



STATE BOARD OF EQUALIZATION

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State Controller

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Executive Director

July 17, 2015

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Regulation 1619, *Foreign Consuls*, which will be presented at the Board's July 28, 2015 Business Taxes Committee meeting. The proposed amendments make a specific reference to sales to a foreign consulate or representative office for official purposes and add references regarding the issuance of tax exemption cards by the American Institute of Taiwan.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m. on July 28, 2015** in Room 121 at the address shown above.

Sincerely,

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

SB:rsw

Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)
Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Vice Chair, First District
Honorable Fiona Ma, CPA, Member, Second District
Honorable Diane L. Harkey, Member, Fourth District
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)

Ms. Kari Hammond, Board Member's Office, Third District
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. Jim 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. Ted Matthies, Board Member's Office, Fourth District
Ms. Lisa Renati, Board Member's Office, Fourth District
Mr. Clifford Oakes, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
Mr. Ramon Salazar, State Controller's Office
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Ms. Lynn Bartolo (MIC 43)
Mr. Todd Gilman (MIC 70)
Mr. Wayne Mashihara (MIC 47)
Mr. Kevin Hanks (MIC 49)
Mr. Mark Durham (MIC 67)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. Lawrence Mendel (MIC 82)
Mr. John Thiella (MIC 73)
Ms. Monica Silva (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Lauren Simpson (MIC 70)
Ms. Karina Magana (MIC 47)
Mr. Bradley Miller (MIC 92)
Mr. Bill Benson (MIC 67)
Mr. Tom Trach (MIC 67)
Mr. Michael Patno (MIC 50)
Mr. Robert Wilke (MIC 50)

Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, *Foreign Consuls*

<p>Action 1 – Agreed Upon Items</p> <p>Agenda, pages 2-4.</p>	<p>Alternative 1</p> <p>Approve and authorize publication of proposed amendments to Regulation 1619, <i>Foreign Consuls</i>, to clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.</p> <p style="text-align: center;">OR</p> <p>Alternative 2</p> <p>Do not approve the proposed amendments to Regulation 1619.</p>
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Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, Foreign Consuls

<p>Action 1 – Staff Recommendation</p>	<p>Regulation 1619, <i>Foreign Missions and Consuls</i>.</p> <p><i>Reference:</i> Sections 6272, 6352, and 7053, Revenue and Taxation Code. Vienna Convention on Diplomatic Relations of April 18, 1961. Article 34 (23 UST 3242) T.I.A.S. No. 7502. <u>Vienna Convention on Consular Relations of April 24, 1963.</u> <u>Article 49 (21 UST 77) T.I.A.S. No. 6820.</u> <u>Taiwan Relations Act (22 U.S.C. §§ 3301-3316).</u> <u>Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013.</u> <u>Designation and Determination under the Foreign Missions Act, 79 Fed. Reg. 16090-16091 (March 24, 2014).</u></p> <p>(a) Application of Tax.</p> <p>(1) <u>Official Purchases - In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sole benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in a form of payment in the name of the foreign mission or representative office.</u></p> <p>(2) <u>Personal Purchases - In General. Neither sales tax nor use tax applies to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic</u></p>
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Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, Foreign Consuls

**Action 1 – Staff
Recommendation**

agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U.S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

(3) Tax applies to sales of tangible personal property to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U.S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(24) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

~~(24) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~

~~Effective June 1, 2003, the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if:~~

- ~~(A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and~~

Agenda – July 28, 2015 Business Taxes Committee Meeting
Regulation 1619, Foreign Consuls

<p>Action 1 – Staff Recommendation</p>	<p>(B) The retailer contacts and obtains directly from the <u>U.S. Department of State, Office of Foreign Missions</u>OFM or the <u>American Institute in Taiwan</u> a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ("<u>OFM Eligibility Letter</u>").</p> <p><u>For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code.</u></p> <p>(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any transaction deduction <u>claimed as an exempt sale on its sales and use tax returns for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers).</u> In addition, to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer.</p> <p>Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above, the retailer must retain a copy of the Tax Exemption Card (Personal, or Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions<u>OFM or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax</u>Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family.</p> <p>Note: For special provisions affecting record retention, see Regulation 1698.</p>
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Issue Paper Number **15-006**



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Amendments to Regulation 1619, *Foreign Consuls*

I. Issue

Whether the Board should amend Regulation 1619, *Foreign Consuls*, to make a specific reference to sales to a foreign consulate or representative office for official purposes and add references regarding the issuance of tax exemption cards by the American Institute of Taiwan.

II. Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1619, as set forth in Exhibit 2. Staff’s proposed amendments clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State, Office of Foreign Missions (OFM) or the American Institute in Taiwan (AIT) as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.

For a more detailed explanation of Alternative 1 - Staff Recommendation, refer to section VI of this paper.

III. Other Alternatives Considered

Do not approve the proposed amendments to Regulation 1619.

IV. Background

General

Sales tax is imposed on the retail sale of tangible personal property in this state, measured by the retailer's gross receipts, unless specifically exempt from taxation by statute. While the sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in California, the retailer may collect tax reimbursement from the customer if the contract of sale so provides. All of a retailer's gross receipts are presumed subject to tax, unless the retailer can show otherwise.

Revenue and Taxation Code section 6352, *Constitutional exemptions*, specifies that "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."

Regulation 1619

Regulation 1619, *Foreign Consuls*, implements section 6352 as it applies to sales and leases of tangible personal property, including vehicles, to certain persons affiliated with foreign consulates that have been identified by the OFM as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States. Regulation 1619 also explains a retailer's general record-keeping requirements with respect to its claimed exempt sales.

Office of Foreign Missions – Tax Exemption Cards

The U.S. Department of State's website (www.state.gov/ofm/tax/sales/index.htm) explains that the OFM issues diplomatic tax exemption cards to eligible foreign missions and their accredited members and dependents based on international law and reciprocity. These cards facilitate the United States in honoring its host country obligations under the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), and other treaties to provide an exemption from sales tax and other similarly imposed taxes throughout the United States at the point of sale.

Mission Tax Exemption Cards

Diplomatic tax exemption cards labeled "Mission Tax Exemption – Official Purchases Only" are used by foreign missions to obtain exemption from sales or use tax on purchases that are necessary for the mission's operations and functions. All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission.

OFM will only issue a mission tax exemption card to an individual who (1) is a principal member or employee of the mission, (2) holds an A or G series visa (and in the case of a G series visa holder, is a diplomatic agent), and (3) is not considered to be a permanent resident of the United States for purposes of the VCDR and VCCR. This person's photo will appear on the card and is the mission's point of contact. Individuals other than the person pictured on the exemption card, however, may present the card when making purchases in the name of the mission.

Personal Tax Exemption Cards

Diplomatic tax exemption cards labeled "Personal Tax Exemption" are used by eligible foreign mission members and their dependents to obtain exemption from sales or use tax on personal purchases in the United States. The card must be used solely for the benefit of the individual identified and pictured on the card. The card is not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on

the form of payment that can be used with the card.

Eligibility for personal tax exemption cards is determined on a case-by-case basis, but the following individuals are generally entitled to apply for a card, if they are neither United States nationals nor permanent residents of the United States for purposes of the VCDR or VCCR:

- Diplomatic agents, members of the administrative and technical staff, consular officers, and consular employees.
- The members of their families forming part of their households, but in the case of a child: those aged 18-21 years, or aged 18-23 years if accredited as a justified student.
- Other personnel may also be eligible to apply for a card if they qualify based on a treaty other than the VCDR or VCCR.

Levels of Exemption

Not all missions or personnel are issued diplomatic tax exemption cards, and missions and personnel holding cards may have varying levels of tax exemption privileges authorized by the card. The level of exemption is set by the OFM based on reciprocity, determined by the tax relief privileges enjoyed by the U.S. Mission and personnel in a foreign country. The cards contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. In addition, tax exemption cards may not be used for exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises. Exemption from taxes on these items is managed and authorized by different means, and requires a request to be directed to the OFM or AIT. With respect to the sales and use tax exemption for vehicles, the purchaser is required to provide a valid Tax Exemption Card or protocol identification card and the retailer is required to obtain an exemption letter from the OFM or AIT.

OFM Assistance

OFM regularly communicates with vendors to educate them about the tax exemption program. OFM explains that tax exemption cardholders should encourage vendors to verify the card's validity at <https://ofmapps.state.gov/tecv/> or by calling OFM during business hours. If vendors are not familiar with the diplomatic tax exemption card program, they are encouraged to visit the OFM website at <http://www.state.gov/ofm/>; and specifically <http://www.state.gov/ofm/tax/sales/c63020.htm>, which provides relevant state-specific guidance; or e-mail OFM for more information about the program.

