 percent of the amount equal to 90 percent of the tax liability, as prescribed in those sections, for each of the periods during that quarterly period for which a required prepayment was not made.

History.—Stats. 1983, Ch. 10 (1X), in effect February 17, 1983, operative April 1, 1983, added "or Section 6471.5" after "Section 6471," "or 95 percent" after "90 percent" and "as prescribed in those sections" after "liability". Stats. 1983, Ch. 337, in effect January 1, 1984, deleted "monthly" before "periods." Stats. 1999, Ch. 484, (AB 384), in effect January 1, 2000, deleted "or 95 percent" after "90 percent".

6478. **Negligence penalty.** (a) If a failure to make a prepayment as described in Section 6477 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 6484, 6485, 6511, 6514, and 6591.

6479. **Notification.** Notification by the board, provided for in Section 6471, may be served personally or by mail in the manner prescribed in Section 6486 for service of notice of a deficiency determination.

History.—Stats. 1974, Ch. 610, effective January 1, 1975, revised the section and substituted the reference to R. & T. C. 6486 for C. C. P. 1013.

Note.—Stats. 1974, Ch. 610, Section 16, explains the purpose of the enactment.

Article 1.2. Payment by Electronic Funds Transfer *

§ 6479.3. Electronic funds transfer payments.
§ 6479.31. Electronic filing.
§ 6479.4. Relief of penalty.
§ 6479.5. Definitions.

6479.3. **Electronic funds transfer payments.** (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board. Any person who collects use tax on a voluntary basis is not required to remit amounts due by electronic funds transfer.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month or any person who voluntarily collects use tax may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 6451) and Article 1.1 (commencing with Section 6470). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) 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.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

* Article 1.2 was added by Stats. 1991, in effect January 1, 1992.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment amount incorrectly remitted.

(f) Except as provided in Sections 6473 and 6477, any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 6591.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 6476 and 6477 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Stats. 1992, Ch. 1294, in effect January 1, 1993, deleted "For purposes of payments pursuant to Article 1 (commencing with Section 6451) and prepayments pursuant to Article 1.1 (commencing with Section 6470)," after "(a)" and added "Any person . . . funds transfer" in subdivision (a); added "or any person who voluntarily collects use tax" after "per month", added "elect to" after "may", deleted "voluntarily" before "remit", and added "The election . . . one year." after "the board" in subdivision (b); substituted "remitting" for "required to remit" after "Any person", substituted "by electronic funds transfer" for "pursuant to this section" after "taxes", substituted "due date of the remittance" for "last day of the month following each quarter" after "before the", substituted "reporting period" for "quarter" after "the preceding", added "required" after "timely file the", deleted "required by this subdivision" after "return", substituted "pay" for "be assessed" after "shall", and substituted "period" for "quarter" after "respect to the" in subdivision (d); substituted "taxes" for "amounts" after "who remits", substituted "transfer" for "transfers in accordance with board procedures" after "electronic funds", substituted "pay" for "be assessed" after "shall", added "the" after "10 percent of", and substituted "incorrectly remitted" for "due at the time of the payment" after "the taxes" in subdivision (e); deleted "for purposes of this section" after "per month", substituted "and" for ", in addition to" after "this part", added "other" after "any", deleted "which is" after "information", and deleted ", or may come into," after "information in" in subdivision (f). Stats. 1994, Ch. 903, in effect January 1, 1995, added subdivision (f) and relettered former subdivisions (f), (g), and (h) as (g), (h), and (i), respectively. Stats. 1996, Ch. 1087, in effect January 1, 1997, added new subdivision (h), relettered former subdivision (h) as (i), and deleted former subdivision (i) which stated, "This section shall become operative on January 1, 1995.". Stats. 1998, Ch. 420, in effect January 1, 1999, substituted "fails to pay . . . established" for "is required to remit taxes pursuant to this article, who fails to timely remit those taxes, and who is issued a deficiency determination", and substituted "6591.5, . . . date of payment" for "6481 with respect to those taxes, shall, in addition to any other penalties imposed, pay a 10 percent penalty of the amount of those taxes" in subdivision (f); added "and" after "this part" in subdivision (g); and added the second sentence in subdivision (h). Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000, substituted "(1) Except as provided in paragraph (2), any" for "Any" and added paragraph (2) in subdivision (e); substituted "Except as provided in Sections 6476 and 6477, any" for "Any" in subdivision (f); substituted "Except as provided in subdivision (i), the" for "The" in subdivision (h); added new subdivision (i); and relettered former subdivision (i) as (j).

6479.31. **Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Payment is deemed timely for electronically filed returns if the transmission is completed on or before the due date of the return.

History.—Added by Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted "filed and . . . may prescribe" for "in a form as the board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer. The board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or taxpayer and may require the declaration to be furnished to the board upon request" in subdivision (a) ; and substituted "Payment is deemed . . . of the return" for "Unless remittance is made pursuant to Section 6479.3, a person filing any return under this section shall deliver remittance of the amount of the tax due to the office of the board, along with a voucher in a form prescribed by the board, on or before the date the return is required to be filed" in subdivision (d).

6479.4. **Relief of penalty.** If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 6479.3.

6479.5. **Definitions.** (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an

entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 6479.3 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

Article 1.5. Prepayment of Sales Tax on Motor Vehicle Fuel Distributions *

§ 6480. Definitions.
§ 6480.1. Prepayments.
§ 6480.2. Supplemental reports.
§ 6480.3. Filing prepayments.
§ 6480.3. Prepayment exemption; diesel fuel resold for agricultural purposes.
§ 6480.4. Penalties and interest.
§ 6480.5. Notification by the board; manner. [Repealed.]
§ 6480.6. Refunds.
§ 6480.7. Security.
§ 6480.8. Credits. [Repealed.]

6480. **Definitions.** (a) For purposes of the imposition of the prepayment of sales tax on motor vehicle fuel or aircraft jet fuel pursuant to this article, the terms ''aircraft jet fuel,'' ''aircraft jet fuel dealer,'' ''aviation gasoline,'' ''entry,'' ''in this state,'' ''motor vehicle fuel,'' ''person,'' ''removal,'' ''sale,'' and ''supplier'' are defined pursuant to Part 2 (commencing with Section 7301), except as provided in subdivision (b).

(b) For purposes of this article, ''motor vehicle fuel'' does not include aviation gasoline for use in propelling aircraft.

(c) For purposes of the imposition of the prepayment of sales tax on diesel fuel pursuant to this article, the terms ''diesel fuel,'' ''entry,'' ''in this state,'' ''removal,'' ''person,'' and ''supplier,'' are defined pursuant to Part 31 (commencing with Section 60001).

(d) ''Wholesaler'' includes every person other than a supplier, dealing in motor vehicle fuel, aircraft jet fuel, or diesel fuel. ''Wholesaler'' does not include anyone dealing in motor vehicle fuel or diesel fuel in the capacity of an operator of a service station. ''Wholesaler'' does not include anyone dealing in aircraft jet fuel in the capacity of an aircraft jet fuel dealer.

(e) With respect to diesel fuel and aircraft jet fuel, ''sale'' means:

* Article 1.5 was added by Stats. 1986, Ch. 214, operative on July 1, 1986.

(1) The transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of aircraft jet fuel or diesel fuel (other than aircraft jet fuel or diesel fuel in a terminal) to a purchaser for a consideration.

(2) The transfer of the inventory position in the aircraft jet fuel or diesel fuel in a terminal if the purchaser becomes the positionholder with respect to the taxable fuel.

(f) For purposes of this article, aircraft jet fuel will be subject to the prepayment of sales tax at such time and in such manner as if it were subject to diesel fuel tax under the Diesel Fuel Tax Law in Part 31 (commencing with Section 60001), except that in the case of bulk transfers, aircraft jet fuel is not subject to the prepayment of sales tax as to the removal of diesel fuel in this state from any refinery as described in paragraph (1) of subdivision (a) of Section 60052, the entry of diesel fuel into this state as described in paragraph (1) of subdivision (b) of Section 60052, or the removal of diesel fuel in this state as described in subdivision (c) of Section 60052.

History.—Stats. 1987, Ch. 210, in effect July 23, 1987, in subdivision (a) deleted period and added “, except as provided in subdivision (b)” following “(commencing with Section 7301)”, and renumbered former (b) as (c) and added new (b). Stats. 2001, Ch. 429 (AB 309), substituted “the imposition . . . supplier” for “this article . . . this state”” after “For purposes of” in subdivision (a); deleted the former second sentence of subdivision (b) which provided, “For purposes of this subdivision, “aviation gasoline” means gasoline, natural gasoline, and any inflammable liquid intended for use in propelling aircraft operated by the explosion type engine.”; substituted “For purposes . . . 60001)” for “This article does not apply to motor vehicle fuel exempt from license taxes pursuant to paragraph (3) of subdivision (a) of Section 7401” in subdivision (c); and added subdivisions (d) and (e).

6480.1. **Prepayments.** (a) At any time that motor vehicle fuel tax or diesel fuel tax is imposed or would be imposed, but for the dyed diesel fuel exemption in paragraph (1) of subdivision (a) of Section 60100, or the train operator exemption in paragraph (7) of subdivision (a) of Section 60100 or paragraph (11) of subdivision (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480, would be deemed to be imposed, on any removal, entry, or sale in this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. However, if no sale occurs at the time of imposition of motor vehicle fuel tax or diesel fuel tax, the supplier shall prepay the retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel fuel. The prepayment required to be collected by the supplier constitutes a debt owed by the supplier to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a supplier or wholesaler who has consumed the fuel has paid the use tax to the board. Each supplier shall report and pay the prepayment amounts to the board, in a form as prescribed by the board, in the period in which the fuel is sold. On each subsequent distribution of that fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each supplier shall provide his or her purchaser with an invoice for, or other evidence of, the collection of the prepayment amounts which shall be separately stated thereon.

(b) (1) A wholesaler shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. Each wholesaler shall provide his or her purchaser with an invoice for or other evidence of the collection of the prepayment amounts, which shall be separately stated thereon.

(2) Each wholesaler shall report to the board, in a form as prescribed by the board and for the period in which the motor vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the following:

(A) The number of gallons of fuel sold and the amount of sales tax prepayments collected by the wholesaler.

(B) The number of tax-paid gallons purchased and the amount of sales tax prepayments made by the wholesaler.

(C) In the event that the amount of sales tax prepayments collected by the wholesaler is greater than the amount of sales tax prepayments made by the wholesaler, then the excess constitutes a debt owed by the wholesaler to the state until paid to the board, or until satisfactory proof has been submitted that the retailer of the fuel has paid the tax to the board.

(c) A supplier or wholesaler who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the motor vehicle fuel, aircraft jet fuel, or diesel fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a supplier or wholesaler who has consumed the motor vehicle fuel, aircraft jet fuel, or diesel fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the sale was made. Failure of the supplier or wholesaler to report prepayments or the supplier's or wholesaler's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, supplier, or wholesaler, either on a temporary or permanent basis or otherwise. To be entitled to the credit, the retailer, supplier, or wholesaler shall retain for inspection by the board any receipts, invoices or other documents showing the amount of sales tax prepaid to his or her supplier, together with the evidence of payment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents ($0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the prepayment rate per gallon for motor vehicle fuel, rounded to the nearest one-half of one cent ($0.005), of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and

Development Commission, in its latest publication of the ''Quarterly Oil Report,'' of all grades of gasoline sold through a self-service gasoline station. In the event the ''Quarterly Oil Report'' is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(g) On April 1 of each succeeding year, the prepayment rate per gallon for aircraft jet fuel rounded to the nearest one-half of one cent ($0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for aircraft jet fuel shall be equal to 80 percent of the arithmetic average selling price of aircraft jet fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of aircraft jet fuel. In the event the price of aircraft jet fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(h) On April 1 of each succeeding year, the prepayment rate per gallon for diesel fuel rounded to the nearest one-half of one cent ($0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for diesel fuel shall be equal to 80 percent of the arithmetic average selling price of diesel fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of diesel fuel. In the event the price of diesel fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(i) (1) Notwithstanding any other provision of this section, motor vehicle fuel sold by a supplier or wholesaler to a qualified purchaser who, pursuant to a contract with the State of California or its instrumentalities, resells that fuel to the State of California or its instrumentalities shall be exempt from the prepayment requirements.

(2) A qualified purchaser who acquires motor vehicle fuel for subsequent resale to the State of California or its instrumentalities pursuant to this subdivision shall furnish to the supplier or wholesaler from whom the fuel is acquired an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe. The supplier or wholesaler shall retain the certificate in his or her records in support of the exemption. To qualify for the prepayment exemption, both of the following conditions shall apply:

(A) The qualified purchaser does not take possession of the fuel at any time.

(B) The fuel is delivered into storage tanks owned or leased by the State of California or its instrumentalities via facilities of the supplier or wholesaler, or by common or contract carriers under contract with the supplier or wholesaler.

(3) For purposes of this subdivision, ''qualified purchaser'' means a broker as defined in Section 7308 who does not have or maintain a storage facility or facilities for the purpose of selling motor vehicle fuel.

History.—Stats. 1987, Ch. 210, in effect July 23, 1987, added the last sentence of subdivision (f). Stats. 1989, Ch. 768, in effect January 1, 1990, added ", in the period in which the fuel is distributed" after "by the board" in subdivisions (a) and (b), substituted "a prepayment computed using the rate applicable at the time of distribution" for "an amount equal to the amount of the prepayment paid by the seller to the person from whom he or she acquired the fuel" in subdivision (a), substituted "distribution" for "prepayment" and added ", distributor," after "retailer" in subdivision (d). Stats. 1992, Ch. 1336, in effect January 1, 1993, inserted a comma after "amounts to the board" in the third sentence of subdivision (a) and the first sentence of the second paragraph of subdivision (b); and added ", 6051.2, 6051.3," after "6051" in the first sentence of subdivision (f). Stats. 1995, Ch. 555, in effect January 1, 1996, added "of this code . . . Constitution" after "7202" in the first sentence of subdivision (f). Stats. 1996, Ch. 1087, in effect January 1, 1997, deleted "of this code" after "7202", and added second sentence in subdivision (f). Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000, substituted "any" for "the first" after "board, on" in subdivision (a). Stats. 2000, Ch. 256 (SB 2174), in effect January 1, 2001, added subdivision (g). Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002, substituted "At any time . . . the supplier" for "After service of written notification by the board, on any distribution in this state of motor vehicle fuel subject to the motor vehicle fuel license tax, the distributor" after "(a)", added ", aircraft jet fuel, or diesel fuel" after "motor vehicle fuel", and substituted "sold" for "distributed" after "diesel fuel is" in the first sentence; added second sentence; substituted "supplier" for "distributor" after "collected by the" and substituted "supplier or wholesaler" for "distributor or broker" in the third sentence; substituted "supplier" for "distributor" after "Each", substituted "in" for "on" after "to the board,", added "as" after "a form", and substituted "sold" for "distributed" in the fourth sentence; deleted "motor vehicle" after "distribution of that", and substituted "sale" for "distribution" in the fifth sentence; substituted "supplier" for "distributor" after "Each" and substituted "an" for "a receipt or" after "purchaser with", added ", or other evidence of," after "invoice for" in the sixth sentence of subdivision (a); added paragraph designation (1) after "(b)", substituted "A wholesaler" for "After service of written notification by the board, the broker" after "(b)(1)", added ", aircraft jet fuel, or diesel fuel" after "motor vehicle fuel", and substituted "sold" for "transferred" after "diesel fuel" in the first sentence; deleted former second sentence which provided, "The prepayment required to be collected by the broker constitutes a debt owed by the broker to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board."; substituted "wholesaler" for "broker" after "Each", substituted "an" for "a receipt or" after "purchaser with", added "or other evidence" after "invoice for", and added a comma after "prepayment amounts" in the third sentence of paragraph (1); substituted "wholesaler" for "broker" after "Each", deleted "and pay the prepayments amounts" after "shall report", substituted "in" for "on" after "to the board," added "as" after "a form", substituted ", in" for "and for", added "motor vehicle" after "period in which the", and substituted ", aircraft jet fuel, or diesel fuel was sold, all of the following:" for "is distributed."; added subparagraphs (A), (B), and (C) to paragraph (2) of subdivision (b); and deleted former second sentence of paragraph (2) therein which provided, "The amount of prepayment paid by the broker to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the broker to the board."; substituted "supplier or wholesaler" for "distributor or broker" after "(c) A", added "motor vehicle" after "consumes the", added "aircraft jet fuel, or diesel fuel," after "fuel," in subdivision (c); substituted "supplier or wholesaler" for "distributor or broker" after "retailer or a", added "motor vehicle" after "has consumed the", added ", aircraft jet fuel, or diesel fuel" after "fuel", and substituted "sale" for "distribution" in the first sentence; substituted "supplier on wholesaler" after "distributor or broker" after "Failure of the", substituted "supplier's or wholesaler's" for

"distributor's or broker's" after "prepayments or the", and substituted "supplier, or wholesaler" for "distributor, or broker" after "to the retailer," in the second sentence; substituted "To" for "The retailer, distributor, or broker shall' after "or otherwise", and substituted ", the retailer . . . of payment" for "to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment" in the third sentence of subdivision (d); added "prepayment" after "year, the", added "for motor vehicle fuel" after "rate per gallon", and added "($0.005)" after "of one cent" in the first sentence, and substituted "supplier, wholesaler," for "distributor, broker" after "by mail every" in the fourth sentence of subdivision (f); added subdivisions (g) and (h); relettered former subdivision (g) as (i), substituted "supplier or wholesaler" for "distributor or broker" after "sold by a" in paragraph (1), substituted "supplier or wholesaler" for "distributor or broker" after "furnish to the" in the first sentence, and substituted "supplier or wholesaler" for "distributor or broker" after "prescribe. The" in the second sentence of paragraph (2); substituted "supplier or wholesaler" for "distributor or broker" after "facilities of the" and after "contract with the" in subparagraph (B) of paragraph (2); and substituted "wholesaler" for "broker as defined in Section 7308" in paragraph (3) of subdivision (i).

6480.2. **Supplemental reports.** (a) If the board determines that it is necessary for the efficient administration of this part, the board may require a supplier or wholesaler to provide the board with a list of purchasers to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel was sold.

(b) In addition to any other reports required under this article, the board may, by rule and otherwise, require additional, other, or supplemental reports, in any form which the board may require, from suppliers or wholesalers with respect to their sales of motor vehicle fuel, aircraft jet fuel, or diesel fuel.

(c) Any supplier or wholesaler who fails to comply with this section is guilty of a misdemeanor punishable as provided in Section 7153.

History.—Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002, substituted "supplier or wholesaler" for "distributor or broker" after "may require a", added ", aircraft jet fuel, or diesel fuel" after "motor vehicle fuel", and substituted "sold" for "transferred" after "fuel was" in subdivision (a); substituted "suppliers or wholesalers" for "distributors or brokers" after "require, from", and substituted ", aircraft jet fuel, or diesel fuel" for "defined pursuant to Part 3 (commencing with Section 8601)" after "motor vehicle fuel" in subdivision (b); and substituted "supplier or wholesaler" after "(c) Any" in subdivision (c).

6480.3. **Filing prepayments.** The supplier or wholesaler shall file his or her prepayment form together with a remittance of the prepayment amounts, if any, required to be collected pursuant to Section 6480.1 payable to the State Board of Equalization, on or before the last day of the month following the monthly period to which the prepayment form or each prepayment relates.

History.—Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002, substituted "supplier or wholesaler" for "distributor or broker" after "The", added ", if any," after "prepayment amounts", substituted "last" for "25th" after "or before the", and deleted "calendar" after "day of the".

6480.3. **Prepayment exemption; diesel fuel resold for agricultural purposes.** (a) A person qualified under subdivision (b) may issue a certificate to a seller with respect to the amount of sales tax required to be prepaid pursuant to Section 6480.1 when purchasing diesel fuel from the seller. The certificate shall be completed in accordance with any instructions or regulations as the board may prescribe, and shall clearly specify that the person will purchase the volume of diesel fuel that the person reasonably expects he or she will sell that qualifies for the exemption under Section 6357.1. A seller that receives a properly completed certificate from a person qualified under subdivision (b) shall not be required to collect the prepayment of the retail sales tax otherwise required in Section 6480.1 on that volume of the diesel fuel sold pursuant to the certificate.

(b) A person is qualified for purposes of this section if both of the following conditions are met:

(1) The person sold diesel fuel that was used by the consumer in a manner that qualified, or would have qualified for an exemption under Section 6357.1, and in the prior year, those sales totaled more than 25 percent of the person's total taxable sales.

(2) The person's sales consist primarily of either bulk deliveries of fuel or of fuel sales through a cardlock, keylock, or other unattended mechanism, or both. For purposes of the preceding sentence, ''bulk deliveries'' means transfers of fuel into storage tanks of 500 gallons or more.

(c) A person issuing a certificate pursuant to this section is liable for sales tax that is imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) and sales tax that is imposed under Section 6051.2 or 6201.2, or under Section 35 of Article XIII of the California Constitution.

(d) A person issuing a certificate pursuant to this section shall be liable for sales tax on any portion of the gross receipts derived from the sale of fuel that is not sold in a manner that qualifies for an exemption under Section 6357.1.

(e) A person liable for the sales tax under subdivision (c) or (d) of this section shall report and pay that sales tax with the return for the reporting period in which the person sells the fuel.

(f) Any person who gives a certificate pursuant to this section for purchases of diesel fuel that he or she knows at the time of purchase do not qualify for the exemption from the prepayment pursuant to this section for the purpose of evading payment of the prepayment of the retail sales tax is guilty of a misdemeanor punishable as provided in Section 7153. In addition, the person shall be liable to the state for a penalty of one thousand dollars ($1,000) for each certificate issued for personal gain or to evade the payment of taxes.

History.—Added by Stats. 2002, Ch. 446, (SB 1901), in effect September 9, 2002, but operative October 9, 2002.

6480.4. **Penalties and interest.** (a) Any supplier or wholesaler who fails to make a timely remittance to the board of the prepayment amounts, if any, required pursuant to Sections 6480.1 and 6480.3 shall also pay a penalty of 10 percent of the amount of the prepayment due but not paid, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the prepayment became due and payable to the state until the date of payment.

(b) The penalty amount specified in subdivision (a) shall be 25 percent if the supplier or wholesaler knowingly or intentionally fails to make a timely remittance.

History.—Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002, added subdivision letter designation (a) before first paragraph, substituted "supplier or wholesaler" for "distributor or broker" after "Any", added "amounts, if any," after "of the prepayment", and substituted "10" for "25" after "a penalty of", therein; and added subdivision (b).

6480.5. **Notification by the board; manner.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.6. **Refunds.** (a) The following persons who have paid prepayment amounts either directly to the board or to the person from whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel was purchased shall be refunded those amounts:

(1) Any person who exports the fuel for subsequent sale outside this state.

(2) Any person who sells the fuel which is exempt from the sales or use tax pursuant to Sections 6352, 6357, 6381, and 6396.

(3) Any person who has lost the fuel through fire, flood, theft, leakage, evaporation, shrinkage, spillage, or accident, prior to any retail sale.

(4) Any supplier who has removed fuel from an approved terminal at the terminal rack, but only to the extent that the supplier can show that tax on the same amount of fuel has been paid more than one time by the same supplier.

(5) Any person who is unable to collect the prepayment from the purchaser insofar as the sales of the fuel are represented by accounts which have been found to be worthless and charged off for income tax purposes, or, if the person is not required to file income tax returns, accounts which have been charged off in accordance with generally accepted accounting principles. If partial payments have been made, the payments shall be prorated between amounts due for fuel and amounts due for the related prepayment. If any of those accounts are thereafter in whole or in part collected by the seller, the gallons of fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the prepayment thereon paid with the return.

(b) In lieu of a refund, the board may authorize a credit to be taken by the person to whom the refund is due upon his or her prepayment form or sales and use tax return.

History.—Stats. 1987, Ch. 210, in effect July 23, 1987, added subdivision (a)(4). Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000, added paragraph (5) to subdivision (a). Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002, substituted "the motor . . . diesel fuel" for "it" after "person from whom", deleted ", on the distribution of motor vehicle fuel which was subject to the motor vehicle fuel license tax," after "was purchased" in subdivision (a); deleted "motor vehicle" after "exports the" in paragraph (1); deleted "motor vehicle" after "who sells the" in paragraph (2),deleted "motor vehicle" after "has lost the" in paragraph (3), added paragraph (4); renumbered former paragraph (4) as (5), and added ", or, if the . . . principles" after "income tax purposes", deleted former fourth sentence which provided, "as a condition for eligibility for refund, the board may require the seller to submit periodical reports listing accounts delinquent for a 90 day period of over." therein; deleted former paragraph (5) which provided, "Any person who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, who purchases the motor vehicle fuel from a person who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401."

