State of California

Board of Equalization

Memorandum

To : Ms. Cynthia Bridges
Executive Director (MIC 73)

Date: February 26, 2014

From : Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : **Board Meeting March 25-26, 2014**
Item N: Administrative Agenda
Proposed Revision to Compliance Policy and Procedures Manual Sections 820.000-825.040

In accordance with the established procedures for audit and compliance manual revisions, I am submitting proposed revisions to Compliance Policy and Procedures Manual (CPPM) Chapter 8, *Consumer Use Tax*, sections 820.000 through 825.040.

The proposed revisions, which incorporate current policies and procedures, have been reviewed and approved by SUTD management, provided to Board Members, and posted at http://www.boe.ca.gov/sutax/pmr.htm to solicit comments from interested parties. One minor suggestion was received from staff and was incorporated. No other comments were received from interested parties or Board Members with regard to these revisions.

The revised sections are attached for your reference. We request your approval to forward them to the Board Proceedings Division for placement on the Administrative Agenda as a consent item at the March 2014 meeting.

If you have any questions, please let me know or contact Ms. Susanne Buehler at 324-1825.

JLM:rs
Attachment

Approved:

Ms. Cynthia Bridges
Executive Director

Rev1 03/20/14

cc: (all with attachment)
Mr. Wayne Mashihara (MIC 46)
Ms. Susanne Buehler (MIC 92)
Mr. Kevin Hanks (MIC 49)

EXEMPTIONS AND EXCLUSIONS: VEHICLES, VESSELS, AND AIRCRAFT 820.000

GENERAL 820.001

Purchases of vehicles, vessels, and aircraft for use in California are subject to either the sales or use tax unless a specific exemption or exclusion applies. Under certain circumstances purchases of vehicles, vessels, and aircraft may be exempted or excluded from tax. Any exemption from use tax or claim that the purchase of the tangible personal property is not subject to the use tax must be supported by satisfactory documentarytion evidence. Even though the evidence may vary considerably from case toin each case, each claimthere must havebe sufficient documentation to substantiate the claim. The following section explains the exemptions and exclusions most common to consumer use tax CUTS programs. General provisions for use tax can be found under RTC sections 6202 and 6241. For specific exemptions, see the applicable law or regulation cited within the specific section.

PRESUMPTION OF PURCHASE FOR USE IN CALIFORNIA 820.005

NOT PURCHASED FOR USE IN CALIFORNIA

A vehicle, vessel, or aircraft purchased outside of California which is subsequently 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.

"Functional use" means use for the purposes for which the property was designed. Vehicles, vessels, and aircraft designed for personal use are "functionally used" when merely driven, sailed, or flown. Vehicles, vessels, and aircraft designed for a commercial or other special purpose are not "functionally used" until used for the purposes for which they were designed.

For vehicles, vessels and aircraft purchased outside of California, first functionally used outside of California, and then brought into California, Regulation 1620, *Interstate and Foreign Commerce,*RTC section 6248 contains the presumptions for application of the use tax. to vehicles, vessels and aircraft purchased outside the state and brought into California for use in this state.For periods prior to October 2, 2004 and from July 1, 2007 to September 29, 2008, the 90-day/6-month test below is applicable to these transactions. When a California retailer delivers and transfers title to a purchaser out of state and does not charge tax, the use tax may still be due from the purchaser.

Due to changes in the law, there are two different tests established for determining whether a vehicle, vessel, or aircraft purchased and first functionally used outside California is considered to have been purchased for use in this state.

A vehicle, vessel, or aircraft purchased and first functionally used outside of California will be subject to either the "90-Day and Six-Month Principal Use Test," or the "12-Month Test" depending upon the purchase date. The following table illustrates the application of each of the two test periods based on the purchase date:

Purchase Date	Test Period
October 2, 2004 – June 30, 2007	12-Month Test
July 1, 2007 – September 30, 2008	90-Day Test
On or after October 1, 2008	12-Month Test

Note: If a binding purchase agreement was completed prior to October 2, 2004, or between July 1, 2007, and September 30, 2008, the purchase will be subject to the "90-day test." The test period will commence on the date of purchase, generally the date of out-of-state delivery.

