

Sales and Use Taxes for Nonprofit and Exempt Organizations

California State Board of Equalization



Written Responses

For Specific Sales and Use Tax Questions

Write to:

Board of Equalization
Audit and Information Section
450 N Street, MIC:44
Sacramento, CA 95814

Course Objectives

- How Sales and Use Tax Law impacts nonprofit and faith-based organizations
- How and where to get help



Board of Equalization Functions

- Administers more than 25 different tax and fee programs for the state.
- Produced more than \$53 billion in revenue for state and local government in 2007-08.
- Funding supports education, health care, public safety, transportation, social services, etc.

No Blanket Exemption

- In general, no blanket exemption from sales or use tax exists for nonprofit or charitable organizations.
- The organization's sales of tangible personal property are subject to tax.
- The organization's purchases of tangible personal property, including supplies are subject to tax.

What Is a Person?

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.

What Is Tangible Personal Property?

Personal property, which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.



What Is a Sale?

Any transfer of title or possession of tangible personal property for a consideration, regardless of when payment is received.



Who Is a Retailer?

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.



Who Is a Consumer?

One that acquires goods or services for direct use or ownership rather than for resale.



Sales Tax vs. Use Tax

The tax rate is the same for sales tax and use tax

Sales Tax

- Tax imposed on retailer
- Seller reports and pays the sales tax due on items sold at retail in California
- Tax measured by the gross receipts from the sale

Original Price \$10.00

Special Price for Fair \$ 5.00

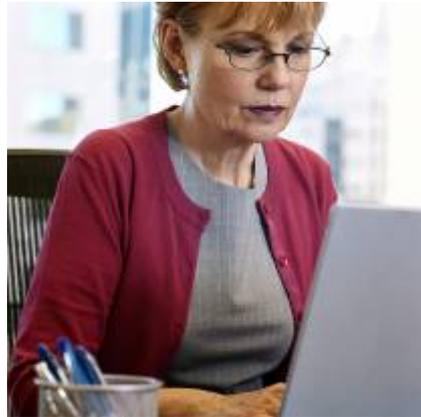
Tax Applies Only to: \$ 5.00

Sales Tax vs. Use Tax

The tax rate is the same for sales tax and use tax

Use Tax

- Tax imposed on consumer
- Consumer owes and pays the use tax due on items purchased without payment of sales tax
- Tax measured by purchase price
- Out-of-state retailers engaged in business in California must collect and pay use tax on items sold in California



Sales by Nonprofit Organizations

- **General Rule = Sales are Taxable**
- **Statutory Consumer**
- **Specific Exemption**

General Rule:

Sales are taxable even if...

- The item is donated or homemade
- The item is bartered or traded
- The proceeds benefit the organization
- The money received is designated as a donation or gift

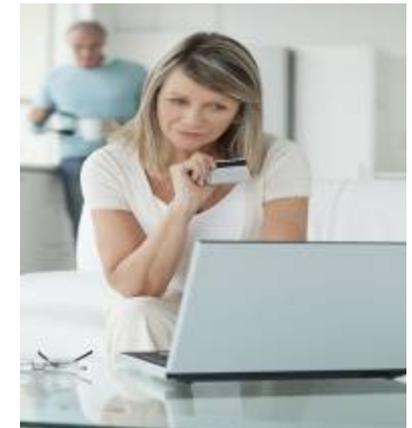
Exemptions for Certain Consumers

- Nonprofit parent-teacher associations
- Qualified nonprofit youth organizations
- Parent cooperative nursery schools
- Nonprofit veterans' organizations
- Friends of the Library



Taxable Activities

- Raffles
- Food sales
- Auctions
(and silent auctions)
- Rummage sales
- Bazaars
- Carnival booths
- Vending machine sales
- Internet sales



Sales of Food “To Go” at Fundraising Events

Type of food: Cold Beverages

Is sale usually taxable? No

Exceptions:

- Tax applies to the sale of alcoholic and carbonated beverages
- May be taxable when sold in a combination package

Taxable



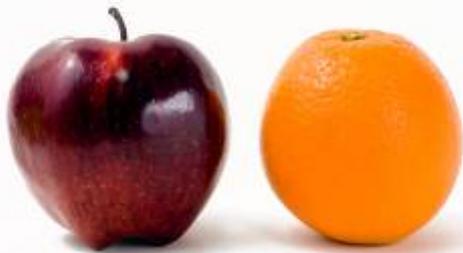
Sales of Food “To Go” at Fundraising Events

Type of food: Cold food
(candy, snack food, produce, etc.)