6480.7. **Security.** (a) The board may require any supplier or wholesaler subject to this article to place with the board any security that the board determines is necessary to ensure compliance with this article. The amount of the security shall be fixed by the board but shall not be greater than three times the estimated average liability of suppliers or wholesalers required to file returns for monthly periods, determined in any manner that the board deems proper, or five hundred thousand dollars ($500,000),

whichever amount is less. These amounts apply regardless of the type of security placed with the board. The amount of the security may be increased or decreased by the board subject to the maximum amounts. The security required pursuant to this section is in addition to the bond or bonds required pursuant to Section 7486.

(b) The board may sell the security at public auction if it becomes necessary to so do in order to recover any tax or any amount required to be collected or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail. If service is by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his or her address as it appears in the records of the board. However, security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may be sold by the board at a private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amounts due shall be returned to the supplier or wholesaler who placed the security.

History.—Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002, substituted "supplier or wholesaler" for "distributor or broker" after "may require any" in the first sentence, and substituted "suppliers or wholesalers" for "distributors or brokers" after "average liability of" in the second sentence of subdivision (a); and substituted "supplier or wholesaler" for "distributor or broker" after "returned to the" in the fifth sentence of subdivision (b).

Bankruptcy.—Property held by the Board as security prior to the taxpayer's filing of a petition for reorganization pursuant to Chapter 11 of the bankruptcy law belongs to the bankruptcy estate and is not immune from the claims of general creditors. The Board violated the automatic stay in bankruptcy by cashing the certificate of deposit taken as security from the taxpayer. *In re Sluggo's Chicago Style, Inc.* (9th Cir., 1990) 912 F.2d 1073.

6480.8. **Credits.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002.]

Article 1.6. Prepayment of Sales Tax on Fuel *
[Repealed by Stats. 2001, Ch. 429 (AB 309),
in effect October 2, 2001, operative January 1, 2002.]

6480.10. **Definitions.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002.]

6480.11. **"Importer."** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.12. **"Producer."** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.13. **"Produce."** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.14. **"Jobber."** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.15. **"Sale."** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

* Article 1.6 was added by Stats. 1991, Ch. 770, operative January 1, 1992.

6480.16. **Prepayments.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.17. **Supplemental reports.** (a) [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.18. **Filing prepayments.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.19. **Penalties and interest.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.20. **Notification to board: manner.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.21. **Refunds.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.22. **Security.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

6480.23. **Credits.** [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect October 2, 2001, operative January 1, 2002].

Article 2. Deficiency Determinations

§ 6481. Deficiency determination.
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§ 6486. Notice of determination.
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§ 6487.06. Deficiency determinations; unregistered California purchasers.
§ 6487.1. Limitations; deficiency determination; decedent.
§ 6487.2. Limitations; deficiency determinations; general partners.
§ 6487.3. Deficiency determination; qualified use tax.
§ 6488. Waiver.

6481. **Deficiency determination.** If the board is not satisfied with the return or returns of the tax or the amount of tax, or other amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period. When a business is discontinued a determination may be made at any time thereafter, within the periods specified in Section 6487, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

History.—Stats. 1949, p. 1167, operative July 1, 1949, added last sentence. Stats. 1984, Ch. 930, effective January 1, 1985, added "or other amount" before "required" in first sentence.

Nature of determination.—A determination hereunder does not create a new obligation or liability, but is merely a determination by the board of the amounts that a retailer has failed to pay. *People* v. *Buckles* (1943) 57 Cal.App.2d 76.

Determination based on estimate.—The board does not exceed its authority in establishing taxable receipts on the basis of cost of goods sold plus appropriate markups, since the Sales and Use Tax Law clearly contemplates an examination of the documents of original entry to ascertain whether the books and the sales tax returns reflect accurately the taxable transactions made by the taxpayer. *Maganini* v. *Quinn* (1950) 99 Cal.App.2d 1.

Consistency of Taxpayer's Books and Records Not Conclusive.—Even though a taxpayer's books and records are comprehensive and in agreement with each other, the Board is not required to accept such evidence as conclusive and may use recognized and standard accounting procedures to establish tax liability. Where the Board establishes a deficiency, the burden of proof is upon the taxpayer to explain any disparity between his books and records and the results of the Board's audit. *Riley B's, Inc.* v. *State Board of Equalization* (1976) 61 Cal.App.3d 610.

6482. **Interest.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

History.—Stats. 1947, p. 1557, operative July 1, 1947, substituted "last day of the month following" for "fifteenth day after the close of." Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . thereof" before "from". Stats. 1983, Ch. 10 (1X), in effect February 17, 1983, added "and by the method" after "rate". Stats. 1984, Ch. 1020, operative July 1, 1985, added "modified" before "adjusted," deleted "annual" before "rate," added "per month, or fraction thereof" before "established," substituted "Section 6591.5" for "Section 19269."

6483. **Offsets.** In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayment and overpayments shall be computed in the manner set forth in Sections 6591 and 6907.

6484. **10 percent penalty.** If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.

Previous errors.—Evidence that the board in 1950 had informed the taxpayer of errors in its 1947 to 1950 tax returns supported a negligence penalty for the years 1950 to 1953 where the same errors were continued in those years; nor could the taxpayer successfully contend that an honest dispute existed as to the legality of a tax on certain transactions for 1950 to 1953 where it did not dispute the imposition in 1950 of a tax on similar transactions for the years 1947 to 1950. *Independent Iron Works, Inc.* v. *State Board of Equalization* (1959) 167 Cal.App.2d 318.

6485. **25 percent penalty.** If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this part or authorized rules and regulations, a penalty of 25 percent of the amount of the determination shall be added thereto.

Standard of proof for civil fraud is clear and convincing evidence.—In a bankruptcy case, a federal appeals court predicted that the California Supreme Court would apply a standard of clear and convincing evidence, not merely a preponderance of evidence, to establish civil tax fraud. *In re Renovizor's, Inc.* (9th Cir. 2002) 282 F.3d 1233.

6485.1. **50 percent penalty.** Any purchaser of a vehicle, vessel, or aircraft who registers it outside the State of California for the purpose of evading the payment of taxes due under this part 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.

History.—Added by Stats. 1984, Ch. 1490, effective September 27, 1984.

6486. **Notice of determination.** The board shall give to the retailer or person storing, using, or consuming tangible personal property written notice

of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer or person storing, using, or consuming tangible personal property at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering it to the person to be served and service is complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

History.—Stats. 1943, p. 2457, operative July 1, 1943, added a statement that service by mail was complete upon deposit in the United States post office. Stats. 1953, p. 2723, in effect September 9, 1953, revised the language of that statement. Stats. 1974, Ch. 610, effective January 1, 1975, expanded and revised the section and deleted reference to Section 1013 of the C. C. P. Stats. 1981, Ch. 714, in effect January 1, 1982, added "or her" after "his" in the second sentence; and, added "it" after "delivering", substituted "is" for "shall be deemed", and deleted "such" before "delivery" in the fourth sentence.

Note.—Stats. 1974, Ch. 610, Section 16, explains the purpose of that enactment.

6487. **Limitations; deficiency determinations.** (a) For taxpayers filing returns, other than a return filed pursuant to Section 6452.1, on other than an annual basis, except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) For taxpayers filing returns on an annual basis, except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined.

(c) The limitation specified in this section does not apply in case of a sales tax proposed to be determined with respect to sales of property for the storage, use, or other consumption of which notice of a deficiency determination has been or is given pursuant to subdivision (a) or (b) or pursuant to Section 6486, 6515, or 6536. The limitation specified in this section does not apply in case of an amount of use tax proposed to be determined with respect to storage, use, or other consumption of property for

the sale of which notice of a deficiency determination has been or is given pursuant to subdivision (a) or (b) or pursuant to Section 6486, 6515, or 6536.

History.—Stats. 1943, p. 2457, operative July 1, 1943, added last sentence. Stats. 1947, p. 1557, operative July 1, 1947, substituted "last" for "fifteenth" in first paragraph. Stats. 1951, p. 2638, operative July 1, 1951, added eight-year limitation period in cases of failure to make a return. Stats. 1969, p. 893, in effect November 10, 1969, deleted "or claim for additional amount pursuant to Section 6563" from the first and second sentences of the first paragraph. Stats. 1977, Ch. 921, operative January 1, 1978, added "For taxpayers filing returns on other than an annual basis" to first paragraph, and added new second paragraph for annual basis taxpayers. Stats. 1983, Ch. 337, in effect January 1, 1984, added "or second" after "first" in the last sentence of the third paragraph. Stats. 1991, Ch. 236, in effect July 29, 1991, added the subdivision letters, added "subdivision (a) or (b) or pursuant to" after "given pursuant to" and substituted "or 6536" for "and 6537" twice in subdivision (c). Stats. 2003, Ch. 718 (SB 1009), in effect January 1, 2004, added ", other than a return filed pursuant to Section 6452.1," after "filing returns" in subdivision (a); added a hyphen in "one-year" after "month following the" twice in subdivision (b); added "a" after "which notice of", deleted "and to the first or second paragraph of this section" after "6515, or 6536" twice in subdivision (c).

Sufficiency of return.—A return by a taxpayer on a "Sales and Use Tax Return" form prescribed by the State Board of Equalization for a combined showing of sales and use tax liability in which the taxpayer fills in entries in all but one of the lines under the sales tax subheading, leaves blank the lines under the use tax subheading, enters the sales tax total in the line for the total amount due for both sales tax and use tax and signs a concluding certificate stating the report to be "a true and complete return" pursuant to the sales and use tax acts is a return for use tax as well as sales tax purposes and starts the running of the limitation period specified in this section against a use tax deficiency determination. *People* v. *Universal Film Exchanges, Inc.* (1950) 34 Cal.2d 649.

Burden of proof.—In a suit for refund of sales tax paid pursuant to a deficiency determination issued after the period of limitations has run, the burden of proving fraud is on the State Board of Equalization, and the taxpayer is entitled to recover in the absence of such proof. *Marchica* v. *State Board of Equalization* (1951) 107 Cal.App.2d 501.

Setoffs of overpayments against underpayments.—The Board may properly credit and set off underpayment of taxes barred by the statute of limitations in one quarter against an overpayment of taxes in another quarter, so long as both setoffs and overpayments occurred during the period put at issue by the taxpayer's claim for refund. *Sprint Communications Company* v. *State Board of Equalization* (1995) 40 Cal.App.4th 1254.

6487.05. **Deficiency determinations; unregistered out-of-state retailers.** (a) Notwithstanding Section 6487, the period during which a deficiency determination may be mailed to a qualifying retailer is limited to three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined. For purposes of this section, a "qualifying retailer" is a retailer that meets all of the following conditions:

(1) The retailer is located outside this state, and has not previously registered with the board.

(2) The retailer is engaged in business in this state, as defined in Section 6203.

(3) The retailer voluntarily registers with the board.

(4) The retailer has not been previously contacted by the board or its agents regarding the provisions of Section 6203.

(5) As determined by the board, the retailer's failure to file a return or failure to report or pay the tax or amount due required by law was due to reasonable cause and was not a result of negligence or intentional disregard of the law, or because of fraud or an intent to evade the provisions of this part.

(b) If the board or its designee finds that the retailer's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the retailer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the retailer shall be relieved of the penalties imposed pursuant to this part. Any retailer seeking relief of penalty shall file a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1994, Ch. 903, in effect January 1, 1995.

6487.06. **Deficiency determinations; unregistered California purchasers.** (a) Notwithstanding Section 6487, the period during which a deficiency determination may be mailed to a qualifying purchaser is limited to the three-year period beginning after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) For purposes of this section, a "qualifying purchaser" is a person that voluntarily files an Individual Use Tax Return for tangible personal property that is purchased from a retailer outside of this state for storage, use, or other consumption in this state, and that meets all of the following conditions:

(1) The purchaser resides or is located within this state and has not previously done either of the following:

(A) Registered with the State Board of Equalization.

(B) Filed an Individual Use Tax Return with the State Board of Equalization.

(2) The purchaser is not engaged in business in this state as a retailer, as defined in Section 6015.

(3) The purchaser has not been contacted by the State Board of Equalization regarding failure to report the use tax imposed by Section 6202.

(4) The State Board of Equalization has made a determination that the purchaser's failure to file an Individual Use Tax Return or to otherwise report, or pay the use tax imposed by Section 6202 was due to reasonable cause and was not caused by reason of negligence, intentional disregard of the law, or by an intent to evade the taxes imposed by this part.

(c) If the State Board of Equalization makes a determination that the purchaser's failure to timely report or remit the taxes imposed by this part is due to reasonable cause or due to circumstances beyond the purchaser's control, the purchaser may be relieved of any penalties imposed by this part. Any purchaser seeking relief from penalties imposed by this part shall file a statement, signed under penalty of perjury, setting forth the facts that form the basis for the claim for relief.

(d) This section shall not apply to purchases of vehicles, vessels, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

(e) The State Board of Equalization shall submit to the Legislature before January 1, 2005, a report that includes the following information:

(1) The number of qualifying purchasers who received the benefits afforded by this section.

(2) The amount of use tax revenue received by the state from the qualifying purchasers described in paragraph (1).

(3) Recommendations for modifying, eliminating, or continuing the operation of, any or all of the provisions of this section.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed.

History.—Added by Stats. 2003, Ch. 697 (AB 1741), in effect January 1, 2004.

6487.1. **Limitations; deficiency determination; decedent.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

History.—Added by Stats. 1968, p. 2449, in effect November 13, 1968.

6487.2. **Limitations; deficiency determinations; general partners.** (a) A notice of determination issued pursuant to Section 6486, 6515, or 6536 to an individual who was a general partner, as shown on the board's records, and who, prior to the period covered by the determination, withdrew from the partnership, causing a change in ownership, and failed to notify the board, shall be mailed within four years after the last day of the calendar month following the quarterly period in which the change of ownership occurred.

(b) An individual who was a general partner, as shown on the board's records, who withdraws from a partnership without notifying the board of the change in ownership, shall not be liable for any unpaid, self-assessed liability of the partnership that becomes due at least three years after the last day of the calendar month following the quarterly period in which the change in ownership occurred.

(c) Subdivisions (a) and (b) shall not apply to either of the following:

(1) Cases of fraud or intent to evade this part or other administrative or interpretive regulations.

(2) Any partners who retain an ownership interest in a corporation that is a successor to the partnership.

(d) For purposes of this part, change in ownership means that a new "person," as defined in Section 6005, is created by the action of the former owner by means of a sale, an incorporation, an addition or elimination of one or more partners, or the termination of a spouse's ownership or community property interest due to legal separation or divorce.

(e) For purposes of this section, "individual" includes only natural persons.

History.—Added by Stats. 1993, Ch. 1109, in effect January 1, 1994.

6487.3. **Deficiency determination; qualified use tax.** (a) (1) For persons that elect to report qualified use tax in accordance with Section 6452.1, except in the case of fraud, intent to avoid this part or authorized rules and regulations issued by the board, or the gross understatement of qualified use taxes, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within three years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(2) In the case of a gross understatement of qualified use tax, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within six years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(3) For purposes of this subdivision a "gross understatement of qualified used tax" is a deficiency that is in excess of 25 percent of the amount of qualified use tax reported on a person's acceptable tax return. In the case of married individuals filing separate California personal income tax returns, the total amount of qualified use tax reported will be considered in determining whether there is a gross understatement of qualified use tax.

(4) For purposes of this section "acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(b) This section applies to reporting of purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, and as of that latter date becomes inoperative, unless a later enacted statute extends the operation of this section.

History.—Added by Stats. 2003, Ch. 718 (SB 1009), in effect January 1, 2004.

6488. **Waiver.** If before the expiration of the time prescribed in Section 6487 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

History.—Added by Stats. 1945, p. 1001, operative July 1, 1945.

Article 3. Determinations if No Return Made

§ 6511. Determination; failure to file return.
§ 6512. Offsets.
§ 6513. Interest.
§ 6514. Penalties.
§ 6514.1. 50 percent penalty.
§ 6515. Notice of determination.

6511. **Determination; failure to file return.** If any person fails to make a return, the board shall make an estimate of the amount of the gross receipts of the person, or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use, or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come in its possession. Upon the basis of this estimate the board shall compute and determine the amount of

tax or other amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one period. When a business is discontinued a determination may be made at any time thereafter, within the periods specified in Section 6487, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

History.—Stats. 1949, p. 1168, operative July 1, 1949, added last sentence. Stats. 1984, Ch. 930, effective January 1, 1985, added "of tax or other amount" before "required to be paid."

Penalty when retailer bankrupt.—A penalty added pursuant to this section for failure to file a return for periods prior to commencement of bankruptcy proceedings is not allowable as a claim in bankruptcy. *State Board of Equalization* v. *Goggin* (1950) 183 F.2d 489, cert. den. (1950) 340 U.S. 891.

6512. **Offsets.** In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in Sections 6591 and 6907.

6513. **Interest.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

History.—Stats. 1947, p. 1557, operative July 1, 1947, substituted "last day of the month following" for "fifteenth day after the close of." Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . thereof" before "from". Stats. 1983, Ch. 10 (1X), in effect February 17, 1983, added "and by the method" after "rate". Stats. 1984, Ch. 1020, effective January 1, 1985, added "modified" before "adjusted," deleted "annual" before "rate," substituted "per month, or fraction thereof" for "and by the method," substituted "Section 6591.5" for "Section 19269."

6514. **Penalties.** If the failure of any person to file a return is due to fraud or an intent to evade this part or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty provided in Section 6511.

6514.1. **50 percent penalty.** Any purchaser of a vehicle, vessel, or aircraft who registers it outside the State of California for the purpose of evading the payment of taxes due under this part 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.

History.—Added by Stats. 1984, Ch. 1490, Effective September 27, 1984.

6515. **Notice of determination.** Promptly after making its determination the board shall give to the person written notice of the estimate, determination, and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 4. Jeopardy Determinations

§ 6536. Jeopardy determination.
§ 6537. Interest and penalty.
§ 6538. Petition for redetermination; security.
§ 6538.5. Administrative hearing.
§ 6539. Service of notice.

6536. **Jeopardy determination.** If the board believes that the collection of any tax or any amount of tax required to be collected and paid to the state or of any determination or other amount required to be paid to the state will be jeopardized by delay, it shall thereupon make a determination of the tax or amount of tax required to be collected or other amount, noting that fact upon the determination. The amount determined is immediately due and payable.

History.—Added by Stats. 1941, Ch. 36. Stats. 1984, Ch. 930, effective January 1, 1985, added "or other . . . to the state" before "will be jeopardized," added "or other amount," before "noting that fact."

6537. **Interest and penalty.** If the amount specified in the determination is not paid within 10 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 10 days, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and the interest provided in Section 6591 shall attach to the amount of the tax or the amount of the tax required to be collected.

6538. **Petition for redetermination; security.** The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 5 of this chapter. He shall, however, file the petition for redetermination with the board within 10 days after the service upon him of notice of the determination. The person shall also within the 10-day period deposit with the board such security as it may deem necessary to insure compliance with this part. The security may be sold by the board in the manner prescribed by Section 6701.

6538.5. **Administrative hearing.** In accordance with such rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive; or

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person; or

(c) To request the release of all or a part of the property to the person; or

(d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not

deposit within the 10-day period prescribed in Section 6538, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 6537 relating to the finality date of the determination or to penalty or interest.

History.—Added by Stats. 1977, Ch. 329, operative January 1, 1978.

6539. **Service of notice.** Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

History.—Added by Stats. 1963, p. 1492, in effect September 20, 1963.

Article 5. Redeterminations

§ 6561. Petition for redetermination.
§ 6561.5. Form and content of petition.
§ 6562. Oral hearing.
§ 6563. Decrease or increase of determination.
§ 6564. Finality date of order or decision.
§ 6565. Due date of determination; penalty.
§ 6566. Service of notice.

6561. **Petition for redetermination.** Any person against whom a determination is made under Article 2 (commencing with Section 6481) or 3 (commencing with Section 6511) or any person directly interested may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of that period.

History.—Stats. 1982, Ch. 454, in effect January 1, 1983, added "(commencing with Section 6481)" after "Article 2" and "(commencing with Section 6511)" after "or 3," and deleted "of this chapter" before "or any" in the first sentence, and substituted "that" for "the" after "expiration of" in the second sentence.

Exhaustion of administrative remedies.—A taxpayer failing to file a return or to petition for redetermination of use tax liability determined by the board on an estimated basis cannot assert alleged errors in computation of the tax liability in the state's action for the enforcement thereof. Even though objectives to the determination involve only questions of law, the board should be given opportunity to rectify its determination. *People* v. *West Publishing Co.* (1950) 35 Cal.2d 80.

6561.5. **Form and content of petition.** Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

History.—Added by Stats. 1967, p. 2328, in effect November 8, 1967.

6562. **Oral hearing.** If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

6563. **Decrease or increase of determination.** (a) The board may decrease or increase the amount of the determination before it becomes final,

but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 6485 or Section 6514 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted during one of the following applicable periods:

(1) In the case of any taxpayer whose reported gross receipts and total sales price of property sold or purchased by him or her is less than ten million dollars ($10,000,000) in each calendar quarter of the period or periods to which the determination applies, within three years after the first deficiency determination or within three years after the time tax records requested by the board were made available, whichever is later.

(2) In the case of any other taxpayer, within eight years after the first deficiency determination or within eight years after the time tax records requested by the board were made available, whichever is later.

(b) If the taxpayer and the board mutually agree, the time limits specified in subdivision (a) may be waived.

(c) The board shall specify the information on which it bases its increase.

History.—Stats. 1945, p. 1725, operative July 1, 1945, added "before it becomes final." Stats. 1969, p. 893, in effect November 10, 1969, added the second sentence. Stats. 1984, Ch. 1728, effective January 1, 1985, deleted "within . . . asserted" after "must be asserted," added "during . . . periods" and paragraphs (1) and (2) and subdivisions (b) and (c) after "must be asserted," added "(a)" designation at beginning of section.

Note.—Sec. 3, Stats. 1984, Ch. 1728 provided (a) The Legislative Analyst shall investigate and report to the Legislature no later than January 1, 1986, on each of the following:

(1) If there are feasible cost-effective methods for the State Board of Equalization to obtain, file, and retrieve information regarding the types of specific transactions reported by taxpayers and the types of transactions covered by an audit by the board's staff. The information so obtained, filed, and retrieved would be for later use in administrative or court proceedings in determining, with respect to any taxpayer's activity or transaction, whether or not other taxpayers have paid sales or use tax on the same activity or transaction and whether or not the board has applied tax to other taxpayers engaged in the same activity or transaction.

(2) In what manner the information so obtained from other taxpayers should be disclosed, in order to protect to the greatest possible extent the confidentiality of the information.

(3) If it is feasible to provide by statute that a new product not previously marketed in California is not subject to tax unless the new product is specifically described in board regulations as subject to tax.

(b) Notwithstanding the provisions of Section 7056 of the Revenue and Taxation Code and Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the board shall make available to the Legislative Analyst any confidential taxpayer accounts and audits requested by the Legislative Analyst in order to complete the required investigation and report. The Legislative Analyst shall maintain the confidentiality of any taxpayer accounts and audits provided by the board. Sec. 4 provided it is the intent of the Legislature that the State Board of Equalization shall explore and use every available means of regularly informing California businesses of the provisions of Section 6596 of the Revenue and Taxation Code.

6564. **Finality date of order or decision.** The order or decision of the board upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

6565. **Due date of determination; penalty.** All determinations made by the board under Articles 2 or 3 of this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

Penalty when retailer bankrupt.—Since a tax and penalty computed in accordance with Section 6511 for periods prior to commencement of bankruptcy proceedings could not be paid by a receiver in bankruptcy, the amount added as a penalty for the receiver's failure to pay is not allowable as a claim in bankruptcy. *State Board of Equalization* v. *Goggin* (1950) 183 F.2d 489, cert. den. (1950) 340 U.S. 891.

6566. **Service of notice.** Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 6. Interest and Penalties

§ 6591. Interest and penalties.
§ 6591.5. Interest rates.
§ 6592. Excusable delay.
§ 6592.5. Interest on prepayment when relief from penalty granted.
§ 6593. Disaster.
§ 6593.5. Relief of interest.
§ 6594. Leases to the United States government.
§ 6595. Penalty interest rates. [Repealed.]
§ 6596. Excusable delay; reliance on advice.

6591. **Interest and penalties.** (a) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511) of this chapter, within the time required shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 6451 or the due date established by the board in accordance with Section 6455, 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.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the taxes for which the return is required, exclusive of any prepayments, for any one return.

History.—Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "Article 2 . . . Section 6511" for "Articles 2 or 3" after "under" and "adjusted . . . Section 19269" for "rate . . . thereof" after "interest at the." Stats. 1983, Ch. 10 (1X), in effect February 17, 1983, added "and by the method" after "rate". Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, added "modified" before "adjusted," deleted "annual" before "rate," substituted "per month, or fraction thereof" for "and by the method," substituted "Section 6591.5" for "Section 19269." Stats. 1996, Ch. 1087, in effect January 1, 1997, added subdivision letter designation (a) before first paragraph, and added subdivisions (b) and (c).