V. Discussion

Correspondence from the U.S. Department of State, Office of Foreign Missions

In a December 16, 2014 letter (Exhibit 3) addressed to the Executive Director, Board of Equalization (BOE), the OFM notified the BOE of a policy in which the AIT issues tax exemption cards to certain eligible persons. The letter suggested that the BOE issue a regulation, ruling, or statement with respect to the exemption cards issued by AIT. The letter also suggested that the BOE revise Regulation 1619 to include a specific reference to sales to a foreign government/consulate itself for official purposes.

Sales to a Foreign Government/Consulate

Currently, Regulation 1619 subdivision (a)(2) discusses the exemption from sales and use tax for the purchase or lease of a vehicle "on behalf of" a foreign mission. However, Regulation 1619 does *not*

(with the exception of vehicles) generally address the issue of sales or leases to a foreign consulate or mission itself. Regulation 1619 only addresses sales or leases of tangible personal property (in general) to individuals affiliated with foreign missions, such as foreign consular officers, employees, and members of their families.

American Institute of Taiwan – Issues Tax Exemption Cards

In 1979, after the United States established diplomatic relations with the People's Republic of China, Congress, via the Taiwan Relations Act (TRA), created the AIT and charged it with the task of fostering strong but non-diplomatic ties between the people of the United States and Taiwan. The AIT serves as the advocate to Taiwan authorities for U.S. political, economic and security interests. In addition, the AIT supports the operations of a wide variety of U.S. agencies by negotiating cooperation agreements on behalf of the United States with its Taiwan counterpart, the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Pursuant to U.S. law¹, TECRO, the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. Accordingly, the AIT, with the approval of the U.S. Department of State, has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents. Such privileges are authorized by the AIT, not the OFM.

Similar to the tax exemption cards issued by the OFM, the tax exemption cards issued by the AIT for TECRO, TECOs and their eligible personnel authorize an exemption from state sales and use tax, lodging/occupancy tax and similarly imposed taxes at the point of sale. The cards incorporate the same features and design elements as OFM's tax exemption cards and have policies regarding their use that are similar to the policies for the OFM-issued tax exemption cards.

Guidance with respect to Vehicles Pre/Post June 1, 2003

Regulation 1619, subdivisions (a)(2), *Vehicles*, and (b), *Records of Retailers*, contain specific guidance with respect to sales and leases of vehicles. The aforementioned subdivisions include guidance reflecting OFM's policy that, on and after June 1, 2003, a retailer is required to obtain an eligibility letter from OFM and a copy of the purchaser's tax exemption card or protocol identification card for sales or leases of vehicles. Prior to June 1, 2003, a purchaser who did not hold a tax exemption card was allowed to make exempt purchases provided the OFM issued an identification letter to the retailer. The guidance in Regulation 1619 reflecting the OFM's policies regarding the exempt sale or lease of a vehicle prior to June 1, 2003 is no longer relevant. Since 2003, the BOE has periodically provided notice of the existing policy regarding record-keeping and the tax exemption card program via special notices and articles in Tax Information Bulletins.

Interested Parties Meeting

Staff held an interested parties meeting on May 5, 2015 to discuss the Initial Discussion Paper and proposed amendments distributed on April 24, 2015. There was some question as to the type of payments that would be acceptable for official purchases and it was generally agreed that a form of payment bearing the name of the foreign mission or representative office would be acceptable. Staff notes that unacceptable forms of payment would include cash, cashier's check, personal check, money order or personal credit card. Staff agreed to consider adding clarifying language with respect to the

¹ Taiwan Relations Act (22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013; Designation and Determination under the Foreign Missions Act, 79 Fed. Reg. 16090-16091 (March 24, 2014).

acceptable types of payment. Given the overall support for the proposed amendments and the fact that staff did not receive any written comments subsequent to the interested parties meeting, the second discussion paper and second interested parties meeting were canceled.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1619, as provided in Exhibit 2, to:

- Clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office (such as TECRO and TECO) for official purposes to the extent that such mission or representative office has been identified by the OFM or AIT as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.
- Add references regarding the issuance of tax exemption cards by the AIT to eligible representative offices and personnel.
- Update the type of records that a retailer may use to support an exempt sale or lease of a vehicle to include a copy of an “official” tax exemption card and exemption letter from AIT.
- Specify that the sale or lease to a mission or representative office for official purchases must be supported by evidence showing that payment was in a form bearing the name of the foreign mission or representative office including a credit card, check, or electronic funds transfer.
- Revise the title of the regulation to include a reference to foreign missions.
- Update the reference section to include pertinent U.S. treaties and diplomatic agreements.
- Remove obsolete language with respect to the sale or lease of vehicles prior to June 1, 2003, including a retailer’s record-keeping requirements with respect to such sales.