APPLICATION OF TEST PERIODS

~~1. Purchase Date Prior to October 2, 2004 and from July 1, 2007 to September 29, 2008.~~

~~a.~~ 90-Day Presumption and Six-Month Principal Use Test

When a vehicle, vessel, or aircraft is purchased and first functionally used outside of California, the vehicle, vessel, or aircraft will be presumed to have been purchased for use in California 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 the vehicle, vessel, or aircraft is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into California. ~~If a vehicle, vessel, or aircraft is purchased and used outside of California for more than 90 days before entering this State, the purchase qualifies for the out-of-state exemption from use tax. Shipping time or time of storage prior to shipment into California is excluded from the 90-day period.~~

~~b. 6-Month Test~~

~~If the vehicle, vessel, or aircraft enters California within 90 days from the date of purchase, it is presumed to have been purchased for use in California, unless it was first functionally used outside California prior to its entry and was used, stored or both used and stored outside California one-half or more of the time during the six-month period immediately following its first entry into this state. The six-month period can be viewed as the equivalent to a "half year," or the actual number of days that range from 181 to184 days depending on which month the test period starts, or 182 days under the rule of the Government Code.~~

~~Taxpayers should be allowed to rebut the presumption under all reasonable interpretations of what "six months" may mean as described above.~~

~~2. From October 2, 2004 through June 30, 2007 (excludes a binding purchase contract entered into on or before October 1, 2004) and after September 30, 2008, a 12-month test period is applicable to these transactions as follows:~~

~~a.~~ 12-~~m~~Month Test ~~[Regulation 1620(b)(5)(A)]~~

When a vehicle, vessel, or aircraft is purchased and 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 it was acquired for storage, use, or other consumption in California, and subject to use tax if any of the following occur:

~~A vehicle, vessel, or aircraft purchased outside of California and brought into this state is regarded as having been purchased for use in this state if the first functional use 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 to be purchased for use in California and is subject to use tax if any of the following occurs:~~

- ~~1. The vehicle, vessel, or aircraft was purchased by a California resident, as defined in Vehicle Code section 516, as that section now reads or is hereinafter amended.~~

~~Vehicle Code section 516 (2006) defines resident as follows:~~

~~"Resident means any person, including a natural person, firm, partnership, association, limited liability company, or corporation, who shows intent to live or be located in this state on more than a temporary basis. A person's presence in the state for six months or more in any 12-month period creates a rebuttable presumption of residency. The following are evidence of residency for purposes of vehicle registration:~~

~~a. Address where registered to vote.~~

~~b. Location of employment or place of business.~~

~~c. Payment of resident tuition at a public institution of higher education. d. Attendance of dependents at a primary or secondary school.~~

~~e. Filing a homeowner's property tax exemption.~~

~~f. Renting or leasing a home for use as a residence.~~

~~g. Declaration of residency to obtain a license or any other privilege or benefit not ordinarily extended to a non-resident.~~

~~h. Possession of a California driver's license.~~

- ~~i. Other acts, occurrences, or events that indicate presence in the state is more than temporary or transient."~~The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the California Vehicle Code (effective January 1, 2010, a California resident is defined to include a closely held corporation if 50 percent or more of the shares are held by shareholders who are California residents, and effective January 1, 2011, to include, but is not limited to, a closely held limited liability company if 50 percent or more of the membership interests are held by members who are California residents), or

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

- ~~3.~~ In the case of a vessel or aircraft, the vessel or aircraft is subject to property tax in this state during the first 12 months of ownership, or~~.~~
- ~~4. The~~If purchased by a nonresident of California, 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. ~~(This is applicable only to non- California residents at the time of purchase.)~~