Is sale usually taxable? No

Exception:

- May be taxable when sold in a combination package



Sales of Food “To Go” at Fundraising Events

Type of food: Hot prepared food

Is sale usually taxable? Yes

Exception:

- Tax does not apply to sales of individual hot drinks and bakery goods

**Not
Taxable**



Sales of Food “To Go” at Fundraising Events

Type of food: Combination packages

Is sale usually taxable? Yes

- Application of tax depends on contents of package

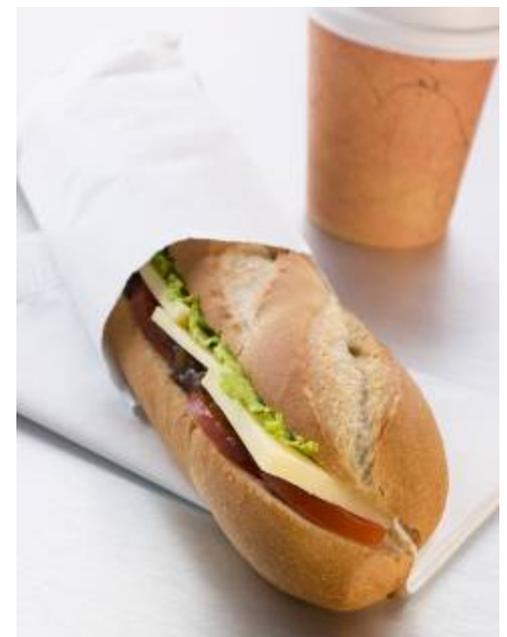


Sales of Combination Food Packages “To Go” at Fundraising Events

When a combination food package includes:

- A hot, prepared food product or hot beverage and any other food item
 - Examples: Hot coffee and a sandwich; hot soup and a cold sandwich

Tax applies to full selling price



Sales of Combination Food Packages “To Go” at Fundraising Events

When a combination food package includes:

- Cold food products only
 - Example: Cold sandwich, chips, and an apple

Tax does not apply



Sales of Combination Food Packages “To Go” at Fundraising Events

When a combination food package includes:

- A carbonated beverage and one or more cold food items
 - Example: Cold sandwich , chips, candy, and a soft drink

Tax applies only to the portion of the selling price that represents the charge for the carbonated beverage



Sales of Food for Consumption On-site at Fundraising Events

Type of sale, location:

- Meals served at fundraising events

Is sale usually taxable?

- Yes



Sales of Food for Consumption On-site at Fundraising Events

Type of sale, location:

- Food sold where admission is charged

Is sale usually taxable?

- Yes

Exception:

- Cold food sold in a form or quantity that buyers would normally take home



Sales of Food for Consumption On-site at Fundraising Events

Type of sale, location:

- Food sold where dining facilities are provided

Is sale usually taxable?

- Yes

Exception:

- Cold food sold in a form or quantity that buyers would normally take home



Sales of Food for Fundraising

Fund Raising Dinners

- Taxable
- Generally, the person serving the meal is responsible for the tax

If a caterer serves the meal, the caterer is the retailer and is responsible for the tax



Certain Nonprofit Activities are Nontaxable

- Advertising for inclusion in a newsletter or publication, etc.
- Gift Cards/Certificates
- Show Tickets
- Movie Tickets
- Coupon Books

Items Donated by Business from Resale Inventory

Items withdrawn from resale inventory and donated to certain nonprofit, government, or qualified religious organizations without prior use are not subject to use tax by the business making the donation.

501(c)(3) Publications

Tax Does Not Apply if the publication is regularly issued (averaging at least 4 issues a year)

- Distributed to Members Without Additional Charge
- OR
- No Revenue is Accepted from Commercial Advertising

Non 501(c)(3) Nonprofit Organization Periodicals

Sale is Exempt if Both Apply

- Distributed to Members Without Additional Charge
- AND
- Cost of Printing is less than 10% of the Annual Membership Fee

Do I Need a Seller's Permit?