B. Pros of Alternative 1

- Provides clear guidance regarding the sale and lease of tangible personal property to a foreign mission for official purchases.
- Ensures the regulation is consistent with the OFM’s current policies and procedures with respect to the issuance of tax exemption cards.
- Eliminates potential confusion by removing obsolete language.

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff’s recommendation does require a regulatory change.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 1619 and begin the formal rulemaking process. Staff will also revise the appropriate manuals that contain guidance relevant to this issue.

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation and updating manuals is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

The proposed amendments to Regulation 1619 provide guidance reflective of the current transactions amongst retailers and foreign missions, representative offices, and their personnel.

H. Critical Time Frames of Alternative 1

None.

VII. Alternative 2

A. Description of Alternative 2

Do not amend Regulation 1619.

B. Pros of Alternative 2

The BOE will not incur the workload associated with revising the regulation.

C. Cons of Alternative 2

Taxpayers and BOE staff would not have complete guidance with respect to the sale and lease of tangible personal property to a foreign mission or representative office for official purposes.

D. Statutory or Regulatory Changes for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

FORMAL ISSUE PAPER 15-006

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Without the regulatory amendments, the regulation is not entirely reflective of the OFM's current policies and procedures with respect to the issuance of tax exemption cards and there may be confusion as to which persons are eligible for the sales and use tax exemption.

H. Critical Time Frames for Alternative 2

None.

Preparer/Reviewer Information

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

Current as of: June 25, 2015

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Proposed Amendments to Regulation 1619, *Foreign Consuls*

I. Issue

Whether the Board should amend Regulation 1619, *Foreign Consuls*, to make a specific reference to sales to a foreign consulate or representative office for official purposes and add references regarding the issuance of tax exemption cards by the American Institute of Taiwan.

II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1619, as set forth in Exhibit 2. Staff's proposed amendments clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative office for official purposes to the extent that such mission or representative office has been identified by the U.S. Department of State, Office of Foreign Missions (OFM) or the American Institute in Taiwan (AIT) as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.

III. Other Alternative(s) Considered

Do not approve the proposed amendments to Regulation 1619.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue. The proposed amendments clarify that sales or use tax does not apply to the sale or lease of tangible personal property to a foreign mission or representative offices such as the Taipei Economic and Cultural Representative Office in the United States (TECRO) and the Taipei Economic and Cultural Offices (TECO) for official purposes to the extent that such mission or representative office has been identified by the OFM or AIT as exempt from tax pursuant to treaties or other diplomatic agreements with the United States.

Other Alternatives Considered

There is nothing in Alternative 2 that would impact revenue. However, taxpayers and BOE staff would not have complete guidance with respect to the sale and lease of

tangible personal property to a foreign mission or representative office for official purposes.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Other alternatives considered – Alternative 2 does not have a revenue impact.

Preparation

Mr. Tom Trach, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate has been reviewed by Mr. Mark Durham, Manager, Research and Statistics Section, Legislative and Research Division, and by Ms. Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department. For additional information, please contact Mr. Trach at (916) 445-0840.

Current as of June 25, 2015.

Regulation 1619. Foreign Missions and Consuls.

Reference: Sections 6272, 6352, and 7053, Revenue and Taxation Code.

Vienna Convention on Diplomatic Relations of April 18, 1961.

Article 34 (23 UST 3242) T.I.A.S. No. 7502.

Vienna Convention on Consular Relations of April 24, 1963.

Article 49 (21 UST 77) T.I.A.S. No. 6820.

Taiwan Relations Act (22 U.S.C. §§ 3301-3316).

Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, signed February 4, 2013.

Designation and Determination under the Foreign Missions Act, 79 Fed. Reg. 16090-16091 (March 24, 2014).

(a) Application of Tax.

(1) Official Purchases - In General. Tax does not apply to the sale or use of tangible personal property sold or leased to a foreign mission or representative office to the extent that such mission or representative office has been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. A foreign mission or representative office exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Mission Tax Exemption Card by the U.S. Department of State, or an Official Tax Exemption Card by the American Institute in Taiwan, for official purchases only and for the sole benefit of the foreign mission or representative office identified on the face of the card. To qualify for exemption, the U.S. Department of State or the American Institute in Taiwan requires that all purchases be paid in a form of payment in the name of the foreign mission or representative office.