  ~~b. Repair, retrofit, or modification of vessels or aircraft are exempt from use tax *unless* the following occurs: [Regulation 1620(b)(5)(D)]~~

  ~~1. 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 aircraft 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 any authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel.~~

  ~~2. 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.~~

This presumption may be rebutted if the purchaser can provide satisfactory documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside California during the first 12 months of ownership. This evidence may include, but is not limited to, proof of registration of the vehicle, vessel, or aircraft with the proper out-of-state authority. In determining whether the presumption has been rebutted, all relevant evidence should be considered in its entirety. Other possible evidence that *may* indicate that the property was not purchased for use in California may include, but is not limited to:

- Proof of payment of property tax to another state,
- Apartment lease, rental agreement, or other evidence showing residence in another state,
- Proof of change in employment status, or
- Anything else that will reasonably establish that at the time of purchase, the purchaser did not intend to use the vehicle, vessel, or aircraft in California.

In some instances, the purchaser may claim that at the time of purchase, the intent was not to use the vehicle, vessel, or aircraft in California, but subsequent circumstances changed the purchaser's original intent (e.g. change in job assignment). To overcome the presumption that the vehicle, vessel, or aircraft was purchased for storage, use or other consumption in this state, the following two factors must be present: (1) at the time of purchase, the purchaser did not contemplate bringing the property to California for use in the state, and (2) the subsequent change of intent was beyond the control of the purchaser.

In addition, a vessel or aircraft the purchase of which is subject to the 12-month test that is brought into California for the exclusive purpose of repair, retrofit, or modification shall not be deemed to have been acquired for storage, use, or other consumption in this state provided either of the following apply:

- In the case of a vessel, the work is 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, the work is performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

~~Under RTC section 6248(f), t~~The presumption for vehicles ~~that a vehicle was purchased for use in this state~~ may be controverted by documentary evidence that ~~it~~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 the dates of travel to and from the warranty or repair facility.

Generally, when a taxpayer claims that a vehicle or undocumented vessel was not purchased for use in California and the applicable test period has not yet expired, it is Board of Equalization (BOE) policy to permit registration with the Department of Motor Vehicles (DMV) without the payment of California use tax. In this situation, the BOE issues a BOE-111, *Certificate of Vehicle, Mobilehome or Commercial Coach Use Tax Clearance*, or BOE-111-B, *Certificate of Vessel Use Tax Clearance*. Clearance certificates are issued subject to certain documentary requirements, with the understanding that the taxpayer is required to provide additional documentation to the BOE to support his or her claim at the end of the test period. See CPPM section 825.000.

For ~~more information~~questions regarding the qualifying period for "Not Purchased for Use in California"claims, contact CUTS.

USE IN INTERSTATE OR FOREIGN COMMERCE 820.010

~~An exception from the use tax applies to tangible personal property that is purchased for use and is used in interstate and foreign commerce prior to its first entry into California and is thereafter used continuously in interstate or foreign commerce both within and without California. Generally, property (except vehicles and aircraft) used exclusively within California does not qualify for the exemption. This means that the property must travel to destinations outside California and cannot operate solely between destinations within California. (See Regulation 1620(b)(2)(B).)~~

~~To qualify for the exception for property purchased for use and used in interstate or foreign commerce, the property must have been delivered to the purchaser out of state and first functionally used in interstate or foreign commerce outside California before entering this state. If the first functional use occurs in California, the purchase or use of the property is subject to tax. In addition, property brought into California within 90 days from the date of purchase is presumed to have been purchased for use in this state unless documentation is provided to show the following:~~

