



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092
916-324-1825 • FAX 1-916-322-4530
www.boe.ca.gov

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Executive Director

January 16, 2015

Dear Interested Party:

Enclosed is the Initial Discussion Paper on Regulation 1505, *Morticians*. Before the issue is presented at the Board's April 28, 2015 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

**January 27, 2015
Room 122 at 10:00 a.m.
450 N Street, Sacramento, CA**

If you would like to participate by teleconference, call 1-888-808-6929 and enter access code 7495412. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at Susanne.Buehler@boe.ca.gov by February 11, 2015. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee staff member Ms. Tracy McCrite at 1-916-323-0536, who will be leading the meeting.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

SB:tmc

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Member, First District (via email)
Honorable Fiona Ma, Member, Second District (via email)
Honorable Diane L. Harkey, Member, Fourth District (via email)
Honorable Betty T. Yee, State Controller

(via email)

Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. James C. Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
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Mr. Jeffrey L. McGuire (MIC 43)
Mr. Todd Gilman (MIC 70)
Mr. Robert Tucker (MIC 82)
Mr. Mark Durham (MIC 67)
Mr. Jeff Vest (MIC 85)
Mr. Wayne Mashihara (MIC 46)
Mr. Kevin Hanks (MIC 49)
Mr. John Thiella (MIC 73)
Mr. Bradley Heller (MIC 82)
Mr. Lawrence Mendel (MIC 82)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Ms. Monica Silva (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Clifford Oakes (MIC 50)
Mr. Bill Benson (MIC 67)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Mr. Bradley Miller (MIC 92)
Ms. Karina Aguilar (MIC 46)
Ms. Lauren Simpson (MIC 70)
Mr. Robert Wilke (MIC 50)
Ms. Tracy McCrite (MIC 50)

INITIAL DISCUSSION PAPER

Regulation 1505, *Morticians*

Issue

Whether the Board should amend Regulation 1505, *Morticians*, to update the general information, tax rates, and examples.

Background

Regulation 1505, *Morticians*

Regulation 1505, which became effective August 1, 1933, provides guidelines for morticians regarding the proper application of tax. The regulation explains when morticians are retailers and when they are consumers. It provides guidance on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and “pre-need agreements.”

The regulation is being amended due to recent procedural changes which allow the United States Veterans Administration (VA) to pay death benefits directly to the surviving party more easily, making much of the current content no longer relevant. Amendments were also made to update terminology and to reflect changes in current goods and services available to clients.

Discussion

Definitions

Definitions for the terms "morticians" and "cash advances" have been added to the beginning of the regulation. The definitions were added to update the regulation and provide clarity regarding who is considered a mortician and what are considered cash advances.

Sales to the U.S. Government

Regulation 1505(b)(2) currently states, in part “effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans.” Beginning in fiscal year 2013, the VA annually increases the burial and plot allowances for deaths occurring after October 1, 2011 based on the Consumer Price Index for the preceding 12-month period. Accordingly, we are proposing to remove the language in the regulation that refers to a specific dollar amount. Including only general information about payments from federal agencies without references to dollar amounts eliminates the need to amend the regulation each time the VA changes their allowance amounts.

Examples

Effective July 7, 2014, the VA amended its regulations regarding payment of burial benefits in an effort to pay eligible survivors more quickly and efficiently. The changes authorize payments through automated systems directly to survivors for eligible veteran's burial and funeral costs at the maximum amounts authorized by law. With these new procedures, it is our understanding that morticians are rarely paid directly by the VA and the examples that demonstrate how to prorate U.S. Government payments are therefore no longer relevant. These examples have been removed from the regulation.

INITIAL DISCUSSION PAPER

Regulation 1505, *Morticians*

A new example, section (b)(3) "Example of Application of Tax" has been added to the regulation. This section contains a sample mortician's invoice demonstrating what a typical transaction may look like and how tax applies to the items on the invoice.

General Information

Other proposed amendments to the regulation include the following:

- add language in (a)(1) that provides specific detail on current goods that may be considered retail items sold by the mortician,
- remove the footnote in subdivision (a)(1) that is no longer relevant,
- update gender specific terms to be gender neutral,
- rename the "accommodation cash advances" section to reflect current industry terminology and move the section up within the subdivision, and
- rearrange and renumber the entire regulation to make it consistent with the formatting of other regulations.

Summary

Staff welcomes any comments, suggestions, and input from interested parties on this issue. Staff invites interested parties to participate in the January 27, 2015 interested parties meeting. The deadline for interested parties to provide written responses regarding this discussion paper is February 11, 2015. This issue currently has only one scheduled interested parties meeting.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 01/15/2015

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REGULATION 1505, MORTICIANS

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

(a) DEFINITIONS.

(1) MORTICIANS. A person who supervises or conducts the preparation of the deceased for burial and directs or arranges funerals.

(2) CASH ADVANCES. Funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the mortician.

(ab) IN GENERAL.

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

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

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

(3) EXAMPLE OF APPLICATION OF TAX. In the example below, the traditional burial package includes the basic services of the funeral director and staff, transfer of decedent to the funeral home, embalming, dressing, cosmetology and placement of deceased in casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one "life-tribute" DVD and a premium memorial box set. The client chose to purchase 10 additional DVDs for their family.

Mortician's invoice to client:

Maple Casket (t)	2,895.00
Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)	250.00
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>

Traditional Chapel Burial Package	\$4,945.00
<u>Fees for Cash Advance items:</u>	
County filing fee.....	12.00
Certified copy of Death Certificate	21.00
Organist	225.00
<u>Total Fees</u>	<u>\$258.00</u>
<u>Total Nontaxable.....</u>	<u>\$5,203.00</u>
<u>Total Taxable.....</u>	<u>\$3,145.00</u>
Sales Tax (\$3,145.00) x 8.25%	259.46
<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

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

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

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

~~(23) SALES TO THE UNITED STATES U.S. GOVERNMENT. All or a portion of charges for funerals of veterans and other persons may be paid by the United States Veterans Administration or by the Social Security Administration. Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans.~~ Morticians may take a deduction for sales to the U~~n~~ited-S~~t~~ates Government when claims filed by them with federal agencies are paid directly to the morticians regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the mortician as a credit against those charges.

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

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services.

None are to be allocated to accommodation cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a mortician has made a specific charge.

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

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

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

~~Example 1. Funeral allowance only.~~

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

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

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

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

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

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

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

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

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

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

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

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

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, Revenue and Taxation Code.