(2) Personal Purchases - In General. ~~Neither sales tax nor use tax applies~~ Tax does not apply to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, to the extent that such persons have been identified by the U.S. Department of State or the American Institute in Taiwan as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Personal Tax Exemption Card by the U.S. Department of State or the American Institute in Taiwan which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

(3) Tax applies to sales of tangible personal property to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, who do not hold a Tax Exemption Card issued by the U.S. Department of State or the American Institute in Taiwan except as provided in subparagraph (a)(24) below. Also, tax applies to sales of

tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

~~(24) Vehicles. In addition to the exemption provided in subparagraphs (a)(1) and (a)(2), the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U.S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.~~

~~Effective June 1, 2003, the sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families, or to a representative office's employees and members of their families, will be exempt from the sales and use tax if:~~

~~(A) The purchaser provides a valid Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or a protocol identification card to the retailer; and~~

~~(B) The retailer contacts and obtains directly from the U.S. Department of State, Office of Foreign Missions ~~OFM~~ or the American Institute in Taiwan a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ("~~OFM Eligibility Letter~~").~~

~~For purposes of this regulation, "vehicle" is as defined in section 6272 of the Revenue and Taxation Code.~~

(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any ~~transaction deduction~~ claimed as an exempt sale on its sales and use tax returns for sales to foreign consuls. The invoices or other written evidence should show the name of the purchaser, the name of the mission or representative office, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. For official purchases as described in subdivision (a)(1), the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). In addition, to support each transaction claimed as an exempt sale or lease of a vehicle ~~to a foreign diplomat or mission not holding a Tax Exemption Card, the identification~~

~~letter from the OFM confirming the exempt status of the diplomat must be retained by the retailer.~~

~~Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above, the retailer must retain a copy of the Tax Exemption Card (Personal, ~~or~~ Mission, or Official) or protocol identification card, and the letter from the U.S. Department of State, Office of Foreign Missions~~OFM~~ or the American Institute in Taiwan stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax.~~
~~Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family.~~

Note: For special provisions affecting record retention, see Regulation 1698.



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BY EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

United States Department of State

Washington, D.C. 20520

December 16, 2014

Cynthia Bridges
Executive Director
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279

Dear Ms. Bridges:

The Department of State's Office of Foreign Missions (OFM) issues tax exemption cards to eligible foreign missions and their accredited members and dependents on the basis of reciprocity and international law, which obligates the host country to provide relief from certain taxes.¹ The current card design, as illustrated on the enclosed flyer, has been in use since 2011.

Pursuant to U.S. law,² the Taipei Economic and Cultural Representative Office in the United States (TECRO), the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are also entitled to tax exemption privileges. Accordingly, the American Institute in Taiwan (AIT) has now issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents that incorporate the same features and design elements as OFM's tax exemption cards. Such privileges are authorized by AIT, not the Department of State. Therefore, as illustrated on the enclosed flyer, these cards read "American Institute in Taiwan" on the front and include AIT's contact information on the reverse.

The following policies are applicable to both tax exemption cards issued by AIT and those issued by OFM. As a reminder, when presented with a tax exemption card, vendors should verify the card's validity at <https://ofmapps.state.gov/tecw/> or by calling the phone number on the back of the tax exemption card or on the enclosed flyer.

Types of Purchases Permitted and Not Permitted

Depending on the language printed on the card (which may contain restrictions as to amount or item), tax exemption cards can generally be used to obtain exemption in person and on point-of-sale purchases. This includes an exemption from sales taxes and other similarly imposed taxes on purchases of most goods and services, hotel stays, and restaurant meals in the United States. Exemption from taxes on purchases of motor vehicles, gasoline/diesel fuel, utility

¹ Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations, and other treaties.

² Taiwan Relations Act (codified at 22 U.S.C. §§ 3301-3316); Agreement on Privileges, Exemptions and Immunities between AIT and TECRO, signed February 4, 2013; Designation and Determination under the Foreign Missions Act, No. FMA-2014-5, dated March 9, 2014.

services, or real estate is managed and authorized by different means, and requires a request to be directed to OFM or AIT.