1. ~~For tangible personal property in general (including vessels): The property was used or stored outside California one-half or more of the time during the six-month period immediately following its first entry into this state. However, vehicles and aircraft purchased for use in interstate or foreign commerce may be exclusively used in California and still qualify for the exception from the use tax, provided the purchaser can prove that the vehicle or aircraft was not purchased for use in California. For vehicles and aircraft, use in interstate commerce means that at least one package or passenger has its origin in one state or country and its destination in another. As such, vehicles or aircraft operating entirely within the boundaries of California that carry at least one package or passenger with an origin or destination outside California are considered to be used in interstate or foreign commerce for that trip or flight.~~
2. ~~For vehicles and aircraft: To determine if a vehicle or aircraft qualifies for the exception from tax for use in interstate commerce, the property must be first functionally used in interstate or foreign commerce outside California before entering this state, then apply the six-month principal use test as stated in Regulation 1620(b)(4).~~
   a. ~~For vehicles: 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 commerce.~~
   b. ~~For aircraft: One-half or more of the flight time traveled during the six-month period~~

~~immediately following its entry into this state is commercial flight time traveled in interstate commerce.~~

Under certain conditions, the purchase of a vehicle, vessel, or aircraft used in interstate or foreign commerce may be exempt from the use tax. Regulation 1620, *Interstate and Foreign Commerce,* provides that 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 outside California and not exclusively in California.

In addition, if a vehicle, vessel, or aircraft is presumed to have been purchased for use in California based on either of the tests discussed in CPPM section 820.005, the purchaser may rebut the presumption by providing satisfactory documentary evidence that the vehicle, vessel, or aircraft was first functionally used outside of California and was primarily used in interstate or foreign commerce during the six-month period immediately following its entry into the state. The following are the criteria that must be met to establish this exclusion for use tax:

- If the property is a vehicle, the 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.
- If the property is a vessel, the 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.
- If the property is an aircraft, the 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.

For the purposes of the regulation, the term "commercial" applies to business uses and excludes personal use. The term is not limited to *for-profit* businesses. To establish that a particular trip was for a business purpose, the taxpayer must show that the principal purpose of the trip was business rather than personal. For examples of what constitutes interstate commerce for vehicles, vessels, and aircraft, see Regulation 1620(b) (7) examples 1 to 13.

WATERCRAFT 820.011

Watercraft used principally (more than one-half of the time) for the purpose of transporting persons or property for hire in interstate or foreign commerce are exempt from the use tax. The test period is the 12-month period following the first operational use of the watercraft. If the purchaser does not own the watercraft for 12 consecutive months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the watercraft will be considered. "Operational use" means the actual time during which the watercraft is operated and does not include storage, modification, repair, or replacement.

It is presumed that the watercraft is not regularly used in the transportation for hire of property or persons if the annual gross receipts from such use of the watercraft, or gross receipts from the lease of the watercraft used in this manner, do not exceed ten percent (10%) of the cost of the watercraft to the person using or leasing it, or twenty-five thousand dollars ($25,000), whichever is less. This presumption may be rebutted by contrary, verifiable evidence that the watercraft is

regularly used in the transportation for hire of property or persons.

The exemption may also apply to barges and ferry boats that operate entirely within the state and are principally used to transport passengers or cargos moving in interstate or foreign commerce, or tugs that operate entirely within the state and are principally used to convoy or aid the departure or arrival of vessels to or from points outside the state, or water-taxis that are engaged in the transportation of harbor pilots to or from vessels for the purpose of navigating or aiding those vessels in the completion or commencement of their voyages to or from points outside of California.

~~For examples of what constitutes interstate commerce for vehicles and aircraft, see Regulation 1620(b) (4) examples 1 to 12.~~

COMMERCIAL DEEP SEA FISHING 820.015

The storage, use, or other consumption in this state of ~~Tax does not apply to~~ watercraft principally used in commercial deep sea fishing operations outside the territorial waters of California by persons who are regularly engaged in commercial deep sea fishing are exempt from the use tax. Regulation 1594 establishes a two-step test to determine if the exemption applies.

