State of California | Board of Equalization

Memorandum

To : Ms. Cynthia Bridges
Executive Director, MIC: 73

Date: November 29, 2012

From : Randy Ferris, Chief Counsel RMF
Legal Department, MIC: 83

Subject : **Board Meeting, December 18-20, 2012**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1620, *Interstate and Foreign Commerce*

We request your approval to place proposed changes to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce*, on the Chief Counsel's Rulemaking Calendar for the December 18 to 20, 2012, Board meeting. The proposed changes incorporate amendments made to Revenue and Taxation Code (RTC) section 6248 by Assembly Bill No. (AB) 1547 (Stats. 2009, ch. 545), Senate Bill No. (SB) 1330 (Stats. 2010, ch. 328), and AB 242 (Stats. 2011, ch. 727).

RTC section 6248 establishes a rebuttable presumption that use tax applies to the storage, use, or other consumption of a vehicle, vessel, or aircraft purchased outside of California, but brought into California within 12 months after its purchase. Section 6248, subdivision (a)(1) provides that the rebuttable presumption applies when the "vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code"; and AB 1547 amended subdivision (a)(1) to provide that the definition of "California resident" includes "a closely held corporation or limited liability [company][1] . . . if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code." AB 1547 also added the phrase "If purchased by a nonresident of California" to the beginning of section 6248, subdivision (a)(4), to clarify that the rebuttable presumption applies if a vehicle, vessel, or aircraft is "purchased by a nonresident of California" and "used or stored in this state more than one-half of the time during the first 12 months of ownership."

In addition AB 1547 clarified the exception from the rebuttable presumption for aircraft and vessels brought into California for repair, retrofit, and modification provided in RTC section 6248, subdivision (e). The bill clarified that the exception only applies to aircraft and vessels brought into the state "exclusively" for repair, retrofit, or modification. The bill clarified that the exception only applies to vessels if the services are "performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the county in which it is located," and the exclusion only applies to aircraft if the services are

[1] Section 213 of SB 1330 corrected a typographical error in the language added to subdivision (a)(1) by AB 1547 by replacing the word "corporation" with the word "company" where indicated in brackets.

"performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility." The bill also deleted RTC section 6248, subdivision (e)(2), which previously limited the airtime and sailing time that could be logged on an aircraft or vessel that qualifies for the exception from the rebuttable presumption.

Finally, AB 242 amended RTC section 6248, subdivision (e) to make a technical clarification to the exception for vessels brought into the state exclusively for repair, retrofit, and modification. The bill clarified that the repair facility performing the services must be licensed to do business by "the city, county, or city and" county in which it is located "if the city, county, or city and county so requires."

Paragraphs (A) and (D) of Regulation 1620, subdivision (b)(5) respectively incorporate the rebuttable presumption and exception from the rebuttable presumption established by RTC section 6248, subdivisions (a) and (e). Board staff will request the Board's authorization to make changes to Regulation 1620, subdivision (b)(5)(A) and (D) under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process, to incorporate the current provisions of RTC sections 6248, subdivisions (a), and (e). The changes are appropriate for processing under Rule 100 because they make the regulation consistent with the changes made to RTC section 6248 by AB 1547, SB 1330, and AB 242, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of the regulation illustrating the proposed changes.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Randy Ferris, Chief Counsel

Approved:

Cynthia Bridges, Executive Director

Approved:

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

BOARD APPROVED
At the 12/19/12 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Attachments

cc: Mr. Jeffrey L. McGuire MIC: 43
Ms. Joann Richmond MIC: 80
Mr. Robert Tucker MIC: 82
Ms. Susanne Buehler MIC: 92
Mr. Bradley M. Heller MIC: 82
Ms. Kirsten Stark MIC: 50
Ms. Kim Rios MIC: 50

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1620. Interstate and Foreign Commerce.

(a) Sales Tax.

(1) In General. When a sale occurs in this state, the sales tax, if otherwise applicable, is not rendered inapplicable solely because the sale follows a movement of the property into this state from a point beyond its borders, or precedes a movement of the property from within this state to a point outside its borders. Such movements prevent application of the tax only when conditions exist under which the taxing of the sale, or the gross receipts derived therefrom, is prohibited by the United States Constitution or there exists a statutory exemption. If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction. The retailer has the burden of proving facts establishing his right to exemption.