“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.”



How to Obtain a Permit

1. Complete application
 - BOE-400-SPA
2. Submit application with all necessary documentation
 - in person
 - mail
 - fax
3. Cost = Free

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

BCE-400-SPA REV. 3 (FRONT) (7-08)
APPLICATION FOR SELLER'S PERMIT

| 1. PERMIT TYPE: (check one) <input type="checkbox"/> Regular <input type="checkbox"/> Temporary | | FOR BOE USE ONLY | | | |
|--|--|---|-------------------|----------|--|
| 2. TYPE OF OWNERSHIP (check one) <small>* Must provide partnership agreement</small> | | TAX | IND | OFFICE | PERMIT NUMBER |
| <input type="checkbox"/> Sole Owner | <input type="checkbox"/> Married Co-ownership | S | | | |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Limited Liability Company (LLC) | | NAICS CODE | BUS CODE | A.C.C. |
| <input type="checkbox"/> General Partnership | <input type="checkbox"/> Unincorporated Business Trust | PROCESSED BY | PERMIT ISSUE DATE | | RETURN TYPE |
| <input type="checkbox"/> Limited Partnership (LP)* | <input type="checkbox"/> Limited Liability Partnership (LLP)* <small>(Registered to practice law, accounting or architecture)</small> | | / / | | <input type="checkbox"/> (1) 401-A <input type="checkbox"/> (2) 401-EZ |
| <input type="checkbox"/> Registered Domestic Partnership | | | | | VERIFICATION |
| <input type="checkbox"/> Other (describe) | | | | | <input type="checkbox"/> DL <input type="checkbox"/> PA <input type="checkbox"/> Other |
| 3. NAME OF SOLE OWNER, CORPORATION, LLC, PARTNERSHIP, OR TRUST | | 4. STATE OF INCORPORATION OR ORGANIZATION | | | |
| 5. BUSINESS TRADE NAME/"DOING BUSINESS AS" (DBA) (if any) | | 6. DATE YOU WILL BEGIN BUSINESS ACTIVITIES (month, day, and year) | | | |
| 7. CORPORATE, LLC, LLP OR LP NUMBER FROM CALIFORNIA SECRETARY OF STATE | | 8. FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN) | | | |
| CHECK ONE <input type="checkbox"/> Owner/Co-Owners <input type="checkbox"/> Partners <input type="checkbox"/> Registered Domestic Partners <input type="checkbox"/> Corp. Officers <input type="checkbox"/> LLC Officers/Managers/Members <input type="checkbox"/> Trustees/Beneficiaries | | | | | |

Use additional sheets to include information for more than three individuals.

Filing Requirements

A tax return (with payment) is due each period

- If no sales are made, you are required to file a zero “0” return
- Notify the Board of any changes to your permit



Books and Records

- Records of all sales, including sales you believe are nontaxable
- Records of purchases
- Documentation to support claimed deductions
- Records must be maintained for at least four (4) years



Resale Certificates

Resale Certificates are issued for purchases of items that will be resold or incorporated into products that will be resold.



Resale Certificates

- When making sales for resale, you should obtain supporting documentation from the purchaser that your sale is not subject to sales tax.
- This typically consists of obtaining a resale certificate from the purchaser.

Resale Certificate

806-230 (7-02)
GENERAL RESALE CERTIFICATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: SR AC 99-999999
2. I am engaged in the business of selling the following type of tangible personal property:
Quilts
3. This certificate is for the purchase from Freddie's Fabrics of the item(s) I have listed in paragraph 5 below.
(Vendor's name)
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:
Fabric, Thread, Batting

6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

| | |
|---|------------------|
| ISSUE BY PURCHASER | |
| <u>Ned Nellie</u> | |
| SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE OR AUTHORIZED REPRESENTATIVE | |
|  | |
| PRINTED NAME OF PERSON SIGNING | TITLE |
| <u>Ned Nellie</u> | <u>President</u> |
| ADDRESS OF PURCHASER | |
| <u>555 Main Street, Anytown, CA 95005</u> | |
| TELEPHONE NUMBER | DATE |
| <u>(555) 555-0101</u> | <u>10-09-09</u> |

Services Available

- Local Board Offices:
<http://www.boe.ca.gov/info/phone.htm>
- Website: *www.boe.ca.gov*
- Information Center
1-800-400-7115/TDD 1-800-735-2929
- 24 hr. Fax-back Service
Commonly requested forms and publications to choose from automatically faxed back to you.