First, the watercraft must be used by persons who are regularly engaged in commercial fishing. Second, the watercraft itself must actually be used principally in commercial fishing operations outside the territorial waters of this state, using a test period of 12 consecutive months beginning with the first operational use of the watercraft. If the purchaser does not own the watercraft for 12 consecutive months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the watercraft will be considered. "Principal use" means that over 50 percent of the time spent in total operation must involve commercial fishing outside the territorial waters of this state. ~~It~~ There is a ~~shall be~~ rebuttable~~y~~ presumption~~ed~~ that a "person~~s~~ is ~~-~~ *not* regularly engaged in the business of commercial deep~~-~~ sea fishing ~~operations"~~if the person has gross receipts from commercial deep sea fishing operations that total ~~do not earn~~ less than $20,000 ~~in gross receipts per~~a year ~~from their fishing activities~~.

–Note: It is not material to the application of tax whether a vessel is documented with the USCG or undocumented and registered with DMV. ~~(RTC section 6368 and Regulation 1594.)~~

TRANSPORTING PERSON OR PROPERTY TO OFFSHORE DRILLING PLATFORMS 820.016

Watercraft used in transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state may be exempt from the use tax, provided the watercraft is functionally used 80 percent or more of the time in such transportation activities. Only the functional use of the watercraft during the first 12 months commencing with the first operational use of the watercraft will be considered. If the purchaser does not own the watercraft for 12 consecutive months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the watercraft will be considered.

AIRCRAFT SOLD TO COMMON CARRIERS 820.020

Generally, tax does not apply to aircraft sold to persons who use the aircraft in operation as a

common carrier of persons or property, or who lease the aircraft to a lessee who will use the aircraft in operation as a common carrier under authority of the laws of this state, of the United States, or any foreign government~~,~~ provided the aircraft is used as a common carrier for more than one half of the operational use during the first twelve consecutive months commencing with the first operational use of the aircraft (see Regulation 1593, *Aircraft and Aircraft Parts).*~~during the first twelve (12) months of operational use. This also extends to aircraft that are leased to common carriers. The use tax law provides a rebuttable presumption that a person is not engaged in business as a common carrier with regard to aircraft purchased after January 1, 1997 unless the yearly gross receipts from such activity exceed 20% of the purchase price of the aircraft, or $50,000, whichever is less.~~

The term "common carrier" is defined as any person who engages in the business of transporting persons or property for hire or compensation and who offers the services indiscriminately to the public or to some portion of the public. Documentation must establish that the principal use of the aircraft was as a common carrier during the first twelve months of operational use.

There is a rebuttable presumption that a person is not engaged in business as a common carrier, unless the yearly gross receipts from such activity exceed 20 percent of the purchase price of the aircraft, or $50,000, whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the Board showing that the aircraft is used principally as a common carrier of persons or property for hire.

If the first twelve months have not expired by the due date of the use tax return, any available documentation should be submitted and the remaining required documentation submitted once the test period has expired. If the purchaser does not own the aircraft for twelve consecutive months commencing with the first operational use, then the period of time commencing with the first operational use that the purchaser owns the aircraft will be considered.
~~(RTC 6366 and 6366.1 and Regulation 1593.)~~

FAMILY TRANSFERS 820.025

~~RTC section 6285 provides~~There is an exemption from the use tax when the person selling ~~the property~~a mobilehome, commercial coach, vehicle, vessel, or aircraft is a parent, grandparent, grandchild, child, or spouse of the purchaser or, on or after January 1, 2005, is the registered domestic partner of the purchaser as defined in Family Code section 297, or the brother or sister of the purchaser if both are minors (under the age of 18) and related by blood or adoption; and the seller is not engaged in the business of selling the type of property for which the exemption is claimed.

This exemption does not extend to stepparents, step-grandparents, step-grandchildren, stepsiblings, or stepchildren. There must be a legal adoption for these relations to fall under this specific tax exemption. Claimants must provide documentation to show proof of the relationship and age~~,~~ (if the transfer is between minors).