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States - When Sales Tax Applies. Sales tax applies when the order for the property is sent by the purchaser to, or delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this state, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business and the sale occurs in this state. The term "other place of business" as used herein includes the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the retailer's functions in this state. It is immaterial that the contract of sale requires or contemplates that the goods will be shipped to the purchaser from a point outside the state. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the tax.

(B) From Other States - When Sales Tax Does Not Apply. Sales tax does not apply when the order is sent by the purchaser directly to the retailer at a point outside this state, or to an agent of the retailer in this state, and the property is shipped to the purchaser, pursuant to the contract of sale, from a point outside this state directly to the purchaser in this state, or to the retailer's agent in this state for delivery to the purchaser in this state, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent of the retailer having any connection with such branch, office, outlet, or place of business.

(C) Imports. Sales tax applies to sales of property imported into this state from another country when the sale occurs after the process of importation has ceased, regardless of whether the property is in its original package, if the transaction is otherwise subject to sales tax under subdivision (a)(2)(A) of this regulation.

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

Text of Proposed Changes to

Title 18. Public Revenue

(A) To Other States - When Sales Tax Applies. Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported. It is immaterial that the contract of sale may have called for the shipment by the retailer of the property to a point outside this state, or that the property was made to specifications for out-of-state jobs, that prices were quoted including transportation charges to out-of-state points, or that the goods are delivered to the purchaser in this state via a route a portion of which is outside this state. Regardless of the documentary evidence held by the retailer (see (3)(D) below) to show delivery of the property was made to a carrier for shipment to a point outside the state, tax will apply if the property is diverted in transit to the purchaser or his representative in this state, or for any other reason it is not delivered outside this state.

(B) Shipments Outside the State - When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer or

2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term "carrier" means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term "forwarding agent" means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a "carrier" or "forwarding agent" within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state. (This subsection is effective on and after September 19, 1970, with respect to deliveries in California to carriers, etc., hired by the purchasers for shipment to points outside this state that are not in another state or foreign country, e.g., to points in the Pacific Ocean.)

(C) Exports.

1. When Sales Tax Applies. Except for certain new motor vehicles delivered to a foreign country pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610), sales tax applies when the property is delivered in this state to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country.

Sales of property such as fuel oil and other items consumed during a voyage to a foreign country are not exempt even though they are transported out of, and are not returned to this country. It is immaterial that the ship to which the property is delivered is of foreign registry.

2. When Sales Tax Does Not Apply. Sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to the foreign county. To be exempt as an export the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property. Movement of the property into the process of exportation does not begin until the property has been shipped, or entered with a common carrier for transportation to another country, or has been started upon a continuous route or journey which constitutes the final and certain movement of the property to its foreign destination.

There has been an irrevocable commitment of the property to the exportation process when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer in a continuous route or journey to the foreign country by means of:

a. Facilities operated by the retailer,

b. A carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export, or

c. A ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property in a continuous journey to the foreign country, title to and control of the property passing to the purchaser upon delivery. Delivery by the retailer of property into a facility furnished by the purchaser constitutes an irrevocable commitment of the property into the exportation process only in those instances where the means of transportation and character of the property shipped provide certainty that the property is headed for its foreign destination and will not be diverted for domestic use. The following are examples of deliveries by the retailer into facilities furnished by the purchaser which demonstrate an irrevocable commitment of the property into the exportation process:

Example 1. Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Example 3. Sale of equipment, designed specifically for use in the foreign destination, delivered to a foreign purchaser's aircraft. The foreign purchaser has filed a flight plan showing that the aircraft will be transporting the property on a continuous journey to its foreign destination.

The following are examples of sales which do not demonstrate sufficient indicia of an irrevocable commitment to the exportation process and do not qualify as exports:

Example 4. Sale of jewelry delivered to a foreign purchaser at the retailer's place of business or to the purchaser or his representative at the airport prior to boarding the plane. The tax applies even though the purchaser may hold tickets for the foreign destination.