Penalties and interest in bankruptcy reorganization.—Pre- and post-petition penalties and post-petition interest which were not provided for under the Bankruptcy Act plan of arrangement were collectible from the reorganized debtor. The post-petition interest was not chargeable to the estate when the receiver's delay was the result of his reasonable business judgment. *Gough Industries* v. *Rothman* (1971) 446 F.2d 536; Cert. den. (1972) 405 U.S. 916.

6591.5. **Interest rates.** (a) (1) For interest required to be paid to the state, "modified adjusted rate per annum" means the adjusted annual rate established pursuant to subdivision (c), plus three percentage points.

(2) For interest required to be paid by the state upon overpayments of tax, "modified adjusted rate per annum" means the adjusted annual rate established pursuant to subdivision (d).

(b) ''Modified adjusted rate per month, or fraction thereof'' means the modified adjusted rate per annum divided by 12.

(c) The rate established for interest to be paid upon underpayments of tax shall be determined in accordance with the provisions of Section 6621 of the Internal Revenue Code which establish the underpayment rate, except that the determination specified in Section 6621(b) of the Internal Revenue Code shall be modified to be determined semiannually as follows:

(1) The rate for January shall apply for the following July 1 to December 31, inclusive.

(2) The rate for July shall apply for the following January 1 to June 30, inclusive.

(d) (1) Except as provided in paragraph (2), the rate established for interest to be paid by the state upon overpayments of tax shall be equal to the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or if a multiple of one-half of 1 percent, the rate shall be increased to the next highest full percent), as follows:

(A) The bond equivalent rate of 13-week treasury bills established at the first auction held during the month of January shall apply for the following July 1 to December 31, inclusive.

(B) The bond equivalent rate of 13-week treasury bills established at the first auction held during the month of July shall apply for the following January 1 to June 30, inclusive.

(2) For the period July 1, 1991, through June 30, 1992, the rate to be paid by the state upon overpayments of tax shall be equal to the bond equivalent rate of 13-week treasury bills established at the auction held on July 1, 1991, rounded to the nearest full percent (or if a multiple of one-half of 1 percent, the rate shall be increased to the next highest full percent).

(e) Referencing this method of computation, in computing the amount of any interest required to be paid by the state or by the taxpayer, or any other amount determined by reference to that amount of interest, that interest and that amount shall be computed as simple interest, not compound interest.

History.—Added by Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985. Stats. 1990, Ch. 1528, in effect January 1, 1991, substituted "subdivision (c)" for "Section 19269" in subdivision (a) and added subdivisions (c) and (d). Stats. 1991, Ch. 236, in effect July 29, 1991, added "(1) For interest required to be paid to the state" before "modified"; added paragraph (2) of subdivision (a); substituted "for interest to be paid upon underpayments of tax" for "under this section" after "rate established" and substituted "which established . . . as follows:" for "except that:" in subdivision (c); substituted paragraphs (1) and (2) for the former paragraphs (1), (2) and subparagraphs (A) and (B) of subdivision (c) which provided that "(1) the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code. (2) The determination specified in Section 6621(b) shall be modified to be determined semiannually as follows: (A) The rate for January shall apply for the following July 1 to December 31, inclusive. (B) The rate for July shall apply for the following January 1 to June 30, inclusive."; and relettered former subdivision (d) as subdivision (e).

Interest on nondischargeable tax debts. Post-petition interest on a tax debt which was not dischargeable under Chapter 11 was also not dischargeable, and the debtor was personally liable for such interest. *In re Artisan Woodworkers (Ward* v. *Board of Equalization)* (9th Cir. 2000) 204 F.3d 888.

6592. **Excusable delay.** (a) If the board finds that a person's failure to make a timely return or payment 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 shall

be relieved of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2.

(b) Except as provided in subdivision (c) 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 he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

History.—Added by Stats. 1963, p. 2845, in effect September 20, 1963. Stats. 1967, p. 2398, in effect November 8, 1967, added sections "6476, 6477." Stats. 1984, Ch. 1707, effective January 1, 1985, added "6565," after "6611." Stats. 1985, Ch. 1343, effective January 1, 1986, added "and 7051.2" at the end of first paragraph. Stats. 1986, Ch. 214, effective June 27, 1986, added reference to Sections 6480.4 and 6480.8. Stats. 1991, Ch. 473, in effect January 1, 1992, substituted "shall" for "may" after "the person", substituted "penalties" for "penalty" after "relieved of the", and added "and subdivisions (d) and (e) of Section 6479.3" after "7051.2". Stats. 1999, Ch. 865, (SB 1302), in effect January 1, 2000, added "6479.3" after "6477", and deleted "and subdivisions (d) and (e) of Section 6479.3" after "and 7051.2" in the first paragraph. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision letter designation (a) before first paragraph; created new subdivision (b) with former second paragraph, and substituted "Except as . . . (c) any" for "Any" therein; and added subdivision (c).

6592.5. **Interest on prepayment when relief from penalty granted.** Any person who is granted relief from the penalty imposed by Section 6476 or 6477 shall pay, in addition to any prepayment, interest at the "modified adjusted rate per month, or fraction thereof" established pursuant to subdivision (b) of Section 6591.5, from the date on which the prepayment would have been due until the date of payment.

History.—Added by Stats. 1993, Ch. 1109, in effect January 1, 1994.

6593. **Disaster.** If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 6459, 6480.4, 6480.8, 6513, 6591, and 6592.5.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1980, Ch. 994, effective September 21, 1980. Stats. 1981, Ch. 947, in effect January 1, 1982, deleted "natural" before "disaster" in the first paragraph. Stats. 1986, Ch. 214, effective June 27, 1986, added reference to Sections 6480.4 and 6480.8. Stats. 1993, Ch. 1109, in effect January 1, 1994, deleted "and" before "6591" and added ", and 6592.5" following "6591" in the first paragraph, added "or she" following "he" and added "or her" following "his" in the second paragraph.

6593.5. **Relief of interest.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part under 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.

(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.

(b) For purposes of this section, 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.

(c) Any person seeking relief under this section 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.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after July 1, 1999.

History.—Added by Stats. 1998, Ch. 612, in effect January 1, 1999. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted "this part" for "Sections 6480.4, 6480.8, 6513, 6591, and 6592.5" after "a person by" in subdivision (a).

6594. **Leases to the United States government.** Notwithstanding any other provision of this part, no interest or penalties shall be assessed against any person for failure to make payments of any taxes on leases of personal property to the United States government while the board is enjoined from collecting such taxes by order of the United States District Court for the Central District of California in the case of United States of America v. California State Board of Equalization, No. CV 79-03359-R, provided that payment of any applicable taxes is made within 60 days after the board is no longer enjoined from collecting such taxes.

History.—Added by Stats. 1980, Ch. 1194, operative January 1, 1981. Stats. 1981, Ch. 714, in effect January 1, 1982, renumbered Section "6593" as Section "6594."

6595. **Penalty interest rates.** [Repealed by Stats. 1985, Ch. 20, effective March 20, 1985, operative July 1, 1985.]

6596. **Excusable delay; reliance on advice.** (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by Sections 6051 and 6201 and any penalty or interest added thereto.

(b) For the purpose of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) In reasonable reliance on the board's written advice, the person did not do either of the following:

(A) Charge or collect from his or her customers amounts designated as sales tax reimbursement or use tax for the described activity or transaction.

(B) Pay a use tax on the storage, use, or other consumption in this state of tangible personal property.

(4) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

History.—Added by Stats. 1984, Ch. 1728, effective January 1, 1985. Stats. 1991, Ch. 402, in effect January 1, 1992, added "do either of the following:" after "person did not", substituted "(A) Charge" for "charge" after "following:", and added subparagraph (B), to paragraph (3) of subdivision (b).

Note.—Sec. 4, Stats. 1984, Ch. 1728 provided it is the intent of the Legislature that the State Board of Equalization shall explore and use every available means of regularly informing California businesses of the provisions of Section 6596 of the Revenue and Taxation Code.

Sec. 5, Stats. 1984, Ch. 1728 Provides "The State Board of Equalization shall request each city which licenses businesses within its jurisdiction to add a notice to its business licenses applications. The requested notice shall state in substance that sales or use taxes may apply to the applicant's business activities, and that the applicant may seek written advice from the State Board of Equalization regarding the application of sales or use taxes to his or her business activities.

The board shall also make reasonable efforts to work with counties and other state agencies to determinate information about taxpayer's obligations under the Sales and Use Tax Law."

Chapter 6. Collection of Tax

Article 1. Security for Tax. §§ 6701–6704.
2. Suit for Tax. §§ 6711–6715.
3. Judgment for Tax. §§ 6736–6740.
4. Priority and Lien of Tax. §§ 6756–6759.
5. Warrant for Collection of Tax. §§ 6776–6778.
6. Seizure and Sale. §§ 6796–6799.
7. Payment on Termination of Business and Successor's Liability. §§ 6811–6815.
8. Miscellaneous Provisions. §§ 6826–6832.6.

Article 1. Security for Tax

§ 6701. Security.
§ 6702. Notice to creditors.
§ 6703. Notice of levy.
§ 6704. Withheld earnings; employer's liability.

6701. **Security.** The board, whenever it deems it necessary to insure compliance with this part, may require any person subject thereto, to place with it such security that the board may determine. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section and Section 6815. The amount of the security shall be fixed by the board but, except as noted below, shall not be greater than twice the estimated average liability of persons filing returns for quarterly

periods or three times the estimated average liability of persons required to file returns for monthly periods, determined in the manner that the board deems proper, or fifty thousand dollars ($50,000), whichever amount is the lesser. In case of a person who, pursuant to Section 6070 of this part, has been given notice of hearing to show cause why his or her permit or permits should not be revoked, or a person whose permit or permits has been revoked or suspended, the amount of the security shall not be greater than three times the average liability of persons filing returns for quarterly periods or five times the average liability of persons required to file returns for monthly periods, or fifty thousand dollars ($50,000), whichever amount is the lesser. The limitations herein provided apply regardless of the type of security placed with the board. The amount of the security may be increased or decreased by the board subject to the limitations herein provided. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required. The board may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, interest, or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his or her address as it appears in the records of the board. Upon any sale any surplus above the amounts due shall be returned to the person who placed the security.

History.—Stats. 1945, p. 1725, operative July 1, 1945, added next to last sentence. Stats. 1947, p. 1557, operative July 1, 1947, added provision in second sentence limiting amount of security to three times estimated average liability of persons filing returns monthly. Stats. 1955, p. 1450, in effect September 7, 1955, substituted "place" and "placed" for "deposit" and "deposited", respectively, throughout section, added "except as noted below" in second sentence, and added third and fourth sentences. Stats. 1991, Ch. 236, in effect July 29, 1991, added the second sentence, and added "or her" after "him" in the fourth and eighth sentences. Stats. 1994, Ch. 903, in effect January 1, 1995, substituted "that" for "as" after "security" in the first sentence, substituted "the" for "such" after "determined in" and "that" for "as" after "manner" in the third sentence, and deleted former ninth sentence which provided, "Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof." Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "fifty thousand dollars ($50,000)" for "ten thousand dollars ($10,000)" in the third and fourth sentences, and added the seventh sentence.

Surety liable on bond.—Surety was held liable on a bond in effect prior to the termination of a prior bond by another surety when the subsequent bond stated the date of effectiveness and the surety collected the premium on the bond even though the board did not approve the bond until a later date, and the fact that both bonds total more than $10,000 did not preclude the board from asserting the claim against the subsequent bond. *People* v. *Great American Ins. Co.* (1963) 222 Cal.App.2d 552.

Duplicate notice to surety not required.—Plaintiff, an insurance company acting as surety for persons required to post security for payment of sales and use taxes, sought a refund of certain penalties paid by it on its bonds. Plaintiff contended that it was entitled to duplicate notice of tax determinations issued against its principals, so that it could make payment of the tax before the determinations become final and penalties were added thereto. The court, in affirming the judgment of the trial court, held that there is no constitutional compulsion for the state to give a duplicate notice to the surety; notice to the taxpayer is sufficient. Nor was this a situation requiring notice to the surety under Civil Code Section 2808, because the surety could have acquired notice of default from its principal through the exercise of due diligence. Lastly, the court held this was not an illegal agreement to indemnify a wrongdoer prohibited by Civil Code Section 2773, because here the indemnity was for the benefit of the State under a reasonable procedure to secure payment of revenue. *American Fidelity Fire Insurance Co.* v. *State Board of Equalization* (1973) 34 Cal.App.3d 51, *cert. denied* (1974) 415 U.S. 990.

Surety liable for penalties and interest on transactions occurring prior to cancellation of bond.—The State of California sought to enforce respondent's liability on a surety bond for penalties and interest assessed against respondent's principal subsequent to the effective date of the cancellation of the bond. The penalties and interest were assessed for transactions all of which had occurred prior to the cancellation date. The contract of surety provided that the surety could terminate its liability to the extent and in the manner set forth in Civil Code Section 2851, but that in no event

would the surety be relieved from liability as respects transactions occurring before the effective date of cancellation of the bond. The surety contended that it was not liable for penalties and interest assessed subsequent to the cancellation of the bond since Civil Code Section 2851 provides that after the effective date of cancellation ". . . the surety is relieved of all liability which otherwise thereafter would arise on its bond." The court, observing that Section 2851 does not stand alone but must be applied to the contract of surety, held that respondent had waived the provisions of Civil Code Section 2851 and had agreed to be liable for the sums at issue. Since no public policy dictated that the agreement not be enforced, its terms were binding upon respondent. *People* v. *Pacific Employers Ins. Co.* (1973) 36 Cal.App.3d 296.

Surety not exonerated because of taxpayer's waiver.—A surety who had guaranteed the tax liability of the taxpayer was not exonerated of such liability because of a waiver signed by the taxpayer extending the time in which the Board might issue a delinquency determination. The language of the Board's standard guarantee form that "the surety's liability shall be coextensive with that of the taxpayer" overrides the provision of Civil Code Section 2819 exonerating a surety if the terms of the principals obligations are altered without the surety's consent. *State Board of Equalization* v. *Carleton* (1990) 223 Cal.App.3d 1607.

Bankruptcy.—Property held by the Board as security prior to the taxpayer's filing of a petition for reorganization pursuant to Chapter 11 of the bankruptcy law belongs to the bankruptcy estate and is not immune from the claims of general creditors. The Board violated the automatic stay in bankruptcy by cashing the certificate of deposit taken as security from the taxpayer. *In re Sluggo's Chicago Style, Inc.* (9th Cir., 1990) 912 F.2d 1073.

6702. **Notice to creditors.** (a) If any person is delinquent in the payment of the amount required to be paid by him or her or in the event a determination has been made against him or her which remains unpaid, the board may, not later than three years after the payment became delinquent, or within 10 years after the last recording of an abstract under Section 6738 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or that person. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier. All persons so notified shall forthwith after receipt of the notice advise the board of all those credits, other personal property, or debts in their possession, under their control, or owing by them.

(b) If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or a state or federal savings and loan association or other credits or personal property in the possession or under the control of a bank or a state or federal savings and loan association, the notice to be effective shall state the amount, interest, and penalty due from the person, and shall be delivered or mailed to the branch or office of the bank or a state or federal savings and loan association at which the deposit is carried or at which the credits or personal property is held. A bank, state or federal savings and loan association, or a state or federal credit union withholding any deposit or other credits or personal property required to be withheld in which the delinquent

taxpayer and another person or persons have an interest, or held in the name of a third party or parties in which the delinquent taxpayer is ultimately determined to have no interest, is not liable therefor to any of the persons who have an interest in the deposit or other credits or personal property unless the deposit or other credits or personal property is released or transferred to the delinquent taxpayer.

(c) In the case of a deposit or other credits or personal property for which the transfer or other disposition is prevented, the depository institution required to prevent transfer or other disposition shall send a notice by first-class mail to each person named on a deposit, other credits, or personal property included in the notice from the board, provided a current address for each person is available to the institution. This notice shall inform each person as to the reason for preventing transfer or disposition of the deposit or other credits or personal property, the amount thereof which is prevented from transfer or other disposition, and the date by which that amount is to be remitted to the board. An institution may assess the deposit or other credits or personal property of each person receiving this notice a reasonable service charge not to exceed three dollars ($3).

(d) Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank or a state or federal savings and loan association, the aggregate amount of deposits, credits, or personal property to be withheld shall be an amount equal to two times the amount of the tax, interest, or penalty due from the person. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of that transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

History.—Stats. 1943, p. 2457, operative July 1, 1943, increased limitation period to three years after recording of abstract or certificate. Stats. 1949, p. 1344, operative July 1, 1949, added "personally or," "or person against whom a determination has been made which remains unpaid" and "or such person" to the first sentence; substituted "60" for "20" and added "whichever period expires the earlier" to the second sentence; substituted "forthwith" for "within five days" in the third sentence; added the last two sentences. Stats. 1951, p. 2389, operative July 1, 1951, added "officer or department of the State or any political subdivision or agency of the State" as persons to whom notice may be given prior to presentation of the delinquent taxpayer's claim to the State Controller. Stats. 1971, p. 3526, operative January 1, 1972, applicable only with respect to certificates of lien or abstracts of judgment filed on or after that date. Substituted "within 10 years after the last recording" for "within 3 years after the last recording" in first sentence. Stats. 1972, Ch. 103, operative April 1, 1973, added "shall state the amount, interest and penalty due from the person and" to the fifth sentence, and added the sixth sentence. Stats. 1978, Ch. 827, effective January 1, 1979, in the first sentence substituted "first-class" for "registered". Stats. 1980, Ch. 600, operative January 1, 1981, substituted present wording between "Section 6738 or" and "give notice" for "of a certificate under Section 6757" in first sentence, added "or a state or federal savings and loan association" where it appears following "bank", and substituted present wording following "control of a bank," in sixth sentence for former wording. Stats. 1984, Ch. 562, effective January 1, 1985, added subdivision designations, in (a) substituted "he or she" for "he" and "him or her" for "him" throughout section, substituted "that" for "such" after "to the delinquent or," substituted "the" for "such" before "officer," deleted "State" before "Controller," in (b) substituted "the" for "such" before "notice," substituted "the" for "such" before "credits," added "A bank, state . . . taxpayer," at end of (a), added text of (c), deleted "hereunder" after "withheld," substituted "that" for "such" before "transfer or disposition."

Text of section operative through June 30, 2001

6703. **Notice of levy.** (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a retailer or other person liable for any amount under this part to withhold from such credits or other personal property the amount of any tax, interest, or penalties due from such retailer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at such times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the retailer or other person liable during the period of the levy.

(d) For the purposes of this section, the term ‘‘payments’’ does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term ‘‘payments’’ does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the retailer or other person liable for the tax.

(3) Any other payments or credits due or becoming due the retailer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1984, Ch. 1490, effective September 27, 1984, added subdivision designations, added “Subject . . . (c)” before “the board” in (a), added all text of (b) through (d). Stats. 1987, Ch. 38, in effect January 1, 1988, added last sentence in paragraph (a), in paragraph (b), changed “Notice of Levy” to “notice of levy”.

Text of section operative July 1, 2001

6703. **Notice of levy.** (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control,

any credits or other personal property belonging to a retailer or other person liable for any amount under this part to withhold from such credits or other personal property the amount of any tax, interest, or penalties due from such retailer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at such times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the retailer or other person liable during the period of the levy.

(d) For the purposes of this section, the term ''payments'' does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term ''payments'' does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the retailer or other person liable for the tax.

(3) Any other payments or credits due or becoming due the retailer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1999, Ch. 991, (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "paragraph 29 of subdivision (a) of Section 9105" for "Section 9102" in subdivision (d).

6704. **Withheld earnings; employer's liability.** (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a retailer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 6703 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 2. Suit for Tax

§ 6711. Court action.
§ 6712. Rules of procedure.
§ 6713. Attachment.
§ 6714. Certificate of delinquency.
§ 6715. Service of process.

6711. **Court action.** At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the recording of an abstract under Section 6738 or the recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to collect the amount delinquent together with penalties and interest.

History.—Stats. 1943, p. 2458, operative July 1, 1943, added provision permitting action within three years of recordation of abstract or certificate. Stats. 1969, p. 1821, in effect November 10, 1969, operative January 1, 1970, substituted "the period during which a lien is in force as the result of the" for "three years after the last", and added the reference to Section 6757.5. Stats. 1977, Ch. 481, operative July 1, 1978, substituted "the recording or filing of a notice of state tax lien under Section 6757," for "of a certificate under Section 6757 or 6757.5,". Stats. 1980, Ch. 600, operative January 1, 1981, substituted "Section 7171 of the Government Code" for "Section 6757".

When tax is "delinquent."—An action brought within three years of the service of notice of an additional assessment is timely, even though more than three years has elapsed since the fifteenth day following the close of the period for which the assessment is made. *People* v. *Hochwender* (1942) 20 Cal.2d 181; *People* v. *West Publishing Co.* (1950) 35 Cal.2d 80.

An action brought within three years from 30 days after mailing of notice of redermination is timely, since the determination did not become final until 30 days after service of the notice. *People* v. *Nymer* (1945) 71 Cal.App.2d 550.

Statute of limitations—alter ego.—The statute of limitations does not bar an action against the defendant where the defendant is the alter ego of a tax debtor corporation and a certificate of delinquency has been duly filed against the tax debtor corporation prior to the running of the statute of limitations. *People* v. *Clauson, People* v. *Miller, People* v. *Johnson* (1964) 231 Cal.App.2d 374.

Statute of limitations.—Where an action was filed more than three years after the recording of a certificate and before the recording of a new certificate under Section 6757, the action was barred by the statute of limitations. *People* v. *Smejkal* (1968) 266 Cal.App.2d 971.

Action on Surety Contract—Effect of Time Extension Before Cause of Action Barred.—An Action to enforce the liability of a surety for delinquent taxes of its principal was held timely under this section when brought three years and five months after the cause of action arose, i.e., the date the determination of tax became final, where the prior limitation period of three years was extended by the Legislature before the cause of action was barred under the prior period. *People* v. *United States Fire Insurance Co.* (1976) 61 Cal.App.3d 231.

Statue of Limitations.—The State can bring an in personam action within three years after the tax becomes due and payable, but no later. *People* v. *Garg* (1993) 16 Cal.App.4th 357.

Fraudulent transfer.—Agreement between spouses transmuting future earnings from community property to separate property was fraudulent transfer, in violation of Family Code section 851 and Civil Code section 3439.04(a), since the taxpayer had a present interest in the future earnings of his spouse and the purpose for the agreement was to avoid having the spouse's earnings be community property which could be used to pay the tax debt of the taxpayer. *State Board of Equalization* v. *Woo* (2000) 82 Cal.App.4th 481.

6712. **Rules of procedure.** The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

6713. **Attachment.** In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

History.—Stats. 1974, Ch. 1516, effective January 1, 1975, deleted the statement that no bond or affidavit was required previous to the issuing of the attachment, and added the proviso that the writ of attachment may be issued in the described manner.

6714. **Certificate of delinquency.** In the action a certificate by the board showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of tax, of the delinquency of the amounts set forth, and of the compliance by the board with all the provisions of this part in relation to the computation and determination of the amounts.

Presumption of correctness.—A certificate of delinquency carries with it the presumption that the board's determination is correct. The taypayer has the burden of proving not only that the determination, based upon his records, is incorrect, but also of producing evidence from which another and proper determination may be made. *People* v. *Schwartz* (1947) 31 Cal.2d 59.

Board's certificate sufficient to establish prima facie case.—In action to collect delinquent sales taxes the certificate provided for by this section is sufficient to establish a prima facie case. Consequently, when such a certificate has been submitted in evidence, a motion for a directed verdict may not be granted. *People* v. *Mahoney* (1939) 13 Cal.2d 729.

Board's certificate not sufficient to establish fraud.—In a suit for refund of sales tax paid pursuant to a deficiency determination issued after the period of limitations had run, the burden of proving fraud is on the State Board of Equalization. *Marchica* v. *State Board of Equalization* (1951) 107 Cal.App.2d 501.

6715. **Service of process.** In any action relating to the use tax brought under this part process may be served according to the Code of Civil Procedure and the Civil Code of this State or may be served upon any agent or clerk in this State employed by any retailer in a place of business maintained by the retailer in this State. In the latter case a copy of the process shall forthwith be sent by registered mail to the retailer at his principal or home office.

Article 3. Judgment for Tax

§ 6736. Request for judgment.
§ 6737. Entry and filing of judgment.
§ 6738. Abstract of judgment; lien.
§ 6739. Execution.
§ 6740. Release of liens.