Mission or Official Tax Exemption Cards

Tax exemption cards that are labeled as “Official Purchases Only” are used by foreign missions (including TECRO and TECO) to obtain exemption from sales and other similarly imposed taxes on purchases in the United States that are necessary for the mission’s operations and functions. Hotel stays for the purpose of tourism, medical treatment, or leisure travel are not considered necessary for the mission’s operations and functions. All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign government or mission, TECRO, or TECO. The individual pictured on the card is the point of contact and need not be present at the purchase.

Personal Tax Exemption Cards

Tax exemption cards that are labeled as “Personal Tax Exemption” are used by eligible personnel and their dependents to obtain exemption from sales and other similarly imposed taxes on personal purchases in the United States. The card is not transferable and cannot be loaned to any other person, regardless of that person’s eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with this type of card.

Guidance Issued by California

Our research indicates that **Sales and Use Tax Regulation 18 CCR § 1619 (Foreign Consuls)** constitutes the guidance promulgated by the State of California governing the extension of exemption from sales and use tax to foreign missions and their personnel. We have also located a reference to the tax exemption program on pages 2-3 of the BOE’s June 2011 Tax Information Bulletin. For Regulation 1619, we suggest including a specific reference to sales to the foreign government/consulate itself (i.e., official purchases).

Additionally, we were unable to locate any guidance governing the extension of tax exemption to TECRO, TECOs, and their personnel. OFM encourages the Department of Revenue to issue a regulation, ruling or statement mirroring the rules cited above for TECRO, TECOs, and their personnel, particularly in light of the presence of TECO offices in both Los Angeles and San Francisco. Please let us know if we have missed any relevant guidance.

The Department of State wishes to thank your office for its ongoing support of this program, which encourages vendors to extend a tax exemption with confidence. Please contact my office at 202-895-3500 ext. 2 or OFMTaxCustoms@state.gov with any questions.

Sincerely,



Cheryl A. Cappiello Edson
Program Manager (Tax)
Office of Foreign Missions

Enclosure: Updated Tax Exemption Card Flyer



TAX EXEMPTION CARDS

The U.S. Department of State issues tax exemption cards to eligible foreign missions, accredited members and dependents on the basis of international law and reciprocity. These cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

Please verify the validity of a tax exemption card at <https://ofmapps.state.gov/tecv/> or by contacting the **Office of Foreign Missions (OFM)** during business hours:

- ✓ **YES** *most goods and services, hotel stays, and restaurant meals (subject to restrictions)*
- ✗ **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to OFM)*

Washington, DC	(202) 895-3500 x2
Chicago	(312) 353-5762
Houston	(713) 272-2865
Los Angeles	(310) 235-6292
Miami	(305) 442-4943
New York	(646) 282-2825
San Francisco	(415) 744-2910

For more information, please visit <http://www.state.gov/ofm/tax>.

OFFICIAL PURCHASES

- ▶ Used by missions
- ▶ Payment in mission's name
- ▶ Individual pictured need not be present
- ▶ **OWL:** no restrictions
- ▶ **BUFFALO:** some restrictions (please read card)



PERSONAL PURCHASES

- ▶ Not transferable
- ▶ Any form of payment
- ▶ For benefit of individual pictured
- ▶ **EAGLE:** no restrictions
- ▶ **DEER:** some restrictions (please read card)



AMERICAN INSTITUTE IN TAIWAN TAX EXEMPTION CARDS

Under U.S. law, the Taipei Economic and Cultural Representative Office (TECRO), Taipei Economic and Cultural Offices (TECOs), their eligible employees and dependents are also eligible for tax exemption privileges. These privileges are authorized by the **American Institute in Taiwan (AIT)** and not the U.S. Department of State.

Please verify the validity of an AIT tax exemption card at <https://ofmapps.state.gov/tecv/> or by contacting AIT during business hours at **(703) 525-8474**.

Like the other tax exemption cards, these cards authorize exemption from sales tax, occupancy tax, and similarly imposed taxes at the point of sale.

- ✓ **YES** *most goods and services, hotel stays, and restaurant meals* ✗ **NO** *motor vehicles, gasoline/diesel fuel, utility services, or property tax (requests must be sent to AIT)*

OFFICIAL PURCHASES

- ▶ Used by TECRO/TECO
- ▶ Payment in TECRO/TECO's name
- ▶ Individual pictured need not be present
- ▶ **OWL:** no restrictions



PERSONAL PURCHASES

- ▶ Not transferable
- ▶ Any form of payment
- ▶ For benefit of individual pictured
- ▶ **EAGLE:** no restrictions