Example 5. Sale of a television set delivered into the trunk of a passenger vehicle or into the storage area of a pickup truck.

Example 6. Sale of equipment delivered to a foreign purchaser's aircraft even though a flight plan had been filed showing that the aircraft was to be flown to a foreign destination. If the equipment sold had been altered or specifically designed for use in the foreign destination, then the combined factors of the character of the property and the means of transportation would provide certainty of export and the sale would qualify as an export as described in (3) above.

Export has not begun where property is transported from a point within this state to a warehouse or other collecting point in this state even though it is intended that the property then be transported, and in fact is transported, to another country. Nevertheless, sales of property are exempt if transported under the circumstances described in 2.b. above to a warehouse or other collecting point of a carrier, forwarding agent, export packer, customs broker, or other person engaged in the business of preparing property for export, or arranging for its export. Property is regarded as transported under the circumstances described in 2.b. above, when the property is sold to a purchaser for shipment abroad and is shipped or delivered to a point in this state to a person who is not the purchaser, whether or not that person is a legal entity related to the purchaser, who ships or delivers the property to a foreign destination as provided in paragraph (a)(3)(C)2.b. of this regulation.

(D) Proof of Exemption. Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support deductions taken under (B) above. Bills of lading, import documents of a foreign country or other documentary evidence of export must be obtained and retained by retailers to support deductions taken under (C) above.

(E) Particular Applications.

Text of Proposed Changes to

Title 18. Public Revenue

1. Property Mailed to Persons in the Armed Forces. Tax does not apply to sales of property which is mailed by the retailer, pursuant to the contract of sale, to persons in the armed forces at points outside the United States, notwithstanding the property is addressed in care of the postmaster at a point in this state and forwarded by him to the addressee.

When mail is addressed to Army Post Offices (A.P.O.'s) or to Fleet Post Offices (F.P.O.'s) in care of the postmaster, it will be presumed that it is forwarded outside California. The retailer must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

2. Property for Defense Purposes Delivered to Offices of the United States. Tax does not apply to sales of property shipped to a point outside this state pursuant to the contract of sale when the property is marked for export and delivered by retailer to the "contracting officer," "officer in charge," "port quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

3. Airplanes Delivered to Agencies of the United States. Tax does not apply to sales of airplanes and parts and equipment for airplanes transported to a point outside this state pursuant to the contract of sale when such property is delivered to the United States Air Force or any other agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

4. Repairers. When repairers of property in California, in fulfillment of their repair contracts with their customers, ship the repaired property to points outside this state by one of the methods set forth under (a)(3)(B) and (C) above, tax does not apply to the sale by the repairer of the repair parts and materials affixed to and becoming a component part of the repaired property so shipped.

(b) Use Tax.

(1) In General. Use tax applies to the use of any property purchased for storage, use or other consumption and stored, used, or consumed in this state, the sale of which is exempt from sales tax under this regulation.

(2) Exceptions.

(A) Use tax does not apply to the use of property held or stored in this state for sale in the regular course of business nor to the use of property held for the purposes designated in subparagraph (b)(9), below.

(B) Interstate and Foreign Commerce.

Text of Proposed Changes to

Title 18. Public Revenue

1. In General. Use tax does not apply to the use of property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

2. Intermodal Cargo Containers. Intermodal cargo containers are containers that are used to transport freight during a continuous movement of that freight from the origin shipper to the destination receiver by the use of two or more of the following modes of transportation: railroad, vehicle, or vessel. The use of an intermodal cargo container in California is exempt from tax if the use meets the requirements of subdivision (b)(2)(B)1 of this regulation.