6736. **Request for judgment.** If any amount required to be paid to the State under this part is not paid when due, the board may, within ten years after the amount is due, file in the office of the Clerk of the Superior Court of Sacramento County, or any county, a certificate specifying the amount required to be paid, interest and penalty due, the name and address as it appears on the records of the board of the person liable, the compliance of the board with this part in relation to the determination of the amount required to be paid, and a request that judgment be entered against the person in the amount required to be paid, together with interest and penalty as set forth in the certificate.

History.—Stats. 1987, Ch. 38, in effect January 1, 1988, changed "within three years" to "within ten years" and changed "county clerk" to "County Clerk". Stats. 2003, Ch. 296 (SB 66), in effect January 1, 2004, deleted "County" after "office of the", and added "the Superior Court of" after "Clerk of".

6737. **Entry and filing of judgment.** The clerk of the court immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the person in the amount required to be paid, together with interest and penalty as set forth in this certificate. The clerk of the court may file the judgment in a looseleaf book entitled, "Special Judgments for State Retail Sales or Use Tax."

History.—Stats. 2003, Ch. 296 (SB 66), in effect January 1, 2004, deleted "county" after "certificate. The", and added "of the court" after "clerk" in the first and second sentence.

Constitutionality.—The procedure provided by this and the preceding section is not violative of due process of law, nor does it constitute special legislation. *People* v. *Skinner* (1941) 18 Cal.2d 349.

Certificate need not be signed by board itself.—Since Section 7052 specifically empowers the board to appoint such assistants as it may deem necessary to enforce its powers and perform its duties, a certificate signed by the tax counsel appointed by the board rather than by the board itself is valid. *Id.*

6738. **Abstract of judgment; lien.** An abstract of the judgment or a copy of such judgment may be filed for record with the county recorder of any county. From the time of the filing the amount required to be paid together with interest and penalty set forth constitutes a lien upon all the real property in the county owned by the person liable or afterward and before the lien expires acquired by him. The lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the date of the judgment so entered by the clerk of the court unless sooner released or otherwise

discharged. The lien may within 10 years from the date of the judgment or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by filing for record in the office of the county recorder of any county an abstract or copy of the judgment and from the time of such filing the lien shall be extended to the property in such county for 10 years unless sooner released or otherwise discharged.

History.—Stats. 1957, p. 2020, in effect September 11, 1957, substituted "afterward" for "afterwards" and "10" for "five." Stats. 1965, p. 2464, in effect September 17, 1965, deleted "real" before the word "property" and added the last sentence. Stats. 1977, Ch. 481, operative July 1, 1978, added "of such judgment" in the first sentence; added the word "real" in the second sentence; deleted the last sentence concerning personal property. Stats. 2003, Ch. 296 (SB 66), in effect January 1, 2004, deleted "county" after "entered by the", and added "of the court" after "clerk" in the third sentence.

No priority over private liens.—The liens provided by this section are subordinate to previously recorded private liens. *Home Owner's Loan Corporation* v. *Hansen* (1940) 38 Cal.App.2d 748.

6739. **Execution.** Execution shall issue upon the judgment upon request of the board in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the Code of Civil Procedure.

6740. **Release of liens.** (a) If the board determines that the amount of tax, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the tax, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that such property has been released or that the lien has been subordinated as provided in the certificate.

History.—Added by Stats. 1980, Ch. 600, operative January 1, 1981.

Article 4. Priority and Lien of Tax

§ 6756. Priority.
§ 6757. Recording certificate; lien. [Repealed.]
§ 6757. Liens; perfection and enforceability of.
§ 6757.5. Filing with Secretary of State; statewide lien. [Repealed.]
§ 6758. Release of lien. [Repealed.]
§ 6758.5. Unenforceable lien. [Repealed.]
§ 6759. Certificate of release. [Repealed.]

6756. **Priority.** The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

The preference given to the State by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

History.—Stats. 1977, Ch. 481, operative July 1, 1978, deleted "recorded lien which attached prior to the date when the amounts required to be paid became a lien." in second paragraph of (d) and added the language following "over any". Stats. 1980, Ch. 600, operative January 1, 1981, substituted "as provided in Section 7171 of the Government Code" for "pursuant to subdivision (b) or (c) of Section 6757".

Expenses of last illness and family allowance prior to sales tax.—Expenses of last illness and family allowance are entitled to priority of payment over a claim for sales tax owing by decedent. *Estate of Jacobs* (1943) 61 Cal.App.2d 152.

Prior lien creditor.—The state has no preference over a creditor who has a prior lien, recorded or not. *Durkin* v. *Durkin* (1955) 133 Cal.App.2d 283.

Interest and penalties.—Where the taxpayer makes a voluntary assignment for the benefit of creditors, the state has priority as to interest and penalties accruing subsequent to the date of assignment as well as to the taxes and the interest and penalties accruing up to the date of the assignment. *People* v. *Warfel* (1958) 162 Cal.App.2d 400.

Transfer of liquor license.—Preferred wage claims of employees and federal tax liens are not being subordinated to state tax claims when an assignee for the benefit of creditors or a receiver in bankruptcy makes prior payment of delinquent state sales and use taxes and unemployment contributions, as a condition to the renewal or transfer of a liquor license pursuant to Section 24049 of the California Business and Professions Code since this isn't a question relating to priority of liens or claims, but rather one relating to the nature of the property rights to which such liens and claims attach. *United States* v. *California* (1960) 281 F.2d 726; *Meyer* v. *Bass* (1960) 281 F.2d 728.

Liability of receiver.—A receiver who collects and withholds sales and unemployment disability taxes is liable in his representative capacity as a receiver for the payment of such funds on a priority basis in case of the insolvency of the receivership estate. *Stewart* v. *State of California* (1969) 272 Cal.App.2d 345.

Property in hands of receiver.—A dealer's reserve account which passes into the hands of a receiver is a part of a tax debtor's "assets" against which the state has a priority claim. *Wright* v. *Standard Engineering Corp.* (1972) 28 Cal.App.3d 244.

6757. **Recording certificate; lien.** [Repealed by Stats. 1977, Ch. 481, operative July 1, 1978.]

Lien attaches to equitable interests.—When section 6757 [now repealed] was amended in 1965 to delete "real" as a modifier of property to which the lien attached, the Legislature intended to broaden the scope of lien to "all property." Since an equitable interest is property, the lien under this section embraces it. *Wilkinson* v. *Wilkinson* (1976) 51 Cal.App.3d 382.

6757. **Liens; perfection and enforceability of.** (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. The lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 6536 (pertaining to jeopardy assessments), the date the notice of the board's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

(c) The lien provided by this section shall not arise during any period that Section 362 of the United States Bankruptcy Code applies to the person against whom the lien would otherwise apply.

History.—Added by Stats. 1977, Ch. 481, operative July 1, 1978. Stats. 1979, Ch. 322, effective January 1, 1980, changed wording of second paragraph of (a), deleted reference to judgment creditors following second sentence of (f), changed "January 1, 1978" to "July 1, 1978" in (g). Stats. 1980, Ch. 600, operative January 1, 1981, deleted part of first sentence in (a) following "lien"; substituted present second sentence for former second sentence; renumbered second paragraph of (a) to become (b); deleted former (b), (c), (e), (f), and (g). Stats. 1994, Ch. 903, in effect January 1, 1995, substituted "The" for "Such a" before "lien" in the second sentence of subdivision (a), and added subdivision (c).

6757.5. **Filing with Secretary of State; statewide lien.** [Repealed by Stats. 1977, Ch. 481, operative July 1, 1978.]

6758. **Release of lien.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

6758.5. **Unenforceable lien.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

6759. **Certificate of release.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

Article 5. Warrant for Collection of Tax

§ 6776. Warrant; time of issuing.
§ 6777. Fees and expenses.
§ 6778. Collection of fees.

6776. **Warrant; time of issuing.** At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 6738 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal, or the Department of the California Highway Patrol and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution and shall be levied within five working days following receipt of the warrant.

History.—Stats. 1943, p. 2458, operative July 1, 1943, revised first sentence. Stats. 1965, p. 2046, in effect September 17, 1965, substituted "10" years for "three" years. Stats. 1977, Ch. 481, operative July 1, 1978, deleted "of a certificate" in the first paragraph, and substituted "the recording or filing of a notice of state tax lien". Stats. 1980, Ch. 600, operative January 1, 1981, added "last" following "Section 6738 or the" and substituted "Section 7171 of the Government Code" for "Section 6757". Stats. 1986, Ch. 1361, effective January 1, 1987, added "California State Police" to the list of officials authorized to direct a warrant. Stats. 1996, Ch. 305, in effect January 1, 1997, substituted "the Department of the California Highway Patrol" for "California State Police" after "constable, or" in the second sentence, and added "and shall . . . the warrant" in the third sentence. Stats. 1998, Ch. 931, in effect September 28, 1998, deleted "constable," after "marshal," in the second sentence.

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

6777. **Fees and expenses.** The board may pay or advance to the sheriff, marshal, or the Department of the California Highway Patrol, the same fees, commissions, and expenses for services as are provided by law for similar services rendered pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1951, p. 2390, operative July 1, 1951, added provisions permitting advance of fees and expenses. Stats. 1986, Ch. 1361, effective January 1, 1987, added "California State Police" to the list of officials authorized to direct warrants. Stats. 1996, Ch. 305, in effect January 1, 1997, substituted "Department of the California Highway Patrol" for "California State Police", deleted "his" after "expenses for", and added "rendered" after "similar services". Stats. 1998, Ch. 931, in effect September 28, 1998, deleted "constable," after "marshal," in the first sentence.

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

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Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

6778. **Collection of fees.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

Article 6. Seizure and Sale

§ 6796. Seizure and sale.
§ 6797. Notice of sale.
§ 6798. Bill of sale; deed.
§ 6799. Disposition of proceeds.

6796. **Seizure and sale.** At any time within three years after any person is delinquent in the payment of any amount, the board may forthwith collect the amount in the following manner: The board shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

Any seizure made to collect a sales tax due shall be only of property of the retailer not exempt from execution under the provisions of the Code of Civil Procedure.

6797. **Notice of sale.** Notice of the sale and the time and place thereof shall be given to the delinquent person and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the person, in case of a sale for use taxes due, at his or her last known address or place of business, and, in case of a sale for sales taxes due, at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located.

Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

History.—Stats. 1990, Ch. 1528, in effect January 1, 1991, added "and to all persons . . . property" after "delinquent person", substituted "20" for "10", added "personally served or" after "The notice shall be", added "or her" after "his" twice, and substituted "state" for "State" in the first sentence; substituted "If not . . . notice" for "It" in the second sentence, deleted "also" after "shall", substituted "pursuant to . . . Code" for "for at least 10 days before the date set for the sale", substituted "city" for "county" and "or a part thereof is situated . . . part thereof is located" for "seized is to be sold" in the third sentence, deleted the former fourth sentence which provided, "If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 10 days prior to the date set for the sale", and added the sentence "Notice shall also be posted . . .", in the first paragraph; created the second paragraph from the former last sentence of the first paragraph and added "taxes," after "including", and substituted "is" for ", interest, penalties, and costs are."

6798. **Bill of sale; deed.** At the sale the board shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

6799. **Disposition of proceeds.** If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the State, the board shall return the excess to the person liable for the amounts and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent

jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the person liable for the amount, his or her heirs, successors, or assigns.

History.—Stats. 1996, Ch. 860, in effect January 1, 1997, added "or her" after "his" throughout text, substituted "to the excess moneys" for "thereto" after "respective parties" in the second sentence, and substituted "Controller" for "State Treasurer" in the third sentence.

Article 7. Payment on Termination of Business and Successor's Liability

§ 6811. Withholding by purchaser.
§ 6812. Liability of purchaser; release.
§ 6813. Certificate.
§ 6814. Notice of successor liability.
§ 6815. Effect of security for tax when business discontinued.

6811. **Withholding by purchaser.** If any person liable for any amount under this part sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

History.—Stats. 1943, p. 2458, operative July 1, 1943, revised wording. Stats. 1963, p. 1492, in effect September 20, 1963, substituted "person" for "retailer."

6812. **Liability of purchaser; release.** (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b) (1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

History.—Stats. 1943, p. 2458, operative July 1, 1943, added last sentence. Stats. 1945, p. 1001, operative July 1, 1945, substituted "60" for "30." Stats. 1947, p. 2029, operative July 1, 1947, added provisions extending to 90 days under certain conditions time for issuance to purchaser of business of certificate or statement of amount due. Stats. 1963, p. 1492, in effect September 20, 1963, substituted "person" for "retailer" in the last sentence. Stats. 1977, Ch. 921, operative January 1, 1978, added provision for 90 days from date of sale. Stats. 1986, Ch. 333, effective January 1, 1987, reduced the Board's allowable response time from 90 to 60 days after receiving the purchaser's request or from the date of sale. Stats. 1991, Ch. 236, in effect July 29, 1991, added "from the"after "to withhold" in subdivisions (a) and (c), substituted "last date upon" for "time within" after "provided. The", and substituted "be not later than . . . purchase of the" for "start to run at the time the person sells out his or her", and deleted "or at the time that the determination against the person becomes final whichever event occurs the later" after "stock of goods" in subdivision (c).

Tax assessed after sale of business.—The purchaser of a business is liable, up to the amount of the purchase price, for sales tax assessed against the retailer after the sale of the business is consummated, measured by taxable sales made before the sale of the business. Such tax is ''due and unpaid'' even though not then assessed. *People* v. *Buckles* (1943) 57 Cal.App.2d 76.

Purchaser of Fixtures and equipment.—A purchaser of fixtures and equipment is not liable for sales tax due from the seller, on account of failing to withhold sufficient of the purchase price to cover such liability when the evidence showed that the purchaser did not purchase the business of the former owner or become his successor in the business. *People* v. *Gabriel* (1943) 57 Cal.App.2d 788.

Related corporations.—A wholly owned subsidiary of a creditor corporation was a ''purchaser'' of a debtor corporation where the debtor corporation transferred all of its operating assets to the subsidiary, and the subsidiary in turn issued to the creditor corporation a promissory note, equivalent to the value of the assets, which the creditor corporation credited to the debtor corporation, in reduction of its indebtedness. *Knudsen Dairy Products Co.* v. *State Board of Equalization* (1970) 12 Cal.App.3d 47.

Effect of Order of Bankruptcy Court.—Where the board fails to appeal the order of a bankruptcy court which finds the claim of the board not a valid debt of the bankrupt seller, the board is barred from subsequently attempting to collect the amount of the tax from the buyer under the successor liability theory. *Century Geophysical Corp.* v. *California Board of Equalization* (1977) 564 F.2d 342.

Compliance with Bulk Sales Law did not avoid successor liability.—A purchaser of a business deposited the purchase price into escrow to comply with Commercial Code § 6101 et seq., but did not obtain a tax clearance from the Board. The Board was entitled to collect the purchase price from the purchaser as a successor. The public interest in collection of taxes outweighs a private interest in the transfer of business assets. Successor liability is a remedy distinct from the Bulk Sales Law. *Schnyder* v. *State Board of Equalization* (2002) 101 Cal.App.4th 538.

6813. **Certificate.** The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 6701.

History.—Added by Stats. 1978, Ch. 827, effective January 1, 1979.

6814. **Notice of successor liability.** (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 6561) of Chapter 5 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner 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, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1979, Ch. 260, effective July 17, 1979. Stats. 1989, Ch. 768, in effect January 1, 1990, added ", not later . . . of goods" after "determination" in second sentence and added subdivision (b).

6815. **Effect of security for tax when business discontinued.** If at the time a business is discontinued the board holds security pursuant to Section 6701 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

History.—Added by Stats. 1966, p. 188, in effect April 18, 1966, operative July 1, 1966.

Article 8. Miscellaneous Provisions

§ 6826. Report of collections.
§ 6827. Remedies; cumulative.
§ 6828. Board; authority of.
§ 6829. Personal liability of corporate officer.
§ 6830. Contracts with private collection entities.
§ 6831. Partnership liability; absence of written partnership agreement.
§ 6832. Installment payment agreements.
§ 6832.5. Annual statement; installment payment agreements.
§ 6832.6. Notice to consumers.

6826. **Report of collections.** The board shall report to the Controller the amount of collections under this part, and he shall keep a record thereof.

6827. **Remedies; cumulative.** The remedies of the State provided for in this chapter are cumulative, and no action taken by the board or Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

6828. **Board; authority of.** In all proceedings under this chapter the board may act on behalf of the people of the State of California.

6829. **Personal liability of corporate officer.** (a) Notwithstanding Section 16306, 16307, 17101, 17158, 17355, 17450, or 17456 of the Corporations Code, upon termination, dissolution, or abandonment of a partnership, a registered or foreign limited liability partnership or a domestic or foreign corporate or limited liability company business, any officer, member, manager, partner, 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 is under a duty to act for the corporation, partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation,partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited liability partnership, or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation, partnership, limited liability partnership, or limited liability company consumed tangible personal property and failed to pay the tax to the seller or has included use tax on the billing and collected the use tax or has issued a receipt for the use tax and failed to report and pay use tax.

(d) For purposes of this section ''willfully fails to pay or to cause to be paid'' means that the failure was the result of an intentional, conscious, and voluntary course of action.

(e) The sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701).

History.—Added by Stats. 1981, Ch. 337, in effect January 1, 1982. Stats. 1987, Ch. 38, in effect January 1, 1988, in paragraph (a) changed "if such officer" to "if the officer", in paragraph (c), added the phrase "has issued a receipt for the use tax and failed". Stats. 1994, Ch. 1200, in effect September 30, 1994, added "Notwithstanding . . . Code," after "(a), substituted "upon" for "Upon", and added "domestic or foreign" after "abandonment of a" in subdivision (a); added "or limited liability company" and ", member, manager," throughout text of section; substituted "that" for "which" after "taxes" in subdivision (b); substituted "in" for "to" after "reimbursement" and added "or added . . . price of," after "price of," in subdivision (c). Stats. 1995, Ch. 679, in effect January 1, 1996, added "registered or foreign limited liability partnership or a" after "abandonment of a", in subdivision (a); added "partner," after "manager," in subdivision (a) and (b); added ", limited liability partnership" after "corporation" twice in subdivisions (a) and (c) and once in subdivision (b); and added "included use tax . . . tax or has" after "seller or has" in subdivision (c). Stats. 1996, Ch. 1003, in effect January 1, 1997, added "16306, 16307," after "Section" and added "a partnership," after "abandonment of" in subdivision (a); added "partnership" after "corporation" throughout text.

Corporate officer liability.—Former corporate officer who had willingly failed to pay the subject sales taxes was liable for the corporation's debt for such taxes even though he was no longer an officer of the corporation at the time it dissolved. *State Board of Equalization* v. *Wirick* (2001) 93 Cal.App.4th_____.

6830. **Contracts with private collection entities.** (a) For the purpose of identifying persons or businesses who may owe taxes or other amounts, or for the purpose of collecting taxes, interest, additions to tax, and penalties, the board may enter into agreement with one or more private persons, companies, associations, or corporations providing these services outside this state with respect to the identification of persons or businesses who may owe taxes or other amounts, or the collection of taxes, interest, additions to tax, and penalties. The agreement may provide, at the discretion of the board, the rate of payment and the manner in which compensation for services shall be paid. The compensation may be added to the amount required to be identified or collected by the collection agency or provider of these services from the tax debtor. The board shall provide the necessary information for the contractor to fulfill its obligation under that agreement.

(b) With the approval of the board, the contractor may, as part of the collection process, refer the tax debt for litigation by its legal representatives in the name of the board.

History.—Added by Stats. 1984, Ch. 1490, effective September 27, 1984. Stats. 1995, Ch. 555, in effect January 1, 1996, added "identifying . . . purpose of" after "purpose of", substituted "these" for "debt collection", and added "identification . . . or the" after "respect to the", in the first sentence, substituted "The" for "That" after penalties." in the second sentence, and substituted "these" for "debt collection" after "provider of" in the third sentence of subdivision (a).

6831. **Partnership liability; absence of written partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for a seller's permit, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

6832. **Installment payment agreements.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the due date of the tax, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 6565.

History.—Added by Stats. 1998, Ch. 612, in effect January 1, 1999. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision (e).

6832.5. **Annual statement; installment payment agreements.** On or before July 1, 2000, the board shall provide each taxpayer who has an installment payment agreement in effect under Section 6832 with an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 1999, Ch. 929, (AB 1638), in effect January 1, 2000.

6832.6. **Notice to consumers.** In the case of liability for use tax arising from the board's auxiliary collection provisions pursuant to Article 3

(commencing with Section 6291) of Chapter 3.5, or use tax liability arising from purchases described in Section 6405, the board shall provide notice to purchasers in simple and nontechnical language of its authorization under Section 6832 to enter into an agreement to accept the payment of use tax in installments. The notice shall be mailed to purchasers concurrently with the mailing of the return, notice of determination, or notice of redetermination.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Chapter 7. Overpayments and Refunds

Article 1. Claim for Refund. §§ 6901–6909.
2. Suit for Refund. §§ 6931–6937.
3. Recovery of Erroneous Refunds. §§ 6961–6964.
4. Cancellations. § 6981.

Article 1. Claim for Refund

§ 6901. Credits and refunds.
§ 6901.5. Credits and refunds; excess tax.
§ 6902. Claim; limitation period.
§ 6902.2. Refund; offset of personal income or bank and corporation tax liability.
§ 6902.3. Overpayments from levies or liens.
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6901. **Credits and refunds.** If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors if a determination by the board is made in any of the following cases:

(a) An amount of tax, interest, or penalty was not required to be paid.

(b) Any amount of prepayment of sales tax, interest, or penalty paid pursuant to Article 1.5 (commencing with Section 6480) of Chapter 5 was not required to be paid.

(c) Any amount that is approved as a settlement pursuant to Section 7093.5.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to Article 1 (commencing with Section 6201) of Chapter 3 shall be credited or refunded by the state to the purchaser. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty

thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1945, p. 1001, operative July 1, 1945, added "and payable" to first paragraph. Stats. 1949, p. 1166, operative July 1, 1949, added second paragraph. Stats. 1959, p. 4377, in effect September 18, 1959, substituted "one hundred dollars ($100)" for "twenty-five dollars ($25)." Stats. 1963, p. 3105, in effect September 20, 1963, added "by the board" and "from whom the excess amount was collected or by whom it was paid" in the second sentence of the first paragraph, and substituted "two hundred fifty dollars ($250)" for "one hundred dollars ($100)" in the second paragraph. Stats. 1965, p. 2052, in effect September 17, 1965, substituted "one thousand dollars ($1,000)" for "two hundred fifty dollars ($250)". Stats. 1977, Ch. 921, operative January 1, 1978, substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)". Stats. 1985, Ch. 591, effective January 1, 1986, substituted "fifteen" for "five" before "thousand" and "($15,000)" for "($5,000)" after "dollars" in the second paragraph. Stats. 1987, Ch. 210, effective July 23, 1987, added "or her" after "his" in first and second paragraphs, deleted first phrase of second paragraph, "In the case, however, of a determination by the board that an amount not exceeding fifteen thousand dollars ($15,000) was not required to be paid under this part", added "however" after "board" in second paragraph and added balance of sentence after "executors" and paragraphs (a) and (b). In third paragraph, deleted "Chapter 3 of this part" and substituted "(commencing with Section 6201) of Chapter 3". Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "fifty thousand dollars ($50,000)" for "fifteen thousand dollars ($15,000)" following "not exceeding" in subdivision (a). Stats. 1992, Ch. 708, in effect September 15, 1992, added subdivision (c). Stats. 1994, Ch. 726, in effect September 22, 1994, deleted "to the State Board of Control" after "and shall certify" in the first sentence; substituted "The" for "If approved by the State Board of Control the" at the beginning of the second sentence; added "if a determination . . . the following cases:" in the first paragraph; deleted the second paragraph which read: "The board, however, without obtaining approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors, if a determination by the board is made in either of the following cases:"; deleted "not exceeding fifty thousand dollars ($50,000)" after "or penalty" in subdivision (a); and added "Any proposed determination . . . of that determination." to the end of subdivision (c).

Unintentional overpayment.—Where a retail taxpayer erroneously collects and pays excessive sales taxes, the board is not required to make refunds directly to the retailer's customers, but may instead require as a condition of refund that the retailer repay such excess to its customers. *Decorative Carpets, Inc.* v. *State Board of Equalization* (1962) 58 Cal.2d 252.

Prior claim for refund by each member of class not required in class action suit for refund.—Where the complaint alleged that the named plaintiffs had filed a claim with the Board in behalf of themselves and all others similarly situated, and also alleged the existence of a well defined community of interest in questions of law and fact between the named plaintiffs and the other members of the class, it is not necessary that the complaint also allege that the unnamed plaintiffs had filed claims for refund as required by law. *Santa Barbara Optical Co., Inc.* v. *State Board of Equalization* (1975) 47 Cal.App.3d 244 [disapproved to the extent inconsistent with *Woosley* v. *State of California* (1992) 3 Cal.4th 758].