Visit our language webpage to see more information about non-English services such as events and publications

The screenshot shows a Windows Internet Explorer browser window displaying the California State Board of Equalization website. The address bar shows the URL <http://www.boe.ca.gov/language/menu.htm>. The page header includes the CA.GOV logo and the text "California State Board of Equalization". A navigation menu contains links for Home, Board Members, eServices, Taxes & Fees, Forms & Publications, Your Rights, Languages, and Contact Us. Below the menu, there is a search bar and a "Skip to: Content | Footer | Accessibility" link. The main content area is titled "Languages" and features a welcome message: "Welcome to the State Board of Equalization's (BOE) Multi-lingual - Outreach and Education Services. The BOE is pleased to be able to provide multiple language capabilities in our four core languages: Chinese, Vietnamese, Korean, and Spanish. The BOE also offers a number of [publications](#), events and assistance in a number of languages and would be pleased to help answer questions." Below this, there are four language-specific sections, each with a small image and a list of links:

- Español (Spanish)**: [Acceso de BOE](#) | [Formas](#) | [Publicaciones](#) | [Eventos](#) | [Cómo comunicarse con nosotros](#)
Bienvenidos a la Directiva Estatal de Impuestos sobre Ventas, Uso, y Otros (BOE) donde se encuentran servicios multilingües de alcance y educativos. El BOE tiene el placer de proveer múltiples capacidades de lenguajes en nuestras idiomas de cuatro bases: Chino, Vietnamita, Coreano y Español. El BOE también ofrece publicaciones, acontecimientos, y ayuda en varias idiomas y tendría el placer de ayudarle a contestar preguntas.
- 中文 (Chinese)**: [加州物稅局](#) | [表格](#) | [刊物](#) | [活動](#) | [如何與我們聯絡](#)
歡迎使用加州物稅局多語種服務及教育服務。物稅局很高興能為您提供四個核心外語服務，包括：中文、越南文、韓文、西語譯文。物稅局會用這些語言為您提供公開刊物、相關活動，以及各類活動，並很樂意解答您的各類問題。
- 한국어 (Korean)**: [미국어 소개](#) | [양식](#) | [간행물](#) | [이벤트](#) | [조세청영국 연락 방법](#)
조세청영국의 다언어 대민 업무 설명회에 오신것을 환영합니다. 조세청영국은 내개의 주요언어인 중국어, 일본어, 한국어 그리고 서반어부 다 언어 기능을 제공할 수 있게 된 것을 기쁘게 생각합니다. 또한 조세청영국은 간행물, 다양한 행사, 그리고 도움을 다언어로 제공하며 여러분의 질문에 성실한 대답에 노력 합니다.
- Tiếng Việt (Vietnamese)**: [Giới thiệu về BOE](#) | [Mẫu Đơn](#) | [Các ấn phẩm](#) | [Sự kiện](#) | [Cách Liên Lạc Với Chúng Tôi](#)
Chào mừng quý vị đến với Chương Trình Nói Rõng và Giáo Dục Nhiều Ngôn Ngữ của Board of Equalization (BOE). BOE rất vui lòng có khả năng để cung cấp nhiều ngôn ngữ, trong bốn ngôn ngữ lớn của chúng ta: tiếng Trung Hoa, tiếng Việt, tiếng Hàn Quốc, và tiếng Tây Ban Nha.

Taxpayers' Rights Advocate

If you are unable to resolve an issue with the BOE, or if you would like to know more about your rights under the law, contact the Taxpayers' Rights Advocate at:

888-324-2798

www.boe.ca.gov/tra/tra.htm



Get It In Writing

Revenue and Taxation code section 6596 – “Excusable Delay-Reliance on Advice”, states:

“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 taxes imposed by §6051 and §6201 and any penalty or interest added thereto...”



Get It In Writing

A person may make a request in writing for advice from the BOE whether an activity or transaction is subject to tax, and the request must fully describe the specific facts and circumstances of the activity or transaction.



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Thank You

Thank you for all the important work you do for the State of California.