An intermodal cargo container is regarded as first used in interstate or foreign commerce prior to its entry into California if the container is loaded with freight outside California and then first enters California during a continuous movement of that freight from the origin shipper to the destination receiver. For purposes of the requirements set forth in subdivision (b)(2)(B)1 of this regulation, an intermodal cargo container is also regarded as first used in interstate or foreign commerce prior to its entry into California if all of the following conditions are satisfied:

a. The contract for the sale or lease of the intermodal cargo container requires that the container be used in interstate or foreign commerce and such sales contract or lease contract is entered into prior to the entry of the intermodal cargo container into California;

b. The purchaser or lessee transports the intermodal cargo container into California with the specific intent that such intermodal cargo container will then be loaded with freight for transport in a continuous movement to a destination outside California, whether or not the purchaser knows which particular freight will be loaded into the intermodal cargo container at the time the intermodal cargo container first enters California; and

c. The intermodal cargo container is, in fact, first loaded with freight for transport in a continuous movement to a destination outside California, and the intermodal cargo container is thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

(C) Use tax does not apply to the use of certain new motor vehicles purchased for subsequent delivery to a foreign country and so delivered pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610).

(D) Hand-Carried from a Foreign Country.

1. Prior to January 1, 2008, use tax does not apply to 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. This subdivision shall not apply to property sent or shipped to this state.

2. On and after January 1, 2008, use tax does not apply to the storage, use, or other consumption in this state of the first eight hundred dollars ($800) 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. This subdivision shall not apply to property sent or shipped to this state.

(3) Purchase for Use in this State. Property delivered outside of California to a purchaser known by the retailer to be a resident of California is regarded as having been purchased for use in this state unless a statement in writing, signed by the purchaser or the purchaser's authorized representative, that the property was purchased for use at a designated point or points outside this state is retained by the vendor.

Notwithstanding the filing of such a statement, property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. For purposes of this regulation, "functional use" means use for the purposes for which the property was designed. Except as provided in subdivision (b)(5) of this regulation, when property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

(4) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 90-Day Test (Prior to October 2, 2004, and from July 1, 2007, through September 30, 2008). The provisions of subdivision (b)(4) apply prior to October 2, 2004, and from July 1, 2007, through September 30, 2008. A vehicle, vessel or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel or aircraft is in California. When the vehicle, vessel or aircraft is first functionally used outside of California, the vehicle, vessel or aircraft will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

Text of Proposed Changes to

Title 18. Public Revenue

(A) Physically Located Outside California. Use tax will not apply if the vehicle, vessel or aircraft is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.

(B) Used in Interstate or Foreign Commerce.

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

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

3. If the property is an aircraft, use tax will not apply if one-half or more of the flight time traveled by the aircraft during the six-month period immediately following its entry into the state is commercial flight time traveled in interstate or foreign commerce. Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(4), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

(5) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the Vehicle Code, as that section now reads or is hereinafter amended. <u>For purposes of subdivision (b)(5), a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in section 516 of the Vehicle Code.</u>

2. In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

3. In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

4. If purchased by a nonresident of California, the~~The~~ vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(B) Evidence Rebutting Presumption. This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

Operative September 20, 2006, through June 30, 2007, and after September 30, 2008, in the case of a vehicle, this presumption also may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

(C) Used in Interstate or Foreign Commerce.

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

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

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

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(5)(C), the term "commercial"

applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1.~~ Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state exclusively for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility.

~~2. Subdivision (b)(5)(D)1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.~~

(E) Binding Purchase Contract. Subdivision (b)(5) does not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before October 1, 2004, or from July 1, 2007, through September 30, 2008.

(6) Purchase for Use in This State - Locomotives - 90-Day Test. A locomotive purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the locomotive is in California. When the locomotive is first functionally used outside of California, the locomotive will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

(A) Physically Located Outside California. Use tax will not apply if the locomotive is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.

(B) Used in Interstate or Foreign Commerce. Use tax will not apply to transactions involving locomotives if one-half or more of the miles traveled by the locomotive during the six-month period immediately following its entry into California are commercial miles traveled in interstate or foreign commerce.

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(6), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

(7) Examples of Interstate and Foreign Commerce. Examples of what constitutes interstate or foreign commerce include, but are not limited to the following:

Example 1. A sightseeing tour bus group (charter) or regularly scheduled bus service (per capita) originates in California and travels to another state or country for a single day or several days, then returns to California where the charter or schedule terminates.