Joinder of Board in suit for refund by consumer against retailers.—Where a consumer brings a class action for refund of sales tax reimbursement against retailers who have failed or refused to apply for tax refunds to which they are entitled, the consumer may join the Board as a party in the suit. *Javor* v. *State Board of Equalization* (1974) 12 Cal.3d 790.

Note.—See Section 34 which authorizes, under certain conditions, payment directly to local governments of amounts paid to a state agency which can be identified as intended as payment of a locally administered tax.

Credit for Bad Debts in Bankruptcy Reorganization.—See Section 6055.

Refund of Excess Tax Reimbursement for Repayment to Consumer.—The board may not offset amounts owed to it by retailer against refunds of excess sales tax reimbursement required as the result of a class action by consumers against the retailers and the board. *Javor* v. *State Board of Equalization* (1977) 73 Cal.App.3d 939 [disapproved to the extent inconsistent with *Woosley* v. *State of California* (1992) 3 Cal.4th 758].

Class action permitted only to the extent authorized by the Legislature.—Class actions for refunds of sales tax were not authorized by the Legislature prior to amendment to section 6904 adopted in 1987, and this amendment authorized a class action only where each member of the class expressly authorizes and signs the claim (disapproving previous appellate decisions inconsistent with this decision). *Woosley* v. *State of California* (1992) 3 Cal.4th 758.

Setoffs of overpayments against underpayments.—The Board may properly credit and set off underpayment of taxes barred by the statute of limitations in one quarter against an overpayment of taxes in another quarter, so long as both setoffs and overpayments occurred during the period put at issue by the taxpayer's claim for refund. *Sprint Communications Company* v. *State Board of Equalization* (1995) 40 Cal.App.4th 1254.

6901.5. **Credits and refunds; excess tax.** When an amount represented by a person to a customer as constituting reimbursement for taxes due under this part 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 shall be returned by the person to the customer upon notification by the Board of Equalization or by the customer that such excess has been ascertained. In the event of his or her failure or refusal to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall

be remitted by that person to this state. Notwithstanding subdivision (b) of Section 6904, those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

History.—Added by Stats. 1982, Ch. 708, in effect September 7, 1982. Stats. 1987, Ch. 38, effective January 1, 1988, deleted "However" and substituted "Notwithstanding subdivision (b) of Section 6904".

6902. **Claim; limitation period.** (a) (1) For persons required to file returns on other than an annual basis, except as provided in subdivision (b) no refund shall be approved by the board after three years from the last day of the month following the close of the quarterly period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511) or Article 4 (commencing with Section 6536) of Chapter 5 of this part, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period.

(2) For persons required to file returns on an annual basis, except as provided in subdivision (b) no refund shall be approved by the board after three years from the last day of the calendar month following the one-year period for which the overpayment was made, or with respect to determinations made under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), or Article 4 (commencing with Section 6536) of Chapter 5, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 6488.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 6488 if a claim therefor is filed with the board before the expiration of the period agreed upon.

History.—Stats. 1945, p. 1002, operative July 1, 1945, substituted "six month" for "60 days," and added provision permitting allowance of credit relating to period for which a waiver is given. Stats. 1947, p. 1558, operative July 1, 1947, substituted "last day of the month following" for "fifteenth day after." Stats. 1949, p. 1342, operative July 1, 1949, reworded the first sentence to permit the board to approve a refund within the limitation period without a claim therefor being filed and substituted "approved by the board" for "allowed" in the last sentence. Stats. 1965, p. 4440, in effect September 17, 1965, revised first line, added "(a)" and "4" in first paragraph, and added (b). Stats. 1977, Ch. 921, operative January 1, 1978, limited paragraph (a) to other than annual basis taxpayers, added a new paragraph for annual basis taxpayers, and added code sections in references to Articles 2, 3, and 4 of Chapter 5. Stats. 1992, Ch. 902, in effect September 25, 1992, operative January 1, 1993, added "(1)" after "(a)", substituted "persons required to file" for "taxpayers filing", added "Article" before "3" and "4", and substituted "that" for "such" after "board within" in paragraph (1) of subdivision (a); added paragraph number (2) after subdivision (a), substituted "persons required" for "taxpayers filing", added "Article" before "3" and "4", deleted "of this part" after "Chapter 5", and substituted "that" for "such" twice after "board within" and after "expiration of" in paragraph (2) of subdivision (a).

Claim not timely.—Where (1) the board issued a notice of determination to a taxpayer that the amounts paid with its returns were less than the amounts due, (2) the taxpayer filed a petition for redetermination, and (3) the board ultimately concluded that the taxpayer had made overpayments with its returns rather than underpayments, the board's ultimate conclusion was not a determination made under Article 2 or 3 of Chapter 5 and hence a refund claim filed within six months of the board's action was not a claim for a refund with respect to a determination under Article 2 or 3 of Chapter 5. *Holland Furnace Co.* v. *State Board of Equalization* (1960) 177 Cal.App.2d 672.

No Refund of Voluntary Payment of Estimated Tax Liability.—Taxpayer sought a refund of amounts voluntarily paid to the Board of Equalization in advance payment of estimated tax liability. Taxpayer made the payments during an extension of time within which a notice of deficiency determination might be mailed to taxpayer. The extension period expired, however, before the Board actually issued a deficiency notice. Taxpayer contended that the Board could not retain the amounts paid because the deficiency notice was not issued within the statutory period of limitations. The court, in holding that taxpayer was not entitled to a refund, noted that the record showed that at the time the payment was made taxpayer's tax delinquency was in excess of the sum paid. The court observed that taxpayer's liability to pay the deficiency was a continuing liability and was not created by the issuance of the deficiency notice and that in issuing a deficiency determination the Board had merely determined that, after the payment in question, there still remained a balance due which taxpayer had failed to pay. The court pointed out that the Board had recognized the bar of the statute of limitations as to any amounts due over and above the amount paid. *Owens-Corning Fiberglas Corp.* v. *State Board of Equalization* (1974) 39 Cal.App.3d 532.

Suit by Consumer Against Retailer for Refund of Excess Tax Reimbursement.—The statute of limitations did not bar the refund of excess sales tax reimbursement to retailers where the California Supreme Court had previously held that the board was a proper party to a class action by a consumer against the retailers, since (1) the refunds were required under the doctrine of the law of the case, (2) the action was commenced before the statute of limitations expired and (3) timely claims by some of the retailers inured to the benefit of the entire class of defendant retailers. *Javor* v. *State Board of Equalization* (1977) 73 Cal.App.3d 939 [disapproved to the extent inconsistent with *Woosley* v. *State of California* (1992) 3 Cal.4th 758].

Purchaser Lacks Standing to Sue for Refund.—A purchaser may not bring an action against the State Board of Equalization seeking recovery of sales taxes which it assertedly overpaid to its vendors because the purchaser is not the taxpayer. *State Board of Equalization* v. *Superior Court (Petroleum Contractors, Inc.)* (1980) 111 Cal.App.3d 568.

Refund.—The court upheld the Board's position that a claim for recovery of a partial payment must be filed within six months of the date of such partial payment. *Chahine* v. *State Board of Equalization* (1990) 222 Cal.App.3d 485.

6902.2. **Refund; offset of personal income or bank and corporation tax liability.** (a) (1) In lieu of claiming the credit allowed by Section 17053.49 or 23649, a person who has paid sales tax reimbursement to a retailer or use tax on a purchase or purchases of property for which a credit may be allowed pursuant to those sections, may file a claim for refund equal to the credit amount that would otherwise be allowed pursuant to those sections. Any claim so filed shall be submitted to the board on a form prescribed by the board, shall be filed no earlier than the date a claim could have been made for a tax credit or carryover of a credit under Section 17053.49 or 23649, whichever is applicable, and shall be for an amount not in excess of the amount of the credit that could have been used to reduce the "net tax," (as defined in Section 17039), or the "tax," as defined in Section 23036. Any credit carried over pursuant to Section 17053.49 or Section 23649 may not be refunded under this section until the credit carried over could be applied to reduce the "net tax" (as defined in Section 17039) or the "tax" (as defined in Section 23036), as applicable. Under no circumstances may any claim for refund exceed the "net tax," as defined by Section 17039, or the "tax," as defined by Section 23036, after the allowance of any credits authorized by Section 17039 or 23036. A claim for refund shall, unless the sale or use of the property is otherwise exempt under this part, be accompanied by proof of payment of the tax to a retailer, including, but not limited to, a copy of an invoice or purchase contract that indicates the following:

(A) The date on which the purchase occurred.

(B) A description of the property purchased.

(C) The price paid for the property.

(D) The amount of tax paid with respect to the purchase.

(2) In the case of a person who has self-reported use tax to the board, the claim for refund shall also indicate the amount of use tax paid and the period for which that tax was remitted.

(3) Any person who claims a refund under this section shall make an irrevocable election to waive the equivalent amount of credit allowed under Section 17053.49 or 23649. Any refund claimed under this section shall be in lieu of claiming any credit under Section 17053.49 or 23649. Any person electing to file a claim for refund pursuant to this section shall provide a copy of the personal or bank and corporation tax return on which the tax liability was assessed for which the in-lieu refund is being claimed under this section.

(b) No interest shall be paid on any refund made pursuant to this section.

(c) Notwithstanding Section 6961, the board may recover any refund or part thereof that is erroneously made pursuant to this section. In recovering any erroneous refund made pursuant to this section, the board, in its discretion, may issue a deficiency determination in accordance with Article 2 (commencing with Section 6481) or Article 4 (commencing with Section 6536) of Chapter 5. Except in the case of fraud, that determination shall be made within three years from the last day of the month following the quarterly period in which the board approved the refund.

(d) The board shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the board and the Franchise Tax Board, of the persons who during the year have claimed a refund of sales or use tax under this section and the amount of the refund issued to each person.

(e) Any refund approved by the board pursuant to this section shall be payable from the General Fund.

History.—Added by Stats. 1994, Ch. 547, in effect September 12, 1994. Stats. 2003, Ch. 606 (SB 1064), in effect January 1, 2004, substituted "reduce the net . . . or 23036" for "offset personal income or bank or corporation tax liability" after "have been used to" in the second sentence of paragraph (1) of subdivision (a).

Note.—Section 2 of Stats. 2003, Ch. 606 (SB 1064) specifies that the amendments made to subdivision (a) of Section 6902.2 of the Revenue and Taxation Code by Section 1 of that act are declaratory of existing law, but are effective for any claims for refund filed with the State Board of Equalization on or after August 7, 2003.

6902.3. **Overpayments from levies or liens.** Notwithstanding of Section 6902, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

6902.4. **Waiver of limitations; financially disabled persons.** (a) The limitation period specified in Section 6902 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be

considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that, without regard to this section, is barred by operation or rule of law, including res judicata, as of the effective date of the act adding this section.

History.—Added by Stats. 1999, Ch. 929, (AB 1638), in effect January 1, 2000.

6903. **Condition; sales tax reimbursement.** (a) No credit or refund of any amount paid pursuant to Chapter 3 (commencing with Section 6201) shall be allowed to any person on the ground that the storage, use, or other consumption of the property is exempted under Section 6401 unless the person establishes to the satisfaction of the board that his or her vendor has paid the sales tax to the state with respect to the sale of the property.

(b) For purposes of this section, ''amount paid pursuant to Chapter 3 (commencing with Section 6201)'' does not include any payment or payments made pursuant to a determination made by the board under Articles 2 (commencing with Section 6481) and 3 (commencing with Section 6511) of Chapter 5.

History.—Stats. 1949, p. 1343, operative July 1, 1949, substituted "the person who paid the amount" for "in addition to the overpayment for which the claim is filed the claimant also." Stats. 1978, Ch. 1211, effective January 1, 1979, added "to any person" following "allowed", deleted "who paid the amount reimburses" and substituted "establishes to the satisfaction of the board that" following "unless the person", deleted "for the amount of" and substituted "had paid" following "vendor" deleted "imposed upon his vendor" and substituted "to the state" following "sales tax" and deleted "and paid by the vendor to the State." following "sale of the property". Stats. 1982, Ch. 454, in effect January 1, 1983, substituted "(commencing with Section 6201)" for "of this part" after "Chapter 3" and added "or her" after "his." Stats. 1989, Ch. 768, in effect January 1, 1990, added "(a)" before first paragraph and added subdivision (b).

6904. **Form and content of claim.** (a) Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(b) A claim filed for or on behalf of a class of taxpayers shall do all of the following:

(1) Be accompanied by written authorization from each taxpayer sought to be included in the class.

(2) Be signed by each taxpayer or taxpayer's authorized representative.

(3) State the specific grounds on which the claim is founded.

History.—Stats. 1987, Ch. 38, effective January 1, 1988, added "(a)" before first paragraph and added subdivision (b).

Class action permitted only to the extent authorized by the Legislature.—Class actions for refunds of sales tax were not authorized by the Legislature prior to amendment to section 6904 adopted in 1987, and this amendment authorized a class action only where each member of the class expressly authorizes and signs the claim (disapproving previous appellate decisions inconsistent with this decision). *Woosley* v. *State of California* (1992) 3 Cal.4th 758.

6905. **Effect of failure to file claim.** Failure to file a claim within the time prescribed in this article constitutes a waiver of any demand against the State on account of overpayment.

6906. **Notice of action on claim.** Within 30 days after disallowing any claim in whole or in part the board shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

Sufficiency of service of notice on corporation.—Where a corporation's claim for refund shows the address of the corporation's principal office, the names of the corporation's own counsel with their address at the corporation's principal office, and the name of the corporation's outside counsel with a different address, a notice of a denial of a claim for refund mailed only to the corporation's principal office is sufficient. *Pacific Gas and Electric Co.* v. *State Board of Equalization* (1955) 134 Cal.App.2d 149, appeal dismissed (1956) 350 U.S. 979.

6907. **Interest.** Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the calendar month following the month during which the overpayment was made. In addition, 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.

The interest shall be paid:

(a) 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 claim is approved by the board, whichever date is the earlier.

(b) 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.

History.—Stats. 1945, p. 1726, operative July 1, 1945, added "if he has not already filed a claim," to (a). Stats. 1947, p. 1558, operative July 1, 1947, substituted "last" for "fifteenth" in first paragraph. Stats. 1949, p. 1343, operative July 1, 1949, substituted "person making the overpayment" for "claimant" in the first paragraph and in (a); substituted "last" for "fifteenth" and "approved by the board" for "certified to the State Board of Control" in (a). Stats. 1949, p. 1167, approved by the Governor prior to p. 1343, would also have amended this section. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . month" before "from" in the first sentence. Stats. 1983, Ch. 10 (1X), in effect February 17, 1983, added "and by the method" after "rate" in the first paragraph. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, added "modified" before "adjusted," deleted "annual" before "rate," substituted "per month" for "and by the method" before "established," substituted "Section 6591.5" for "Section 19269." Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, substituted "at a rate equal to the average of the bond equivalent rates of the 13-week treasury bills auctioned during the period for which interest is paid." for "at the modified adjusted rate per month established pursuant to Section 6591.5,", added "Interest shall be paid" before "From the", and substituted "From" for "from" after "shall be paid" in the first paragraph. Stats. 1991, Ch. 236, effective July 29, 1991, substituted "at the modified adjusted rate per month established pursuant to Section 6591.5," for "at a rate equal to the average of the bond equivalent rates of the 13-week treasury bills auctioned during the period for which interest is paid."; deleted "Interest shall be paid" before "From the"; substituted "from" for "From" after "Section 6591.5"; substituted "first" for "last" after "from the"; substituted "month during" for "quarterly period for"; and substituted ". In addition, a" for "; but no" after "overpayment was made" in the first paragraph.

6908. **Disallowance of interest; waiver.** (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) 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 on the claim.

History.—Stats. 1968, p. 1200, in effect November 13, 1968, added subdivision letters and the text of (b).

6909. **Smog impact fee refund.** (a) The Controller shall transfer the amount of six hundred sixty-five million two hundred sixty-one thousand

dollars ($665,261,000) from the General Fund to the Smog Impact Fee Refund Account, which is hereby created in the Special Deposit Fund.

(b) Notwithstanding Section 13340 of the Government Code, the moneys in the Smog Impact Fee Refund Account in the Special Deposit Fund are hereby continuously appropriated, without regard to fiscal years, to the Department of Motor Vehicles for the purpose of making refunds to persons who paid the smog impact fee formerly required by Chapter 3.3 (commencing with Section 6261) upon registering a vehicle in California. Each refund shall also include the amount of any penalties incurred by the payer with respect to the fee, and shall also include interest as specified in Sections 1673.2 and 1673.4 of the Vehicle Code. In addition, the appropriate level of court costs, fees, and expenses in the settlement of the case of Jordan v. Department of Motor Vehicles (1999) 75 Cal.App.4th 449, shall be determined through binding arbitration, and all of those fees, costs, or expenses shall be paid with funds from the account.

History.—Added by Stats. 2000, Ch. 32 (SB 215), in effect June 8, 2000.

Arbitration award limited to $18.194 million.—Section 6909 (b) implicitly contained a cap of $18.194 million in attorneys' fees and costs. At the time this section was enacted, the state had appealed a trial court judgment for this amount but the plaintiffs had not. Any arbitration award greater than this amount would be an unconstitutional gift of public funds. *Jordan et al.* v. *Department of Motor Vehicles et al.* (2002) 100 Cal. App.4th 431.

Article 2. Suit for Refund

§ 6931. Enjoining collection forbidden.
§ 6932. Necessity of refund claim.
§ 6933. Action for refund; limitation.
§ 6934. When refund claim not acted upon.
§ 6935. Disposition of amount of judgment.
§ 6936. Interest.
§ 6937. Judgment for assignee forbidden.

6931. **Enjoining collection forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection under this part of any tax or any amount of tax required to be collected.

Suit for refund of partial payment.—Section 6931 does not bar a suit for refund where only a portion of the assessed tax is paid even though the decision in such suit may indirectly result in prohibiting the collection of the remainder. The court will not, however, issue its process to restrain collection of the balance of the tax. In the absence of statutory provisions allowing installment payments, such partial payments need not be accepted. *Schaffer* v. *State Board of Equalization* (1952) 109 Cal.App.2d 574. Disapproved in *State Board of Equalization* v. *Superior Court (O'Hara & Kendall Aviation, Inc.)* (1985) 39 Cal 3d 633.

Petition for declaratory relief does not lie.—A petition asking the Probate Court to construe the Retail Sales Tax Act is, in effect, a petition for declaratory relief. A declaratory judgment construing the act as requested would have the same effect as an injunction and is clearly contrary to the statutory prohibition against the issuance of such a writ. *Estate of Schneider* (1944) 62 Cal.App.2d 463.

Tax recovery denied when suit founded on illegality of business.—Although operators of tango games are not engaged in selling tangible personal property, they are not entitled to recover sales taxes paid under protest on their receipts from such games. Tango games constitute gambling devices, the operation of which is a violation of Section 330 of the Penal Code, and a court of law will not enforce a demand connected with an illegal transaction. *Schur* v. *Johnson* (1934) 2 Cal.App.2d 680; *Asher* v. *Johnson* (1938) 26 Cal.App.2d 403.

Adequacy of remedy.—The provisions of this article afford a ''plain, speedy, and efficient remedy'' within the meaning of Section 24 (1) of the United States Judicial Code, as amended, August 21, 1937 (28 U. S. C. A., Section 41 (1)). Consequently, the United States district courts do not have jurisdiction of suits to enjoin the enforcement of the use tax. *Nevada-California Electric Corp.* v. *Corbett* (1938) 22 F.Supp. 951. And see *Corbett* v. *Printers and Publishers Corp., Ltd.* (1942) 127 F.2d 195, refusing to enjoin collection of the sales tax.

A taxpayer is not entitled to injunctive relief to restrain the cancellation of its seller's permit for nonpayment of the tax assessed against it even though that tax is illegal, inasmuch as it had an adequate remedy at law. *Helms Bakeries* v. *State Board of Equalization* (1942) 53 Cal.App.2d 417.

Review of board's decision by prohibition and certiorari.—A writ of prohibition is exercised only to prevent official action of a judicial nature. Thus, a letter sent by the State Board of Equalization to a person engaged in the business of manufacturing ice stating that the board would consider ice companies as retailers and the independent distributors operating therefrom as their agents and would not issue individual retailers' permits to independent distributors, but would issue a single permit to the ice companies under which such companies would report and pay the tax on all business done by the independent distributors, would not call for the interposition of such a writ. *Teed* v. *State Board of Equalization* (1936) 12 Cal.App.2d 162.

A writ of certiorari will lie only to review the exercise of judicial functions and, in the absence of constitutional authority, the Legislature can not confer judicial power upon state-wide boards or commissions. Therefore, such a writ provided for by Section 33 of the Retail Sales Tax Act will not lie to review a ruling of the State Board of Equalization. *Standard Oil Co. of California* v. *State Board of Equalization* (1936) 6 Cal.2d 557.

An officer of a dissolved corporation may not obtain a declaratory judgment to determine, on the ground that any judgment against the corporation would be void, that he is under no fiduciary duty to petition for redetermination by the State Board of Equalization of sales tax determined against the corporation, and thereby obtain an adjudication against the board barring it from collecting the tax. *Casey* v. *Bonelli* (1949) 93 Cal.App.2d 253.

Propriety of declaratory relief questionable after transaction is entered into.—While a taxpayer may test the validity of a tax regulation by an action for declaratory relief before he has acted so that he may govern his conduct accordingly, it is very doubtful that such an action is appropriate after a taxpayer has entered into a transaction which the taxing authorities claim is taxable since Section 6931 prohibiting the granting of an injunction or writ of mandamus to prevent the collection of tax would thereby appear to be circumvented. The rule that a claimant must exhaust administrative remedies before initiating a judicial action applies to tax proceedings. *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 907.

Eleventh Amendment bars federal suit.—U.S. Constitution, Eleventh Amendment bars taxpayer's suit in federal court to enjoin and declare as unenforceable the assessment of a state tax, regardless of taxpayer's claim that the assessment violated the immunity of the United States from state taxation. *V. O. Motors, Inc.* v. *California State Board of Equalization* (1982) 691 F.2d 871.

Tax Injunction Act.—Unless taxpayer does not have a plain, speedy, and efficient remedy in state courts, federal Tax Injunction Act bars federal court jurisdiction; taxpayer's demonstrated inability to pay tax assessments does not avoid jurisdictional bar of the Act. *Redding Ford* v. *State Board of Equalization* (1983) 722 F.2d 496, cert. den._U.S._

Partial payment insufficient for refund action.—Cal. Const. Art XIII, Sec. 32 barred the taxpayer from maintaining an action for refund of a partial payment before the full amount of the disputed tax was paid. Inconsistent prior decisions, *Snoozie Shavings, Inc.* v. *State Board of Equalization* (1979) 97 Cal.App.3d 771, and *Schaffer* v. *State Board of Equalization* (1952) 109 Cal.App.2d 574, are disapproved. *State Board of Equalization* v. *Superior Court (O'Hara & Kendall Aviation, Inc.)* (1985) 39 Cal.3d 633.

Tax Injunction Act.—Taxpayer and its shareholders, who were under federal criminal investigation, sought an injunction against the holding of a hearing on a petition for redetermination. The hearing and administrative proceedings on a petition for redetermination are an integral part of California's sales tax and collection scheme, and the state has provided taxpayers an adequate remedy. The Tax Injunction Act therefore divests the federal court of jurisdiction. *Jerron West, Inc.* v. *California State Board of Equalization* (9th Cir. 1997) 129 F.3d 1334.

Interest Due is not Part of the Tax.—Interest which accrues on a delinquent tax is not part of the tax within the meaning of California Constitution Article XIII, Section 32, or Revenue and Taxation Code section 6931, so that payment of accrued interest on the tax deficiency is not a prerequisite to either an administrative claim for refund or a subsequent court action for refund of taxes. *Agnew* v. *State Board of Equalization* (1999) 21 Cal.4th 310.

Eleventh Amendment does not bar federal suit by Indian Tribe.—Suit in federal court for declaratory relief by Indian Tribe permitted under the doctrine of *Ex Parte Young*. *Agua Caliente Band of Cahuilla Indians* v. *Hardin* (9th Cir. 2000) 223 F.3d 1041.

6932. **Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed pursuant to Article 1 (commencing with Section 6901).

History.—Added by Stats. 1941, Ch. 36. Stats. 1984, Ch. 144, effective January 1, 1985, substituted "(commencing with Section 6901)" for "of this chapter."

Prior claim for refund by each member of class not required in class action suit for refund.—Where the complaint alleged that the named plaintiffs had filed a claim with the Board in behalf of themselves and all others similarly situated, and also alleged the existence of a well defined community of interest in questions of law and fact between the named plaintiffs and the other members of the class, it is not necessary that the complaint also allege that the unnamed plaintiffs had filed claims for refund as required by law. *Santa Barbara Optical Co., Inc.* v. *State Board of Equalization* (1975) 47 Cal.App.3d 244 [disapproved to the extent inconsistent with *Woosley* v. *State of California* (1992) 3 Cal.4th 758].

Administrative Remedies Must be Exhausted Prior to Any Suit for Refund.—Pending completion of the administrative remedies available to taxpayer a trial court lacked jurisdiction to hear a purchaser's complaint for refund of sales taxes assertedly overpaid to its vendors. *State Board of Equalization* v. *Superior Court (Petroleum Contractors, Inc.)* (1980) 111 Cal.App.3d 568.

Failure to Exhaust Administrative Remedies is a Jurisdictional Bar.—Failure by taxpayer to exhaust administrative remedies by presenting factual documentation of his claim for refund to the board barred further action by trial court. *Barnes* v. *State Board of Equalization* (1981) 118 Cal.App.3d 994.

Failure to cooperate in tests with Board.—Taxpayer's claim that he cannot identify ''new clothing'' was barred for failure to exhaust administrative remedies where taxpayer failed to produce records or participate in tests to determine tax due. *Duffy* v. *State Board of Equalization* (1984) 152 Cal.App.3d 1156.

Suit Limited to Issues Stated in Claim.—In a suit for refund, plaintiff is barred from raising issues not stated in its claim for refund. *Atari, Inc.* v. *State Board of Equalization* (1985) 170 Cal.App.3d 665.

6933. **Action for refund; limitation.** Within 90 days after the mailing of the notice of the board's action upon a claim filed pursuant to Article 1 (commencing with Section 6901), the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in any city or city and county of this State in which the Attorney General has an office for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

Failure to bring action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

History.—Stats. 1957, p. 2021, in effect September 11, 1957, substituted "any city or city and county of this State in which the Attorney General has an office" for "the County of Sacramento." Stats. 1984, Ch. 144, effective January 1, 1985, substituted "(commencing with Section 6901)" for "of this chapter."

6934. **When refund claim not acted upon.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board of its action on the claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

Exhaustion of administrative remedies.—Where the Board fails to act on a claim for refund within six months after the claim is filed, the claimant has the right to elect to treat such failure to act as a denial of the claim in order to institute an action, alleging therein that it has exhausted its administrative remedies. *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 897.

6935. **Disposition of amount of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any sales or use tax or amount of use tax due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

History.—Stats 1945, p. 1726, operative July 1, 1945, reworded section to permit crediting of judgment for refund of use tax upon either sales or use tax due from the plaintiff.

Refund of Excess Tax Reimbursement for Repayment to Consumer.—The board may not offset amounts owed to it by retailers against refunds of excess sales tax reimbursement required as the result of a class action by consumers against the retailers and the board. *Javor* v. *State Board of Equalization* (1977) 73 Cal.App.3d 939 [disapproved to the extent inconsistent with *Woosley* v. *State of California* (1992) 3 Cal.4th 758].

6936. **Interest.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established for overpayments pursuant to Section 6591.5 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.—Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "12 percent" for "6 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . annum" before "upon." Stats. 1983, Ch. 10 (1X), in effect February 17, 1983, added "and by the method" after "rate". Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, added "modified" before "adjusted," deleted "annual" before "rate," substituted "per annum" for "and by the method," substituted "Section 6591.5" for "Section 19269." Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, substituted "a rate equal to the average of the bond equivalent rates of the 13-week treasury bills auctioned during the period for which interest is paid. Interest shall be paid" for "the modified adjusted rate per annum established pursuant to Section 6591.5" after "allowed at". Stats. 1991, Ch. 236, in effect July 29, 1991, substituted "the modified adjusted rate per annum established for overpayments pursuant to Section 6591.5" for "a rate equal to the average of the bond equivalent rates of the 13-week treasury bills auctioned during the period for which interest is paid. Interest shall be paid" after "allowed at".

6937. **Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

Article 3. Recovery of Erroneous Refunds

§ 6961. Erroneous refunds; actions.
§ 6962. Place of trial.
§ 6963. Rules of procedure, etc.
§ 6964. Interest on erroneous refunds.

6961. **Erroneous refunds; actions.** (a) The Controller may recover any refund or part thereof that is erroneously made and any credit or part thereof that is erroneously allowed in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made and any credit or part thereof that is erroneously allowed. In recovering any erroneous refunds or credits, the board, in its discretion, may issue a deficiency determination in accordance with Article 2 (commencing with Section 6481) or Article 4 (commencing with Section 6536) of Chapter 5. Except in the case of fraud, the determination shall be made within three years from the last day of the month following the quarterly period in which the board made its certification to the Controller that the amount collected was in excess of the amount legally due.

History.—Stats. 1994, Ch. 903, in effect January 1, 1995, added subdivision letter designation (a) before first paragraph, substituted "that" for "which" after "thereof" twice in the first paragraph, and added subdivision (b).

6962. **Place of trial.** The action shall be tried in the County of Sacramento unless the court with the consent of the Attorney General orders a change of place of trial.

6963. **Rules of procedure, etc.** The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

6964. **Interest on erroneous refunds.** (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 6961, no interest shall be imposed on the amount of that erroneous refund

until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section is operative for any action for recovery under Section 6961 on or after July 1, 1999.

History.—Added by Stats. 1998, Ch. 612, in effect January 1, 1999.

Article 4. Cancellations

§ 6981. Cancellation of determinations.

6981. **Cancellation of determinations.** If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1947, p. 2029, operative July 1, 1947, added "either by the person filing a return or by the board,". Stats. 1949, p. 1167, operative July 1, 1949, reworded section to permit the board to cancel a determination in an amount not exceeding $25.00 without authorization of the State Board of Control. Stats. 1959, p. 4378, in effect September 18, 1959, substituted "one hundred dollars ($100)" for "twenty-five dollars ($25)" in the first and third sentences, substituted the wording following "certify" in the first sentence for "this fact to the State Board of Control and the latter shall authorize the cancellation of the amount upon the records of the board." and added the second sentence. Stats. 1963, p. 3106, in effect September 20, 1963, added "set forth that fact in its records and" to the first sentence, and substituted "two hundred fifty dollars ($250)" for "one hundred dollars ($100)" in the first and last sentence. Stats. 1965, p. 2052, in effect September 17, 1965, substituted "one thousand dollars ($1,000)" for "two hundred fifty dollars ($250)" in the first and last sentences. Stats. 1977, Ch. 921, operative January 1, 1978, substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in the first and last sentences. Stats. 1985, Ch. 591, effective January 1, 1986, substituted "fifteen" for "five" before "thousand" and substituted "($15,000)" for "($5,000)" after "dollars." Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "fifty thousand dollars ($50,000)" for "fifteen thousand dollars ($15,000)" following "in excess of" in the first sentence and following "not exceeding" in the last sentence. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted "in excess of fifty thousand dollars ($50,000)" after "If any amount"; substituted ", certify" for "and certify to the State Board of Control" after "in its records"; substituted ", and" for ". If the State Board of Control approves, it shall" after "determination was made"; and substituted "Any proposed determination . . . of that determination" for "If an amount not exceeding fifty thousand dollars ($50,000) has been illegally determined either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board."

Chapter 8. Administration

Article 1. Administration. §§ 7051–7060.
2.5. Managed Audit Program. §§ 7076–7076.5.
3. The California Taxpayers' Bill of Rights. §§ 7080–7099.1.

Uncodified Sections
1. Multiagency task force.

Article 1. Administration

§ 7051. Enforcement by board; rules and regulations.
§ 7051.1. Retailers; direct payment permit.
§ 7051.2. Retailers; direct payment permit.
§ 7051.3. Use tax direct payment permit.
§ 7051.5. Rules and regulations respecting retail grocers.
§ 7052. Employees and representatives of board.
§ 7053. Records.
§ 7054. Examination of records.
§ 7055. Reports relative to use tax liability.

§ 7056. Divulging of information forbidden.
§ 7056.5. Unauthorized inspection of information.
§ 7056.6. Disclosure of information; return preparers.
§ 7057. Registration of employers.
§ 7058. Certificate of notice.
§ 7059. Notice to computer industry.
§ 7059. Reward program for unreported tax information. [Renumbered.]
§ 7060. Reward program for unreported tax information.
§ 7062. Report to Legislature; Waterborne Vessels. [Repealed.]

7051. **Enforcement by board; rules and regulations.** The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Discriminatory ruling invalid.—A ruling which results in exempting one class of sales while taxing another class is discriminatory and invalid unless the classification is made on a rational basis. *Maranville* v. *State Board of Equalization* (1950) 99 Cal.App.2d 841.

Reliance upon erroneous ruling.—The state is not estopped from collecting sales taxes because of reliance upon an erroneous ruling by the Board of Equalization. However, the state is estopped from collecting penalties and interest for failure to pay taxes because of such reliance. *Market Street Railway Co.* v. *State Board of Equalization* (1955) 137 Cal.App.2d 87.

Suit against discharged bankrupt.—Failure to file bankruptcy claim when there are sufficient funds in bankrupt's estate to pay delinquent sales and use taxes does not bar subsequent action against discharged bankrupt. *California State Board of Equalization* v. *Coast Radio Products* (1955) 228 F.2d 520.

Uncertainty in concept of fixtures justifies initial administrative determination.—The difficulty involved in drawing a line of demarcation between fixtures and materials justifies a process of initial administrative determination pursuant to a regulation subject to judicial review. *Honeywell, Inc.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 907.

Classification by Board.—A court may not substitute its own policy judgment for that of the board in distinguishing by regulation between fixtures and materials incorporated into a structure in the absence of substantial evidence showing that the classification by the board is arbitrary or capricious or that the classification had no reasonable or rational basis. *Oliver and Williams Elevator Corp.* v. *State Board of Equalization* (1975) 48 Cal.App.3d 890.

Interpretation of Regulations by Board.—An administrative agency's interpretation of its own regulations deserves great weight; however, the ultimate resolution of such legal questions rests with the courts. *Culligan Water Conditioning* v. *State Board of Equalization* (1976) 17 Cal.3d 86.

Administrative ruling entitled to great weight.—Long-standing tax counsel ruling that nonreusable hospital menus are not meal components under Board Regulation 1503, was entitled to great weight as an administrative interpretation of general application. *American Hospital Supply Corp.* v. *State Board of Equalization* (1985) 169 Cal.App.3d 1088 [to the extent this case held that an annotation is entitled to the same weight as a regulation, this case was disapproved in *Yamaha Corp. of America* v. *State Board of Equalization* (1998) 19 Cal.4th 1.

Annotations not entitled to the same weight as regulations.—Board annotations are entitled to some consideration by the court, but they are not entitled to the same deference as regulations. *Yamaha Corp. of America* v. *State Board of Equalization* (1998) 19 Cal.4th 1.

7051.1. **Retailers; direct payment permit.** The board may adopt rules and regulations which provide for the issuance of a permit to a person who holds a valid seller's permit which allows the purchase of tangible personal property without payment by the retailer of the tax imposed under this part and any reimbursement of the sales tax to the retailer by that person, if all of the following conditions are met:

(a) That person agrees to report and pay the retailer's tax liability directly to the board.

(b) The board determines that such a direct payment permit will facilitate the collection of the tax imposed under this part.

(c) The board determines that the issuance of a direct payment permit is to the mutual convenience of the board, the person to whom the direct payment permit is issued, and the retailers whose tax liability will be reported and paid by that person.

(d) The board determines that the issuance of a direct payment permit will not result in a tax loss either in total or on a cash flow basis. To ensure against a potential cash flow loss, the board may accelerate by not more than 10 days the prepayment due dates of a person.

(e) Any person who is issued a direct payment permit shall include with each tax return required to be filed under this part a schedule upon which all local sales and use tax, and any applicable district transactions and use tax, reported on the return as provided in subdivision (a) is allocated to the cities, counties, city and county, redevelopment agencies, and districts to which the tax would have been allocated if it had been reported and paid by the retailers.

History.—Added by Stats. 1985, Ch. 1343, effective January 1, 1986.

7051.2. **Retailers; direct payment permit.** (a) If a holder of a direct payment permit issued by the board pursuant to Section 7051.1 gives an exemption certificate to a retailer for the purpose of paying that retailer's tax liability to the board, and fails or refuses to pay that retailer's tax liability to the board on a timely basis, then in addition to that retailer's tax liability, the direct payment permitholder shall be subject to the same penalty provisions that would apply if that permit holder was the retailer.

(b) If a holder of a direct payment permit issued by the board pursuant to Section 7051.1 does not properly allocate a retailer's local sales and use tax liability, or that retailer's district transactions and use tax liability, if applicable, to the cities, counties, city and county, redevelopment agencies, and districts to which those taxes would have been allocated if properly reported by that retailer, then the direct payment permitholder shall be liable to the state for a penalty of 10 percent of the amount of that retailer's tax liability not properly allocated by the direct payment permitholder for improper allocation due to negligence or intentional disregard of the law.

History.—Added by Stats. 1985, Ch. 1343, effective January 1, 1986.

7051.3. **Use tax direct payment permit.** (a) ''Use tax direct payment permit'' means a permit issued by the board that allows a taxpayer to 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 otherwise applicable, Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) directly to the board.

(b) Every person 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 upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place or places of business where the applicant intends to make direct payment of use tax, and any other information that the board may require. An applicant for a use tax direct payment permit may register as a place to make direct payment of use tax, any of the places of business in this state that the applicant expects to be a place of first use for purchases subject to use tax, in accordance with the

requirements of subdivision (d). 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.

(c) Pursuant to an application, a use tax direct payment permit shall be issued to any person who meets all of the following conditions:

(1) The applicant agrees to self-assess and pay directly to the board any use tax liability incurred under this section.

(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 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.

(B) The applicant is a county, city, city and county, or redevelopment agency.

(d) Any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the board use taxes due under this part, Part 1.5 (commencing with Section 7200), and if otherwise applicable, Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report on the tax return required to be filed by Section 6452, the amount of local use tax applicable to each county, city, city and county, or redevelopment agency in which the first "use," as defined in Section 6009, occurs.

(e) 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 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 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 actual 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 in good faith from a person who holds a use tax direct payment permit. 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.

(4) 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.

(f) It is the intent of the Legislature that the board administer this part in a manner which assures that local use tax be received by the county, city, city and county, or redevelopment agency where the first use occurs.

History.—Added by Stats. 1997, Ch. 702 (SB 110), in effect January 1, 1998. Stats. 1998, Ch. 15 (AB 1243), in effect April 7, 1998, deleted former subdivision (f) which provided, "Each quarter the board shall allocate local use tax not reported to a county, city, city and county, or redevelopment agency, based upon the distribution of local use tax that has been reported to the county, city, city and county, or redevelopment agency in the prior quarter.", and relettered former subdivision (g) as (f).

Note.—Sec. 5 of Ch. 702 (SB 110), Stats. 1997, provides that the Legislature hereby recognizes that currently there are a number of claims pending before the State Board of Equalization relating to the distribution of local taxes that were filed by, or on behalf of, various cities and counties. Section 7051.3 of the Revenue and Taxation Code shall not be construed to impair or otherwise affect the validity of any claim or the interpretation of any law or regulation applicable to any claim of incorrect distribution of a local tax filed with the State Board of Equalization or its staff by a local government agency or its representative designated pursuant to Section 7056 of the Revenue and Taxation Code that was filed prior to January 1, 1998.

7051.5. **Rules and regulations respecting retail grocers.** The board shall prescribe rules and regulations respecting retail grocers who sell both taxable items and exempt food items to provide one or more methods whereby they may report their sales tax liabilities in as simplified a manner as is consistent with law. Such rules and regulations shall be applied equally to all grocers who report their sales tax liabilities thereunder.

History.—Added by Stats. 1972, Ch. 1351, effective March 7, 1973.

Note.—Section 3 of Ch. 1351, Stats. 1972, recites the legislative intent in adding section 7051.5.

7052. **Employees and representatives of board.** The board may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of this part and may designate representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by this part or other laws of this State upon the board.

7053. **Records.** Every seller, every retailer as defined in subdivision (b) of Section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the board may require.

Evidence.—The state is not bound to accept the statements of the taxpayer, unsupported by any record, which are contrary to entries in his books of transactions pointing to a larger sum as the true total. *People* v. *Schwartz* (1947) 31 Cal.2d 59.

Adequate records must support all claimed exemptions.—Taxpayer did not maintain records adequate to support claimed exempt sales of animal feed, because sales invoices were not correlated to exemption certificates. *Paine* v. *State Board of Equalization* (1982) 137 Cal.App.3d 438.

7054. **Examination of records.** The board or any person authorized in writing by it may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

Post-audit test as admissible evidence.—Board's test period results were properly admitted as evidence where sales during test period were representative of sales during audit period and where taxpayer's business remained similar in both periods. *Paine* v. *State Board of Equalization* (1982) 137 Cal.App.3d 438.

7055. **Reports relative to use tax liability.** In administration of the use tax the board may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use, or other consumption of which is subject to the tax. The reports shall be filed when the board requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the board may require.

7056. **Divulging of information forbidden.** (a) (1) Excepting the information set forth on permits issued under Article 2 (commencing with Section 6066) of Chapter 2, the information set forth on certificates of registration issued pursuant to Section 6226, and the terms of any settlement made pursuant to Section 19442 (as amended by Chapter 138 of the Statutes of 1994), it is unlawful for the board, any person having an administrative duty under this part or any person who obtains access to information contained in, or derived from, sales or transactions and use tax records of the board pursuant to subdivision (b), to make known in any manner whatever the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the board or pay a tax pursuant to this part, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person.

(2) It is also unlawful for any person, other than an officer or employee of a county, city and county, city, or district, who obtains access to information contained in, or derived from, sales or transactions and use tax records of the board pursuant to subdivision (b), to retain that information after that person's contract with the county, city and county, city, or district has expired.

(3) Notwithstanding paragraphs (1) and (2), the Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, by the tax officials of Mexico, if a reciprocal agreement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(b) When requested by resolution of the legislative body of any county, city and county, city, or district, the board shall permit any duly authorized officer or employee of the county, city and county, city, or district, or other person designated by that resolution, to examine all of the sales or transactions and use tax records of the board pertaining to the ascertainment

of those sales or transactions and use taxes to be collected for the county, city and county, city, or district by the board pursuant to contract entered into between the board and the county, city and county, city, or district under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)). Except as otherwise provided herein, this subdivision shall not be construed to allow any officer, employee, or other person authorized or designated by a county, city and county, city, or district to examine any sales or transactions and use tax records of any taxpayer. The costs that are incurred by the board in complying with a request made pursuant to this subdivision shall be deducted by the board from those revenues collected by the board on behalf of the county, city and county, city, or district making the request.

(1) The resolution shall certify that any person designated by the resolution, other than an officer or employee, meets all of the following conditions:

(A) Has an existing contract with the county, city and county, city, or district to examine those sales and use tax records.

(B) Is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of the county, city and county, city, or district who is authorized by the resolution to examine the information.

(C) Is prohibited by that contract from performing consulting services for a retailer during the term of that contract.

(D) Is prohibited by that contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after that contract has expired.

(2) Information obtained by examination of board records as permitted in this subdivision shall be used only for purposes related to the collection of local sales or transactions and use taxes by the board pursuant to the contract, or for purposes related to other governmental functions of the county, city and county, city, or district set forth in the resolution.

(c) If the board believes that any information obtained pursuant to subdivision (b) has been disclosed to any person not authorized or designated by the resolution of the legislative body of the county, city and county, city, or district, or has been used for purposes not permitted by subdivision (b), then notwithstanding subdivision (b), the board may impose conditions on access to its sales and use tax records which the board considers reasonable, in order to protect the confidentiality of those records.

(d) Predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

(e) For purposes of this section, ‘‘reciprocal agreement’’ means a formal agreement to exchange information between national taxing officials of

Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

History.—Stats. 1951, p. 2390, operative July 1, 1951, authorized Governor to permit examination of board's records in addition to returns; added provision limiting publicity of information obtained pursuant to Governor's order; and rearranged wording for clarity. Stats. 1957, p. 2802, in effect July 4, 1957, added second paragraph, added "or the resolution of the local legislative body" and "or resolution" to third paragraph, and divided section into paragraphs. Stats. 1963, p. 2611, in effect September 20, 1963, added last sentence in paragraph one; changed wording in paragraph two; and added last sentence in paragraph two in place of former paragraph three. Stats. 1965, p. 2465, in effect September 17, 1965, added all before "it is unlawful for the board" in the first paragraph, and deleted "information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty" and substituted "any other information pertaining to any retailer or any other person required to pay to the board or pay a tax pursuant to this part." Stats. 1969, p. 459, in effect June 12, 1969, added the third paragraph. Stats. 1985, Ch. 211, effective July 12, 1985, added subdivision designations (a) through (e), deleted "of this part" after "Chapter 2" and added "any person . . . subdivision (b) or (c)" in the first paragraph after "board" in subdivision (a) (1), added subdivision (a) (2), added paragraph designation and language "(3) Notwithstanding . . . and (2)" in subdivision (a), added subdivision "(b)", designation, added subdivision (b) (1), added paragraph "(2)" before "Information", and added "in this subdivision", and "or for . . . resolution" in subdivision (b) (2), added subdivision "c" designation, substituted "the" for "such", deleted "herein" before "permitted" and added "in this subdivision" after "permitted," and, added subdivision (e) designation. Stats. 1986, Ch. 308, effective January 1, 1987, added "Predecessors" to (e). Stats. 1991, Ch. 236, in effect July 29, 1991, added "the information set . . . to Section 7093," in paragraph (1) of subdivision (a). Stats. 1991, Ch. 479, in effect October 2, 1991, deleted "or (c)" after "subdivision" in paragraph (1) of subdivision (a) and twice in subdivision (c); deleted "or" after "city or county" twice in paragraph 2 of subdivision (a), three times in subdivision (b), in subparagraphs (A) and (B) of paragraph (1) of subdivision (b), and in paragraph (2) of subdivision (b); added "or district," after "city," in paragraph (2) of subdivision (a), and in subdivision (b); added "or transactions" after "sales" in paragraph (2) of subdivision (a), twice in subdivision (b), in subparagraphs (B) and (D) of paragraph (1) of subdivision (b), and in paragraph (2) of subdivision (b); added ", or district" after "city" in paragraph (2) of subdivision (a), twice in subdivision (b), in subparagraphs (A) and (B) of paragraph (1) of subdivision (b), and in paragraph (2) of subdivision (b); added "or district" after "city," in subdivision (b), and in subparagraph (A) of paragraph (1) of subdivision (b); added "or the Transactions . . . Section 7251))" after "Section 7200))" in subdivision (b); deleted former subdivision (c) which provided, "When requested by resolution of the legislative body of a district, the board shall permit any duly authorized officer or employee of the district to examine the records of the board pertaining to transactions and use taxes collected for the district by the board pursuant to contract entered into between the board and the district. Information obtained by examination of the board records as permitted in this subdivision shall be used only for purposes related to the collection of district transactions and use taxes by the board pursuant to the contract."; and relettered former subdivisions (d) and (e) as subdivisions (c) and (d). Stats. 1993, Ch. 891, in effect January 1, 1994, added "by the tax . . . agreement exists" after "exists" in the first sentence of paragraph (3) of subdivision (a), and added subdivision (e). Stats. 1997, Ch. 702 (SB 110), in effect January 1, 1998, substituted "19442 (as . . . of 1994)" for "7093" after "pursuant to Section", and added "or transactions" after "from, sales" in paragraph (1) of subdivision (a); added "the ascertainment of those" after "pertaining to" and added "to be" after "use taxes" in the first sentence, and added the second and third sentences in subdivision (b).

Information on tax returns not subject to discovery.—It is the clear legislative intent that disclosures made in tax returns shall not be indiscriminately exposed to public scrutiny. The purpose is to facilitate tax enforcement by encouraging full and truthful declarations on returns. A taxpayer is therefore privileged to refuse to furnish information concerning specific entries on his return when such information is sought by means of an interrogatory. *Sav-On Drugs, Inc.* v. *Superior Court* (1975) 15 Cal.3d 1.

Public Records Act.—The Board cannot avoid a Public Records Act request for disclosure of documents merely because the documents contain confidential information that may identify a taxpayer if such information can be excised without destroying the utility of the documents. *State Board of Equalization* v. *Superior Court (Associated Sales Tax Consultants)* (1992) 10 Cal.App. 4th 1177.

7056.5. **Unauthorized inspection of information.** (a) Except as otherwise provided by this article or other express provision of law, the information furnished or secured pursuant to this part shall be used solely for the purpose of administering the tax laws or other laws administered by the person or agency obtaining it. Any willful unauthorized inspection or unwarranted disclosure or use of the information by the person or agency, or the employees and officers thereof, is a misdemeanor. For purposes of this section, "inspection" means any examination of confidential information furnished or secured pursuant to this part.

(b) The board shall notify a taxpayer of any known incidents of willful unauthorized inspection or unwarranted disclosure or use of the taxpayer's confidential tax records, but only if criminal charges have been filed for the willful unauthorized inspection or unwarranted disclosure.