Example 2. A charter bus, vessel or aircraft deadheads under contract to another state, picks up the group and operates the charter without entering the state of California, drops the group in the other state, and deadheads back into the State of California. (The charter was quoted round trip.)

Example 3. A commercial vehicle deadheads to another state or country or transports property to another state or country and delivers that property within the other state or country or to another state or country. The vehicle then returns to California, either loaded or empty.

Example 4. A charter bus group tours under contract to another state or country for a day or several days, drops the passengers in the other state or country, and then deadheads back under contract to its terminal or next assignment.

Example 5. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft and transported to another state or country for a day or several days. The commercial vehicle, vessel or aircraft then returns to California, either loaded or empty.

Example 6. A sightseeing tour bus group (charter) arriving in California via plane, train, or ship from another state or country is picked up by bus and tours California for a number of days, goes to another state or country for a number of days, and then terminates service either in another state, country, or California.

Example 7. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft, which may be operating wholly within California, and transported for further distribution to one or more California locations or to locations in another state or country. The vehicle, vessel or aircraft then

returns empty to pick up another load arriving in California via plane, train, or vessel from another state or country.

Example 8. A commercial vehicle, vessel, aircraft, or regularly scheduled bus service operating wholly within California is picking up or feeding passengers or property arriving from, or destined to, a state or country other than California to another form of transportation be it plane, train, ship, or bus. (Example: an airport bus service or a bridge carrier for Amtrak.)

Example 9. Property is transported by a commercial vehicle, vessel, aircraft, or locomotive from another state or country to California or from California to another state or country. While engaged in this transportation, the commercial vehicle, vessel, aircraft, or locomotive also transports property from one point in California to another.

Example 10. A commercial vehicle, vessel, aircraft, or locomotive is dispatched from one location in California to another location in California to pick up property and transport it to another state or country.

Example 11. A commercial vehicle, vessel or aircraft, sightseeing tour bus group (charter), or regularly scheduled bus service operating in interstate or foreign commerce experiences a mechanical failure and is replaced by another vehicle, vessel or aircraft. The replacement vehicle, vessel or aircraft is also deemed to be operating in interstate or foreign commerce as a continuation of the original trip.

Example 12. A vehicle, vessel, aircraft, or locomotive transports persons or property for commercial purposes (a) from California to another state or country; (b) from another state or country to California; (c) entirely within California, but the vehicle, vessel, aircraft, or locomotive picks up persons or property arriving in California via train, bus, truck, vessel, or aircraft from another state or country and then transports the persons or property in a continuous route or journey to one or more California locations or to locations in another state or country.

Example 13. A vessel transports persons or property for commercial purposes (a) from a California port to a port in another state or country; or (b) from a port in another state or country to a port in California.

(8) Imports. Use tax applies with respect to purchases of property imported into this state from another country when the use occurs after the process of importation has ceased and when sales tax is not applicable, regardless of whether the property is in its original package.

(9) "Storage" and "Use" - Exclusions. "Storage" and "use" do not include the keeping, retaining or exercising any right or power over property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured, into, attached to, or incorporated into, other property to be transported outside the state and thereafter used solely outside the state.

The following examples are illustrative of the meaning of the exclusion:

Example 1. An engine installed in an aircraft which is flown directly out of the state for use thereafter solely outside the state qualifies for the exclusion. The use of the engine in the transporting process does not constitute a use for purposes of the exclusion. However, if any other use is made of the aircraft during removal from this state, such as carrying passengers or property, the exclusion does not apply.

Example 2. An engine installed in a truck which is transported by rail or air directly out of the state for use thereafter solely outside the state qualifies for the exclusion.

Example 3. An engine transported outside the state and installed on an aircraft which returns to the state does not qualify for the exclusion. It does not matter whether the use of the aircraft in California is exclusively interstate or intrastate commerce or both.

Example 4. An engine transported outside the state and installed on an aircraft which does not return to the state qualifies for the exclusion.

(c) Rail Freight Cars. Sales tax does not apply to the sale of, and the use tax does not apply to the storage, use or other consumption in this state of rail freight cars for use in interstate or foreign commerce.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396 and 6405, Revenue and Taxation Code.