History.—Added by Stats. 1998, Ch. 623, in effect January 1, 1999.

7056.6. **Disclosure of information; return preparers.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 5 (commencing with Section 6451), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), if effect January 1, 2001.

7057. **Registration of employers.** Any officer or employee of the Board of Equalization authorized to accept an application for a seller's permit under Section 6066 of this code or authorized to register a retailer under Section 6226 of this code shall at the time of acceptance of such an application or such registration, ascertain whether or not the person is also required to register as an employer under Section 1086 of the Unemployment Insurance Code, and if so shall register the person as an employer on a form provided by the Employment Development Department and shall promptly notify the Employment Development Department of such registration.

History.—Added by Stats. 1949, p. 596, in effect October 1, 1949. Stats. 1972, Ch. 1273, in effect March 7, 1973, changing Section 36 of the Cal. Unemployment Insurance Act to Section 1086 of the Unemployment Insurance Code and the Department of Employment to the Department of Human Resources Development. Stats. 1973, Ch. 1206 and Ch. 1207, effective January 1, 1974, replace Department of Human Resources Development with Department of Employment Development. Stats. 1973, Ch. 1212, operative July 1, 1974, substituted "Department of Benefit Payments" for "Department of Employment Development." Stats. 1977, Ch. 1252, changed "Department of Benefit Payments" to "Employment Development Department".

7058. **Certificate of notice.** A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this

part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

History.—Added by Stats. 1974, Ch. 610, effective January 1, 1975.

Note.—Stats. 1974, Ch. 610, section 16, explains the purpose of the enactment.

7059. **Notice to computer industry.** The board shall provide notice of the application of the sales and use tax laws to automatic data-processing services and equipment, as defined in Section 1502 of Title 18 of the California Administrative Code, and to other related items of particular interest to the computer industry. The notice required by this section shall be provided annually to trade magazines, periodicals, or other publications devoted to, and published for, the computer industry.

This section shall remain in effect only until January 1, 1986, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends such date.

History.—Added by Stats. 1982, Ch. 1274, in effect September 22, 1982.

7059. **Reward program for unreported tax information.** [Renumbered, as Section 7060, by Stats. 1985, Ch. 591, effective January 1, 1986.]

7060. **Reward program for unreported tax information.** (a) The board, under regulations prescribed by the board, may establish a reward program for information resulting in the identification of underreported or unreported taxes due under this part. Any reward may not exceed 10 percent of the taxes collected as a result of the information provided. Any person employed by or under contract with any state or federal tax collection agency shall not be eligible for a reward provided pursuant to this section.

(b) Within 2½ years of the effective date of the act adding this subdivision or within 2½ years of the commencement of a program pursuant to subdivision (a), whichever is later, the board shall report to the Legislature on all of the following:

(1) The number of informant letters and telephone calls received during the 2-year period following the effective date of the act adding this subdivision or following the commencement of a program pursuant to subdivision (a), whichever is later.

(2) The amount of additional taxes and penalties assessed and collected as a result of this program and the amount of rewards distributed.

(3) The administrative costs incurred in implementing and operating this program.

(c) Rewards paid pursuant to this section shall be paid from amounts appropriated by the Legislature for that purpose.

History.—Added by renumbering Section 7059, as added by Stats. 1984, Ch. 1490, by Stats. 1985, Ch. 591, effective January 1, 1986. Stats. 1992, Ch. 671, in effect January 1, 1993, added the subdivision letter (a) to the beginning of the section; and added subdivisions (b) and (c).

7062. **Report to Legislature; waterborne vessels.** [Repealed by Stats. 1987, Ch. 921, effective September 22, 1987.]

Article 2.5. Managed Audit Program *

§ 7076. Board determines which accounts are eligible.
§ 7076.1. Eligibility.
§ 7076.2. Information required to conduct self-audit.
§ 7076.3. Authority to examine records.
§ 7076.4. Interest on liabilities.
§ 7076.5. Repeal of article.

7076. **Board determines which accounts are eligible.** (a) The State Board of Equalization shall determine which taxpayer's accounts are eligible for the managed audit program in a manner that is consistent with the efficient use of its auditing resources and the maximum effectiveness of the program.

(b) A taxpayer is not required to participate in the managed audit program.

7076.1. **Eligibility.** A taxpayer's account is eligible for the managed audit program only if the taxpayer meets all of the following criteria:

(a) The taxpayer's business involves few or no statutory exemptions.

(b) The taxpayer's business involves a single or small number of clearly defined taxability issues.

(c) The taxpayer is taxed pursuant to this part and agrees to participate in the managed audit program.

(d) The taxpayer has the resources to comply with the managed audit instructions provided by the board.

7076.2. **Information required to conduct self-audit.** (a) If the board selects a taxpayer's account for a managed audit, all of the following apply:

(1) The board shall identify all of the following:

(A) The audit period covered by the managed audit.

(B) The types of transactions covered by the managed audit.

(C) The specific procedures that the taxpayer is to follow in determining any liability.

(D) The records to be reviewed by the taxpayer.

(E) The manner in which the types of transactions are to be scheduled for review.

(F) The time period for completion of the managed audit.

(G) The time period for the payment of the liability and interest.

(H) Any other criteria that the board may require for completion of the managed audit.

(2) The taxpayer shall:

(A) Examine its books, records, and equipment to determine if it has any unreported tax liability for the audit period.

(B) Make available to the board for verification all computations, books, records, and equipment examined pursuant to subparagraph (A).

(b) The information provided by the taxpayer pursuant to paragraph (2) of subdivision (a) is the same information that is required for the completion of any other audit that the board may conduct.

*Article 2.5 was added by Stats. 2003, Ch. 87 (AB 1043), in effect January 1, 2004.

7076.3. **Authority to examine records.** Nothing in this article limits the board's authority to examine the books, papers, records, and equipment of a taxpayer under Section 7054.

7076.4. **Interest on liabilities.** Upon completion of the managed audit and verification by the board, interest on any unpaid liability shall be computed at one-half the rate that would otherwise be imposed for liabilities covered by the audit period. Payment of the liabilities and interest shall be made within the time period specified by the board. If the requirements for the managed audit are not satisfied, the board may proceed to examine the records of the taxpayer in a manner to be determined by the board under law.

7076.5. **Repeal of article.** This article is repealed on January 1, 2009.

History.—Added by Stats. 2003, Ch. 87 (AB 1043), in effect January 1, 2004.

Note.—Section 2 of Stats. 2003, Ch. 87 (AB 1043) requires the Board, on or before January 1, 2008, to report to the Legislature regarding the managed audit program as of June 30, 2007, and requires the report contain all of the following:

(a) The amount of taxes, penalties, and interest payments collected from taxpayers that participated in the managed audit program.

(b) The amount of interest that was forgiven as a result of the managed audit program.

(c) The amount of taxes, penalties, and interest payments that was collected as a result of redirecting the board's auditing resources away from taxpayers participating in the managed audit program toward audits of other taxpayers with outstanding sales and use tax liabilities.

(d) Board recommendations for improving the success of the managed audit program.

Article 3. The California Taxpayers' Bill of Rights *

§ 7080. Title.
§ 7081. Legislature's findings and declarations.
§ 7082. Administration.
§ 7083. Taxpayers' Rights Advocate.
§ 7084. Education and information program.
§ 7085. Identification of taxpayer noncompliance by board.
§ 7086. Preparation of statements by board.
§ 7087. Limit on revenue collected or assessed.
§ 7088. Evaluation of employee's contact with taxpayers.
§ 7089. Plan to timely resolve claims and petitions.
§ 7090. Procedures relating to protest hearings.
§ 7091. Reimbursement to taxpayer.
§ 7092. Investigations for nontax administration purposes.
§ 7093. Settlement of disputed tax liabilities. [Repealed.]
§ 7093.5. Settlement authority.
§ 7093.6. Offers in compromise.
§ 7093.8. Waiver of interest and penalty.
§ 7094. Release of levy.
§ 7094.1. Return of property.
§ 7095. Exemptions from levy.
§ 7096. Claim for reimbusement of bank charges by taxpayer.
§ 7097. Preliminary notice to taxpayers prior to lien.
§ 7098. Notice preliminary to suspension.
§ 7099. Disregard by board employee or officer.
§ 7099.1. Protection of taxpayer communications.

7080. **Title.** This article shall be known and may be cited as "The Harris-Katz California Taxpayers' Bill of Rights."

7081. **Legislature's findings and declarations.** The Legislature finds and declares that taxes are the most sensitive point of contact between

* Article 3 was added by Stats. 1988, Ch. 1574, in effect January 1, 1989.

citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will both improve voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability.

History.—Stats. 2001, Ch. 670 (SB 445), in effect January 1, 2002, added third paragraph.

7082. **Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

7083. **Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

7084. **Education and information program.** (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Taxpayer or industry groups identified in the annual report described in Section 7085.

(3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1989, Ch. 163, in effect January 1, 1990, added "federal," and a comma after "state" in paragraph (3) of subdivision (b). Stats. 1998, Ch. 612, in effect January 1, 1999, substituted "holder of a seller's permit or use tax registrant" for "resale permitholder" in paragraph (2), and added "and compliance" after "audit" in paragraph (5) of subdivision (b).

7085. **Identification of taxpayer noncompliance by board.** (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings in its annual report submitted pursuant to Section 15616 of the Government Code.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether or not professional tax preparation assistance was utilized by the taxpayer.

(F) Whether sales and use tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

7086. **Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical

language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

7087. **Limit on revenue collected or assessed.** (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

History.—Stats. 1991, Ch. 402, in effect January 1, 1992, added "total" after "(a) The" in subdivision (a), added ", other than . . . accounts receivable" after "goals" in paragraph (2) of subdivision (a), and added subdivision (c).

7088. **Evaluation of employee's contact with taxpayers.** (a) The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

7089. **Plan to timely resolve claims and petitions.** No later than July 1, 1989, the board shall, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

7090. **Procedures relating to protest hearings.** Procedures of the board, relating to protest hearings before board hearing officers, shall include all of the following:

(a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer.

(b) The hearing may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any hearing that he or she has a right to have present at the hearing his or her attorney, accountant, or other designated agent.

7091. **Reimbursement to taxpayer.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

History.—Stats. 1994, Ch. 726, in effect September 22, 1994, substituted "board" for "State Board of Control" after "expenses with the" in paragraph (1) of subdivision (a); substituted "decides" for "makes a recommendation to the State Board of Control" after "the board", and substituted "that" for "which" after "hearing," in paragraph (2) of subdivision (a); deleted paragraph (4) of subdivision (a) which read, "The State Board of Control concurs with the recommendations and orders the board to provide reimbursement of fees and expenses to the taxpayer."; and added subdivision (d). Stats. 1998, Ch. 612, in effect January 1, 1999, added "within one year . . . final" after "the board" in paragraph (1), substituted "in an amount" for "that shall be" after "hearing," and added "in its sole discretion" after "board" in paragraph (3) of subdivision (a); substituted "board staff" for "taxpayer" after "whether the", and substituted "its position was" for "the position of the board staff was not" after "established that" in subdivision (b); and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted "the notice of . . . a claim" for "filing petitions for redetermination and claims" after "the date of" in paragraph (1) of subdivision (c).

7092. **Investigations for nontax administration purposes.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include sales and use tax violations.

(e) For the purposes of this section:

(1) ''Investigation'' means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) ''Surveillance'' means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

7093. **Settlement of disputed tax liabilities.** [Repealed by Stats. 1994, Ch. 138, in effect July 7, 1994.]

7093.5. **Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of

the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any

determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1992, Ch. 708, in effect September 15, 1992. Stats. 1993, Ch. 75, in effect June 30, 1993, and Ch. 155, in effect July 19, 1993, substituted "1993" for "1992" and "1994" twice for "1993" in subdivision (f). Stats. 1993, Ch. 868, in effect January 1, 1994, substituted "January 1, 1994" for "July 1, 1993" and added second paragraph in subdivision (f). Stats. 1994, Ch. 138, in effect July 7, 1994, added new subdivision (a); renumbered former paragraph (1) of subdivision (a) as paragraph (1) of subdivision (b), deleted "In addition to the authority provided by Section 7093 and" after "(1)" and substituted "Subject" for "subject" after "(1)", therein; deleted former paragraph (3) of subdivision (a) which read, "The members of the board shall not participate in the settlement of these tax matters, except as provided in subdivision (c)."; relettered former subdivision (b) as (c) and added "settlement in" after "tax in" therein; substituted "in dispute" for "involved" in paragraph (2) and substituted "agreed to" for "payable or refundable" in paragraph (3) of subdivision (c); added new subdivision (d); relettered former subdivisions (c), (d), (e), (f), and (g) as (e), (f), (g), (h), and (i), respectively; substituted "(c)" for "(b)" after "subdivision" in subdivision (g); and substituted "in dispute . . . subdivision" for "disputes existing on January 1, 1994, with respect to which recommendations for settlement, pursuant to paragraph (2) of subdivision (a), are first submitted to the Attorney General no later than June 30, 1994, and are first submitted to the board no later than September 15, 1994. With respect to civil tax matter disputes that did not exist on September 1, 1993, but that existed on January 1, 1994, this section shall apply only to determinations issued during that interval and to payments made pursuant to those determinations." after "tax matter" in subdivision (h). Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted "Except as provided . . . subject" for "Subject" in subparagraph (1), added "itself," after "to the board," in the first and third sentences of subparagraph (2), and added subparagraph (3) in subdivision (b); added "or penalties . . . and penalties" after "reduction of tax" in subdivision (c); substituted "For any . . . itself, the" for "The" in subparagraph (5) of subdivision (c); added ", itself" after "by the board" in the second sentence of subparagraph (1) of subdivision (e); added "considered or" after "any settlement" in the second sentence of subdivision (g); and substituted "matters" for "matter" after "civil tax" in subdivision (h). Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004, added ", for at least one year," after "placed on file" in subdivision (c).

7093.6. **Offers in compromise.** (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, ''a final tax liability'' means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute

of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section, ''person'' means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

History.—Added by Stats. 2002, Ch. 152, (AB 1458), in effect January 1, 2003.

7093.8. **Waiver of interest and penalty.** (a) (1) For the period beginning on October 1, 2002, and ending on June 30, 2003, an eligible taxpayer's liability, with respect to any unpaid taxes, may be satisfied by the payment of an eligible amount. The authority granted by this section is limited to an unpaid tax liability that has been determined by the State Board of Equalization to be a high-risk collection account.

(2) The liability of an eligible taxpayer for any unpaid penalties and interest included in the computation of the unpaid tax liability shall be extinguished only upon receipt by the State Board of Equalization of all payments equal to the eligible amount on or before the final due date for payment established by the State Board of Equalization.

(b) For purposes of this section, the following definitions apply:

(1) ''Eligible taxpayer'' means any person that receives notification from the State Board of Equalization that the taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount.

(2) ''Eligible amount'' means an amount equal to any unpaid tax liability, excluding penalties and interest, owed by the eligible taxpayer that is paid in one or more installments, as determined by the State Board of Equalization, on or before the due date established by the State Board of Equalization, but in no event later than June 30, 2004.

(3) ''High-risk collection account'' means any unpaid tax liability of a taxpayer where satisfaction of that liability under this section would be in the best interest of the state and shall include any unpaid tax liability for which the State Board of Equalization has made either of the following determinations:

(A) Under the State Board of Equalization's collection modeling policies, practices, and procedures, efforts to collect the unpaid tax liability would not be economical.

(B) The unpaid tax liability would not be paid in full within a reasonable period of time.

(4) ''Unpaid tax liability'' means any final liability under Part 1 (commencing with Section 6001), including tax, penalties, and interest, that are owed by a person and, as of October 1, 2002, are unpaid.

(c) No refund or credit shall be granted with respect to any penalty or interest paid or collected with respect to an unpaid tax liability prior to October 1, 2002.

(d) The determinations made by the State Board of Equalization pursuant to this section shall be final and conclusive and shall not be subject to review by any other officer, employee, or agent of the state, or by any court.

(e) Nothing in Section 7056, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used in connection with any determinations made by the State Board of Equalization for purposes of this section, or the data used or to be used for determining those standards if the State Board of Equalization determines that the disclosure will seriously impair assessment, collection, or enforcement under this part.

(f) Nothing in this section shall authorize the State Board of Equalization to compromise any final tax liability.

(g) The Legislature finds that it is essential for fiscal purposes that the special collection efforts authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued in implementing and administering the program required by this section.

(h) This section shall be operative with respect to unpaid tax liabilities of high-risk collection accounts that are the subject of notifications made to eligible taxpayers on or after October 1, 2002, and before July 1, 2003.

(i) Whenever a ''high-risk collection account'' is forgiven of any penalties and interest pursuant to this section, the public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of related penalties and interest relieved.

(3) A summary of the reason why the relief is in the best interest of the state.

(j) This section shall remain in effect only until December 31, 2004, and as of that date is repealed.

History.—Added by Stats. 2002, Ch. 488, (AB 2065), in effect September 12, 2002.

7094. **Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars ($1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, added "or notice of withhold" after "levy", and substituted "that the" for "of any of the following: (1) The" in subdivision (a); substituted "(b)" for "(2)" before "The", substituted "may order" for "orders" after "Advocate", substituted "any" for "the" after "release of", added "or notice . . . moneys received" after "levy", and added "or notice to withhold" after "the levy" in subdivision (b); relettered former subdivisions (b) and (c), as (c) and (d), respectively.

7094.1. **Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

History.—Added by Stats. 1998, Ch. 612, in effect January 1, 1999.

7095. **Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

7096. **Claim for reimbursement of bank charges by taxpayer.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Stats. 1991, Ch. 236, in effect July 29, 1991, added "or notice to withhold" after "levy" throughout entire text of section. Stats. 2001, Ch. 543 (SB 1185), in effect January 1, 2002, added "and any other . . . fees" after "bank charges" in the first sentence, added "and third-party" after "board. Bank" and added "or third party's" after "financial institution's" in the second sentence, and added "or third party" after "financial institution" in the third sentence, and substituted "that" for "which" after "with the board", substituted "the" for "such" after "shall be in" in the fourth sentence.

7097. **Preliminary notice to taxpayers prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1998, Ch. 612, in effect January 1, 1999, added subdivision (e).

7098. **Notice preliminary to suspension.** For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to revocation or suspension which indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

History.—Stats. 1989, Ch. 654, in effect January 1, 1990, substituted "the board shall not revoke or suspend a person's permit" for "a taxpayer shall not be suspended," and added "revocation or" after "pursuant to" in the first sentence.

7099. **Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, as defined for purposes of Section 7156.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

7099.1. **Protection of taxpayer communications.** (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the State Board of Equalization.

(3) For purposes of this section:

(A) ''Federally authorized tax practitioner'' means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

(B) ''Tax advice'' means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, ''federal tax advice'' means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) ''Tax shelter'' means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

History.—Added by Stats. 2000, Ch. 438 (AB 1016), in effect January 1, 2001.

Uncodified Sections

§ 1. Multiagency task force.

1. **Multiagency task force.** (a) The multiagency task force established pursuant to Executive Order D-51-86 (hereinafter referred to as ''task force'') shall include among its goals and objectives the following:

(1) To deter tax evasion by maximizing recoveries from blatant tax evaders and violators of cash-pay reporting laws, utilizing all penalties which are available to the taxing and enforcement agencies under existing law.

(2) To reduce enforcement costs by eliminating duplicative audits and investigations.

(3) To generate greater voluntary taxpayer compliance and to deter tax and cash-pay violations by publicizing the efforts of the task force.

(4) To provide opportunities for auditors and investigators from tax and enforcement agencies to become familiar with other agencies' laws and enforcement procedures.

(5) To concentrate its efforts in investigating and prosecuting violations of cash-pay and tax laws by employers with five or more employees and by individuals who are habitual or willfull violators of those laws.

(b) In addition to the responsibilities cited in Executive Order D-51-86, the task force shall be empowered to do all of the following:

(1) Identify areas of blatant violations and noncompliance with tax and cash-pay laws.

(2) Solicit referrals from the tax and enforcement agencies represented on the task force committee of instances of blatant violations and noncompliance with tax and cash-pay laws.

(3) Conduct audits, investigations, and referrals for prosecution of violations referred by other agencies and in the identified areas of violations and noncompliance, using all enforcement powers available in existing laws and regulations.

(4) Establish an advertised telephone ''hotline'' for referrals from the public.

(5) Publicize the activities of the task force.

(6) Keep the audit and investigative staff of the tax and enforcement agencies represented on the task force committee fully informed of the activities of the task force.

(7) Develop procedures for improved information sharing among the agencies represented on the task force committee, consistent with restrictions on disclosure of confidential tax information in existing law, for the purpose of improving enforcement.

(8) Based on the activities of the task force, evaluate the need for any law changes to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve agencies' ability to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(c) The task force shall report to the Governor, the Senate and Assembly Revenue and Taxation Committees, and the Commission on California State Government Organization and Economy every six months during the period

it is in existence, beginning on March 1, 1987, regarding the activities of the task force. The reports shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited or investigated, and referred for prosecution.

(2) Actions taken by the task force to publicize its activities.

(3) Efforts made by the task force to establish an advertised telephone "hotline" for referrals from the public.

(4) Procedures developed for improved information sharing among the agencies represented on the task force.

(5) Steps taken by the task force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any law changes needed to accomplish the goals described in paragraph (8) of subdivision (b).

History.—Added by Sec. 40, Stats. 1986, Ch. 1361, effective January 1, 1987.

CHAPTER 9. DISPOSITION OF PROCEEDS

§ 7101. Retail Sales Tax Fund.
§ 7101.3. Disposition of funds; Fiscal Recovery Fund.
§ 7102. Disposition of fund.
§ 7104. Transportation Investment Fund.
§ 7104.1. Exclusion; suspension of Transportation Investment Fund.
§ 7105. Transportation Deferred Investment Fund.

7101. **Retail Sales Tax Fund.** All fees, taxes, interest, and penalties, imposed and all amounts of tax required to be paid to the State under this part shall, except as provided in Section 6452.1, be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Retail Sales Tax Fund.

History.—Stats. 2003, Ch. 718 (SB 1009), in effect January 1, 2004, added ", except as . . . 6452.1," after "this part shall", and deleted "State" after "payments to the".

7101.3. **Disposition of funds; Fiscal Recovery Fund.** Notwithstanding Section 7101, all revenues, less refunds, derived from the taxes imposed to Sections 6051.5 and 6201.5 shall be deposited in the State Treasury to the credit of the Fiscal Recovery Fund, as established pursuant to Section 99008 of the Government Code.

History.—Added by Stats. 2003, Ch. 13X (AB 7X), in effect August 2, 2003, but operative July 1, 2004.

7102. **Disposition of fund.** The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, credits or refunds pursuant to Section 60202, and refunds pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4¾-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent

and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(A) For the 2001–02 fiscal year, those transfers may not be more than eighty-one million dollars ($81,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds eighty-one million dollars ($81,000,000).

(B) For the 2002–03 fiscal year, those transfers may not be more than thirty-seven million dollars ($37,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds thirty-seven million dollars ($37,000,000).

(C) For the 2003–04 fiscal year, no transfers shall be made pursuant to this paragraph, except that if the amount to be otherwise transferred pursuant to this paragraph is in excess of eighty-seven million four hundred fifty thousand dollars ($87,450,000), then the amount of that excess shall be transferred.

(2) All revenues, less refunds, derived under this part at the 4¾-percent rate, resulting from increasing, after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the 4¾-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)) and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(5) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during

that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be made quarterly.

(d) Notwithstanding the designation of the Public Transportation Account as a trust fund pursuant to subdivision (a), the Controller may use the Public Transportation Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

(e) The Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section.

History.—Stats. 1971, p. 2785, operative July 1, 1972, provided for transfers to the State Transportation Fund according to estimates by the State Board of Equalization. Stats. 1972, Ch. 1406, effective December 26, 1972, repealed and reenacted the section on June 1, 1973, changing the percentage rates to 4¾ and 5 percent and deleting the words, "the Transportation Planning and Research Account in." Stats. 1972, Ch. 1408, effective December 27, 1972, deleted "shall be transferred monthly to the State Transportation Fund." which followed "State Board of Equalization" in (a) and inserted the present language. Stats. 1975, Ch. 1130, in effect January 1, 1976, substituted "1972–73 fiscal year and ending with the first six months of the 1975–76 fiscal year on December 31, 1975. Effective January 1, 1976," for "fiscal year 1972–73" and "calendar" for "fiscal." Stats. 1979, Ch. 161, effective June 28, 1979, in (a), changed "3¾" to "4¾" and "4" to "5", deleted references to past fiscal years, deleted "as soon as practicable after the close of each claendar year" following "shall be made", changed "Research" to "Development" following "Transportation Planning and", added "each calendar quarter" following "shall be transferred", added wording following "State Transportation Fund." Stats. 1981, Ch. 541, in effect September 17, 1982, substituted "been" for "remained at" before "5 percent" in the first sentence of, and deleted the balance of the first paragraph in, and substituted a new second paragraph in, subdivision (a); and added a new subdivision "(c)" and "(d)". Stats. 1985, Ch. 1600, effective October 2, 1985, added "(1)" and substituted "if motor . . . Finance" for "Section 6357 . . . Finance", deleted "(1) One hundred . . . base year" and added "for appropriation . . . Code" in paragraph (1), added paragraph (2) and deleted former paragraph (2), deleted "and (3)" before "of subdivision" in subdivision (c), and deleted subdivision (d). Stats. 1986, Ch. 41, effective March 31, 1986, amended (b) and (c) to specify that the deficiency in the 1987–88 budget be transferred from the sales and use tax on fuel as defined under the Use Fuel Tax Law. Stats. 1987, Ch. 1280, effective January 1, 1988, added to first paragraph "and pursuant to Section 1793.25 of the Civil Code" following "refunds under this part", added hyphen after "4¾". Stats. 1989, Ch. 14 (1X), in effect November 8, 1989, added "and" after "Finance" in paragraph (1) of subdivision (a), deleted former paragraph (2) and added paragraph (2) of subdivision (a), added subdivisions (b) and (c), changed previous subdivisions (b) and (c) to (d) and (e), substituted "subdivisions (a) and (b)" for "subdivision (a)" in subdivision (e). Stats. 1990, Ch. 174, in effect June 22, 1990, added a comma after "Finance," substituted "quarterly" for "during each fiscal year", added ", a trust fund" after "Account" and deleted "for appropriation pursuant to Section 99312 of the Public Utilities Code." after "Fund" in paragraph (1) of subdivision (a); renumbered former paragraph (2) as paragraph (3); renumbered former subdivision (b) as paragraph (2); substituted "quarterly" for "during each fiscal year" and substituted ", a trust fund in the State Transportation Fund" for "for appropriation pursuant to Section 99312 of the Public Utilities Code." in paragraph (2) of subdivision (a); substituted "derived under this part at the 4¾-percent rate" for "due to", deleted "at the 4¾-percent rate" after "Section 8601)," added "estimated by . . . and shall be" before "transferred", substituted "quarterly" for "during each fiscal year", and substituted ", a trust fund in the State Transportation Fund" for "for appropriation pursuant to Section 99312 of the Public Utilities Code" in paragraph (2) of subdivision (a); renumbered former subdivision (c) as paragraph (4); added "for the period . . . inclusive" after "6201.1" in paragraph (4) of subdivision (a); added paragraphs (5) and (6) to subdivision (a); relettered former subdivision (d) as (b) and (e) as (c); substituted "estimates" for "estimate", "subdivision" for "subdivisions", deleted "and (b)" before "shall be based" twice, substituted a comma for "and" before "(2)", added ", and (3)" after "(2)", substituted "subdivision" for "subdivisions", deleted "and (b)" in the second sentence of subdivision (c); and added subdivision (d). Stats. 1991, Ch. 85, in effect June 30, 1991, operative July 1, 1991, added paragraph (7) to subdivision (a). Stats. 1993, Ch. 73, in effect June 30, 1993, added paragraphs (8) and (9) to subdivision (a). Stats. 1993, Ch. 866, in effect January 1, 1994, added paragraph (10) to subdivision (a). Stats. 1994, Ch. 136, in effect July 5, 1994, added subdivision (d) and relettered former subdivision (d) as (e). Stats. 1997, Ch. 620 (SB 1102), substituted "credits and refunds pursuant to Section 60202, and refunds" for "and" after "under this part" in the first paragraph, and added "and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001))" after "Section 8601))" in paragraph (3) of subdivision (a). Stats. 2000, Ch. 91 (AB 2928), in effect July 7, 2000, added a comma after "from increasing" in paragraph (2), and deleted former paragraphs (11), (12), and (13), of subdivision (a) which provided, "(11) All revenues, less refunds, derived under this part at the 5-percent rate, resulting from the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)) on motor vehicle fuel, less the amount transferred pursuant to paragraph (2) of subdivision (a), shall be transferred quarterly to the Traffic Congestion Relief Fund. (12) All revenue, less refunds, derived under this part at the 5-percent rate, resulting from the rate of federal motor vehicle fuel tax imposed pursuant to Section 4081 of Title 26 of the Internal Revenue Code, shall be transferred quarterly to the Traffic Congestion Relief Fund. (13) All revenue, less refunds, derived under this part at the 5-percent rate, with respect to the sale, storage, use, or other consumption of motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), other than that transferred pursuant to paragraph (1), (2), (11), or (12) of subdivision (a), shall be transferred quarterly to the Traffic Congestion Relief Fund. In no event shall the transfer to the Traffic Congestion Relief Fund pursuant to paragraph (11), (12), and (13) of subdivision (a) of this section, exceed one hundred

twenty-five million dollars ($125,000,000) in any quarter."; added "and" after "(1), (2)," and deleted "(11), (12), and (13)" before "subdivision (a)" in subdivision (c); deleted former subdivision (f) which provided, "The transfers authorized by paragraphs (11), (12), and (13) of subdivision (a) shall be operative for the 2000–01 fiscal year only."; relettered former subdivision (g) as (f) and substituted "become operative on June 30, 2001" for "remain in effect only until June 30, 2001, and as of that date is repealed, unless a later enacted statute that is enacted before June 30, 2001, deletes or extends that date." therein. Stats. 2001, Ch. 113 (AB 438), in effect July 30, 2001, substituted "Public Transportation Account" for "Transportation Planning and Development Account" after "quarterly to the" in paragraphs (1), (2), and (3), and added subparagraph (A) to paragraph (1) in subdivision (a); and substituted "Public Transportation Account" for "Transportation Planning and Development Account" after "designation of the" and after "may use the" in subdivision (d). Stats. 2003, Ch. 224 (AB 1751), in effect August 11, 2003, added subparagraph (C) of paragraph (1) of subdivision (a), substituted "the taxes imposed . . . by statute" for "a rate of more than 4¾ percent pursuant to Sections 6051.1 and 6201.1 for the period December 1, 1989, to June 5, 1990, inclusive, shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code" after "this part from" in subparagraph (4) of subdivision (a); deleted former paragraphs (5) through (10) which provided for the disposition of funds pursuant to 6051.1, 6201.1, 6051.2, 6201.2, 6051.6, 6201.6 and the increase in the revenues attributable to the increase in the rate of federal motor vehicle fuel tax between January 1, 1993 and the rate in effect on January 1, 1994; and deleted former subdivision (f) which read, "This section shall become operative on June 30, 2001.".

7104. **Transportation Investment Fund.** (a) The Transportation Investment Fund (hereafter the fund) is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(b) All of the following shall occur on a quarterly basis:

(1) The State Board of Equalization, in consultation with the Department of Finance, shall estimate the amount that is transferred to the General Fund under subdivision (b) of Section 7102 that is attributable to revenue collected for the sale, storage, use, or other consumption in this state of motor vehicle fuel, as defined in Section 7304.

(2) The State Board of Equalization shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(3) Commencing with the 2003–04 fiscal year, the Controller shall transfer the amount estimated under paragraph (1) from the General Fund to the fund.

(c) For each quarter during the period commencing on July 1, 2001, and ending on June 30, 2006, the Controller shall make all of the following transfers and apportionments from the funds identified for transfer under paragraph (2) of subdivision (b) in the following order:

(1) To the Traffic Congestion Relief Fund created in the State Treasury by Section 14556.5 of the Government Code, the sum of one hundred sixty-nine million five hundred thousand dollars ($169,500,000), except that the transfer for the final quarter shall be ninety-three million four hundred thousand dollars ($93,400,000), for a total transfer of three billion three hundred thirteen million nine hundred thousand dollars ($3,313,900).

(2) To the Public Transportation Account, a trust fund in the State Transportation Fund, 20 percent of the amount remaining after the transfer required under paragraph (1). Funds transferred under this paragraph shall be appropriated by the Legislature as follows:

(A) To the Department of Transportation, 50 percent for purposes of subdivision (a) or (b) of Section 99315 of the Public Utilities Code.

(B) To the Controller, 25 percent for allocation pursuant to Section 99314 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99314 of the Public Utilities Code.

(C) To the Controller, 25 percent for allocation pursuant to Section 99313 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99313 of the Public Utilities Code.

(3) To the Department of Transportation for expenditure for programming for transportation capital improvement projects subject to all of the provisions governing the State Transportation Improvement Program, 40 percent of the amount remaining after the transfer required under paragraph (1), except that in the 2006–07 and 2007–08 fiscal years, the transfer shall be 80 percent of the amount remaining after the transfer required under paragraph (1).

(4) To the Controller for apportionment to the counties, including a city and county, 20 percent of the amount remaining after the transfer required under paragraph (1), in accordance with the following formulas:

(A) Seventy-five percent of the funds payable under this paragraph shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) Twenty-five percent of the funds payable under this paragraph shall be apportioned among the counties in the proportion that the number of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(5) To the Controller for apportionment to cities, including a city and county, 20 percent of the amount remaining after the transfer required under paragraph (1), except that the 2006–07 and 2007–08 fiscal years, no transfer may be made under this paragraph. Funds transferred under this paragraph shall be apportioned among the cities in the proportion that the total population of the city bears to the total population of all the cities in the state.

(d) Funds received under paragraphs (4) and (5) of subdivision (c) shall be deposited as follows in order to avoid the commingling of those funds with other local funds:

(1) In the case of a city, into the city account that is designated for the receipt of state funds allocated for transportation purposes.

(2) In the case of a county, into the county road fund.

(3) In the case of a city and county, into a local account that is designated for the receipt of state funds allocated for transportation purposes.

(e) Funds allocated to a city, county, or city and county under this section shall be used only for street and highway maintenance, rehabilitation,

reconstruction, and storm damage repair. For purposes of this section, the following terms have the following meanings:

(1) ''Maintenance'' means either or both of the following:

(A) Patching.

(B) Overlay and sealing.

(2) ''Reconstruction'' includes any overlay, sealing, or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the geometric design criteria of the department for 3R (reconstruction, resurfacing, and rehabilitation) projects that are not on a freeway, but does not include widening for the purpose of increasing the traffic capacity of a street or highway.

(3) ''Storm damage repair'' is repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to winter storms and flooding, and construction of drainage improvements to mitigate future roadway flooding and damage problems, in those jurisdictions that have been declared disaster areas by the President of the United States, where the costs of those repairs are ineligible for emergency funding with Federal Emergency Relief (ER) funds or Federal Emergency Management Administration (FEMA) funds.

(f) (1) Cities and counties shall maintain their existing commitment of local funds for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair in order to remain eligible for the allocation of funds pursuant to paragraph (4) or (5) of subdivision (c).

(2) In order to receive any allocation pursuant to paragraph (4) or (5) of subdivision (c), the city or county shall annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 1996-97, 1997-98, and 1998-99 fiscal years, as reported to the Controller pursuant to Section 2151 of the Streets and Highways Code. For purposes of this paragraph, in calculating a city's or county's annual general fund expenditures and its average general fund expenditures for the 1996-97, 1997-98, and 1998-99 fiscal years, any unrestricted funds that the city or county may expend at its discretion, including vehicle in-lieu tax revenues and revenues from fines and forfeitures, expended for street and highway purposes shall be considered expenditures from the general fund. One-time allocations that have been expended for street and highway purposes, but which may not be available on an ongoing basis, including revenue provided under the Teeter Plan Bond Law of 1994 (Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of the Government Code, may not be considered when calculating a city's or county's annual general fund expenditures.

(3) For any city incorporated after July 1, 1996, the Controller shall calculate an annual average of expenditure for the period between July 1, 1996, and December 31, 2000, that the city was incorporated.

(4) For purposes of paragraph (2), the Controller may request fiscal data from cities and counties in addition to data provided pursuant to Section 2151, for the 1996-97, 1997-98, and 1998-99 fiscal years. Each city and county shall furnish the data to the Controller not later than 120 days after receiving the request. The Controller may withhold payment to cities and counties that do not comply with the request for information or that provide incomplete data.

(5) The Controller may perform audits to ensure compliance with paragraph (2) when deemed necessary. Any city or county that has not complied with paragraph (2) shall reimburse the state for the funds it received during that fiscal year. Any funds withheld or returned as a result of a failure to comply with paragraph (2) shall be reallocated to the other counties and cities whose expenditures are in compliance.

(6) If a city or county fails to comply with the requirements of paragraph (2) in a particular fiscal year, the city or county may expend during that fiscal year and the following fiscal year a total amount that is not less than the total amount required to be expended for those fiscal years for purposes of complying with paragraph (2).

(7) The allocation made under paragraph (4) or (5) of subdivision (c) shall be expended not later than the end of the fiscal year following the fiscal year in which the allocation was made, and any funds not expended within that period shall be returned to the Controller and shall be reallocated to the other cities and counties pursuant to the allocation formulas set forth in paragraph (4) or (5) of subdivision (c).

(g) The Los Angeles County Metropolitan Transportation Authority shall give first priority for using its share of the funds made available under subparagraphs (B) and (C) of paragraph (2) of subdivision (c) to providing the levels of bus service mandated under the consent decree entered into by the authority on October 29, 1996, in the case of Labor/Community Strategy Center, et al. v. Los Angeles County Metropolitan Transportation Authority.

(h) For the purpose of allocating funds under paragraph (4) or (5) of subdivision(c) to counties, cities, and a city and county, the Controller shall use the most recent population estimates prepared by the Demographic Research Unit of the Department of Finance. For a city that incorporated after January 1, 1998, that does not appear on the most recent population estimates prepared by the Demographic Research Unit, the Controller shall use the population determined for that city under Section 11005.3 of the Revenue and Taxation Code.

(i) This section shall become inoperative on the date that all encumbrances incurred for the projects funded under paragraph (3) of subdivision (c) have been liquidated or on June 30, 2008, whichever date is later, and as of the January 1 immediately following that date is repealed.

History.—Added by Stats. 2000, Ch. 91 (AB 2928), in effect July 7, 2000. Stats. 2000, Ch. 656 (SB 1662), in effect September 26, 2000, added second sentence in subdivision (a); added "and apportionments" after "following transfers" and "identified . . . subdivision (b)" after "from the funds" in subdivision (c); substituted "Traffic" for "Transportation" before "Congestion Relief" in paragraph (1), added "expenditure for" after "of Transportation for" in paragraph (3), added "Controller for apportionment to the" after "To the" in paragraph (4), and added "the Controller for

apportionment to the" before "cities, including" in paragraph (5) of subdivision (c); added ", where the . . . (FEMA) funds" in paragraph (3) of subdivision (e); added "any city . . . incorporated" after "(3) For", and created new paragraph (4) with the former first sentence of paragraph (3), and substituted "(2)" for "(1)" after "of paragraph" and deleted "At the conclusion of each fiscal year during which a city or county receives funding under paragraph (4) or (5) of subdivision (c), the Controller shall verify the city's or county's" therein; created new paragraph (5), and added "The Controller may perform audits to ensure" before "compliance with paragraph", substituted "(2) when deemed necessary" for "(1)" after "compliance with paragraph", and substituted "(2)" for "(1)" after "comply with paragraph" therein; renumbered former paragraph (5) as (6), and substituted "(2)" for "(1)" after "paragraph" twice therein; renumbered paragraph (6) as (7) in subdivision (f); added subdivision (h); created new subdivision (i) with former last sentence of statute, and substituted "the date that . . . following that date" for "June 30, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and" after "become inoperative on" therein. Stats. 2001, Ch. 113 (AB 438), in effect July 30, 2001, substituted "Commencing with the 2003–04 fiscal year, the" for "The" before "Controller shall transfer" in paragraph (3) of subdivision (b); added "except that . . . ($93,400,000)" after "($169,500,000)", and substituted "thirteen million . . . ($3,313,900,000)" for "ninety million dollars($3,390,000,000)" in paragraph (1), added "except that . . . paragraph (1)" after "under paragraph (1)," in paragraph (3), added "except that . . . shall be allocated" after "under paragraph (1)," in paragraph (4), and added "except that . . . this paragraph" in paragraph (5) of subdivision (c); substituted "paragraph (4) or (5) of subdivision (c)" for "this section" after "funds under" in subdivision (h); and substituted "2008" for "2006" after "on June 30," in subdivision (i).

7104.1. **Exclusion; suspension of Transportation Investment Fund.** Notwithstanding any other provision of law, the requirements imposed on cities and counties by subdivision (f) of Section 7104 shall not apply for any fiscal year in which the transfer of revenues from the General Fund to the Transportation Investment Fund is suspended pursuant to Article XIX B of the California Constitution and funds consequently are not made available for allocation to cities or counties pursuant to paragraphs (4) and (5) of subdivision (c) of Section 7104.

History.—Added by Stats. 2003, Ch. 716 (SB 460), in effect January 1, 2004.

7105. **Transportation Deferred Investment Fund.** (a) The Transportation Deferred Investment Fund is hereby created in the State Treasury.

(b) On or before June 30, 2009, the Controller shall transfer an amount from the General Fund to the Transportation Deferred Investment Fund that is equal to the amount that was not transferred from the General Fund to the Transportation Investment Fund for the 2003–04 fiscal year because of the partial suspension of the transfer pursuant to Section 14557 of the Government Code, plus interest calculated at the Pooled Money Investment Account rate relative to the amounts that would otherwise have been available for the transportation programs described in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104. The money in the Transportation Deferred Investment Fund is continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(c) The Controller, from money in the Transportation Deferred Investment Fund, shall make transfers and apportionments of those funds in the same manner and amounts that would have been made in the 2003–04 fiscal year from the Transportation Investment Fund pursuant to Section 7104, as that section read on January 1, 2003, if the transfer of funds from the General Fund to the Transportation Investment Fund had not been partially suspended for the 2003–04 fiscal year pursuant to Section 14557 of the Government Code. However, in making those transfers and apportionments, the Controller shall take into account and deduct therefrom any transfers and

apportionments that were made from the Transportation Investment Fund in the 2003–04 fiscal year from funds made available pursuant to subdivision (b) of Section 14557 of the Government Code. It is the intent of the Legislature that upon completion of the transfer of funds pursuant to subdivision (b) from the General Fund to the Transportation Deferred Investment Fund that each of the transportation programs that was to have been funded during fiscal year 2003–04 from the Transportation Investment Fund pursuant to Section 7104 of the Revenue and Taxation Code shall have received the amount of funding that the program would have received in the absence of the suspension of the transfer pursuant to Section 14557 of the Government Code.

(d) The interest that is to be deposited in the Transportation Deferred Investment Fund pursuant to subdivision (b) shall be allocated proportionately to each program element in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104, based on the amount that each program did not receive in fiscal year 2003–04 due to suspension of the transfer pursuant to Section 14557 of the Government Code.

(e) The Legislature finds and declares that continued investment in transportation is essential for the California economy. That investment reduces traffic congestion, assists in economic development, improves the condition of local streets and roads, and provides high-quality public transportation.

History.—Added by Stats. 2003, Ch. 224 (AB 1751), in effect August 11, 2003.

Chapter 10. Violations

§ 7151. Criminal penalties. [Repealed.]
§ 7152. Criminal penalties.
§ 7153. Same.
§ 7153.5. Same.
§ 7154. Statute of limitations.
§ 7155. 50 percent penalty.
§ 7156. Civil proceedings.

7151. **Criminal penalties.** [Repealed by Stats. 1986, Ch. 1361, effective January 1, 1987.]

7152. **Criminal penalties.** (a) Any person required to make, render, sign, or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor punishable as provided in Section 7153.

(b) Any person who willfully aids or assists in, or procures, counsels, or advises in, the preparation or presentation, in connection with any matter arising under this part, of a return, affidavit, claim, or other document that is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, is guilty of a misdemeanor punishable as provided in Section 7153.

History.—Added by Stats. 1941, Ch. 36. Stats. 1984, Ch. 1490, effective September 27, 1984, deleted all text after "misdemeanor," and added "punishable . . . Section 7153" after "misdemeanor." Stats. 1994, Ch. 903, in effect January 1, 1995, added subdivision letter designation (a) before first paragraph and added subdivision (b).

7153. **Same.** Any violation of this part by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000), or imprisonment not exceeding one year in the county jail, or both the fine and imprisonment in the discretion of the court.

History.—Added by Stats. 1941, Ch. 36. Stats. 1984, Ch. 1490, effective September 27, 1984, deleted all text after "part" and added "by any person . . . of the court" after "part."

7153.5. **Same.** Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the reporting, assessment, or payment of a tax or an amount due required by law to be made is guilty of a felony when the amount of unreported tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

History.—Added by Stats. 1987, Ch. 1064, effective January 1, 1988. Stats. 1989, Ch. 654, in effect January 1, 1990, substituted "Deputy Director, Business Taxes," for "principal tax auditor," and "designee" for "supervisor" in the second sentence. Stats. 1992, Ch. 902, in effect September 25, 1992, operative January 1, 1993, substituted "person who violates" for "violation" after "part, any", deleted "by any person" after "this part" in the first sentence and deleted former second sentence which stated, "The determination shall be approved by the Deputy Director, Business Taxes, or that person's designee." Stats. 1994, Ch. 903, in effect January 1, 1995, substituted "reporting . . . a tax or" for "determination of" after "evade the" and added "unreported" after "amount of" in the first sentence.

7154. **Statute of limitations.** Any prosecution for violation of any of the penal provisions of this part shall be instituted within five years after the commission of the offense, or within two years after the violation is discovered, whichever is later.

History.—Added by Stats. 1953, p. 3385, in effect September 9, 1953. Stats. 1986, Ch. 1361, effective January 1, 1987, added, "or within two years after the violation is discovered, whichever is later." Stats. 1992, Ch. 902, in effect September 25, 1992, operative January 1, 1993, substituted "five" for "three" after "instituted within".

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

7155. **50 percent penalty.** (a) Any person who, for the purpose of evading the payment of taxes due under this part, knowingly fails to obtain a valid permit prior to the date on which the first tax return is due shall be liable for a penalty of 50 percent of any tax determined to be due for the period during which the person engaged in business in this state as a seller without a valid permit.

(b) This section shall not apply to any person whose measure of tax liability over the period during which he or she was engaged in business in this state as a seller without a valid permit averaged one thousand dollars ($1,000) or less per month.

(c) This section 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 Section 6514.1.

History.—Added by Stats. 1984, Ch. 1490, effective September 27, 1984.

7156. **Civil proceedings.** (a) In the case of any civil proceeding which is—

(1) Brought by or against the State of California in connection with the determination, collection, or refund of any tax, interest, or penalty under this part, and

(2) Brought in a court of record of this state, the prevailing party may be awarded a judgment for reasonable litigation costs incurred in that proceeding.

(b) (1) A judgment for reasonable litigation costs shall not be awarded under subdivision (a) unless the court determines that the prevailing party has exhausted the administrative remedies available to that party under this part.

(2) An award under subdivision (a) shall be made only for reasonable litigation costs which are allocable to the State of California and not to any other party to the action or proceeding.

(3) No award for reasonable litigation costs may be made under subdivision (a) with respect to any declaratory judgment proceeding.

(4) No award for reasonable litigation costs may be made under subdivision (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted that proceeding.

(c) For purposes of this section—

(1) The term ‘‘reasonable litigation costs’’ includes any of the following:

(A) Reasonable court costs.

(B) Based upon prevailing market rates for the kind or quality of services furnished any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars ($75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(2) (A) The term ''prevailing party'' means any party to any proceeding described in subdivision (a) (other than the State of California or any creditor of the taxpayer involved) which—

(i) Establishes that the position of the State of California in the civil proceeding was not substantially justified, and

(ii) (I) Has substantially prevailed with respect to the amount in controversy, or

(II) Has substantially prevailed with respect to the most significant issue or set of issues presented.

(B) Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made—

(i) By the court, or

(ii) By agreement of the parties.

(3) The term ''civil proceeding'' includes a civil action.

(d) For purposes of this section, in the case of—

(1) Multiple actions which could have been joined or consolidated, or

(2) A case or cases involving a return or returns of the same taxpayer which could have been joined in a single proceeding in the same court, these actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which the action is brought determines, in its discretion, that it would be inappropriate to treat these actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, ''position of the State of California'' includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the State Board of Equalization (and all subsequent administrative action or inaction) upon which that proceeding is based.

History.—Added by Stats. 1988, Ch. 1138, in effect January 1, 1989.

Costs awarded under Taxpayer's Bill of Rights should not be offset.—Litigation costs awarded under the Taxpayer's Bill of Rights are not an ordinary debt to the taxpayer which can be offset under Government Code sections 12419.4 and 12419.5. *Garg* v. *State Board of Equalization* (1997) 53 Cal.App.4th 199.

Chapter 11. Res Judicata

§ 7176. Res judicata.

7176. **Res judicata.** In the determination of any case arising under this part the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

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