Department of Housing and Community Development (HCD) or DMV ~~and HCD~~ may allow the transfer of vehicles, mobilehomes, ~~or~~ vessels, or aircraft between qualified family members without requiring a use tax clearance from the BOE~~.~~ (See CPPM section 825.035 ~~RTC section 6285, Regulation 1610.2(b)(1)(B)1, and Publication 52.~~).

GIFT 820.030

The gift of a vehicle, vessel, or aircraft is not subject to use tax. To qualify as a gift, the transfer of a vehicle, vessel, or aircraft must be made without any consideration being exchanged in order to obtain the vehicle, vessel, or aircraft. Examples of consideration include cash, credits, receipts, the fair market value of any trade, including trades of equal value, or the assumption of any liability. ~~A Form BOE-111, Certificate of Use Tax Clearance, must be obtained from the BOE in order to effect registration at the DMV of vehicles and undocumented vessels obtained by gift.~~ All relevant evidence supporting the gift should be considered. Although not determinative, the applicant's statement that it was a gift should be supported by a signed statement from the previous owner, or, in the case of a corporation, corporate minutes.

Under certain circumstances, an individual may wish to transfer registration of a vehicle or vessel from a company or corporate name to his or her own. The individual may or may not own the entity in question. Fully depreciated vehicles no longer needed by the company or transfers for insurance purposes are among the most common reasons for transfer. In all cases, these transfers must meet the criteria of a transfer without consideration before an exemption can be granted.

~~OTHER EXEMPTIONS~~ ~~820.035~~

~~In addition to the above, there are other types of exemptions not listed on the various Consumer Use Tax returns that can be claimed with the required documentation. The exemption claimed should be explained upon registration at DMV or HCD or on the use tax return under "Other exemptions."~~

PURCHASES FOR RESALE 820.040

Property purchased for resale may be purchased without payment of tax~~ or tax reimbursement~~, provided the purchaser makes no use of the property except retention, demonstration, ~~and~~or display while holding it for sale in the regular course of business~~offering the property for sale~~. When the purchase is made from a licensed retailer, the burden of proving that a sale of tangible personal property is a sale for resale is upon the person who makes the sale unless the retailer timely accepts, in good faith, a valid resale certificate from the purchaser. Where a retailer is unable to produce a timely, valid resale certificate, the retailer will be relieved of liability for the tax only where the retailer proves the sale was in fact a sale for resale by submitting evidence to establish that the property was resold by the purchaser without intervening use, that the purchaser still holds the property for resale without intervening use, or that the purchaser paid the applicable tax to BOE.

When a vehicle, vessel, or aircraft is purchased from a private party not required to hold a seller's permit by reason of the number, scope, and character of its sales, the applicable tax is the use tax, imposed on the purchaser. Therefore, the purchaser has the burden of proving the purchase was for resale. This does not apply to sales of vessels and aircraft when a broker arranges the sale and collects the applicable tax.

MILITARY PERSONNEL 820.045

A member of the armed forces on active duty who purchases a vehicle prior to the effective date of his or her discharge, shall not be deemed to have purchased the vehicle for use in this State

unless, at the time of purchase, he or she intended to use it in this State (see Regulation 1610).

Additionally, ~~W~~when a member of the armed forces on active duty, ~~or the spouse of a member on active duty,~~ contracts to purchase a vehicle outside California before the member receives orders transferring ~~such member~~him or her to California, no use tax is due~~ based upon registration of the vehicle in California pursuant to the transfer~~.

However, the member will be considered to have made the ~~independent~~ determination to use the vehicle in California if he or she contracts to purchase the vehicle after receipt of official orders transferring him or her to California. Unless the use is otherwise not subject to tax, the use tax will apply.

The member will be considered to have made the ~~independent~~ determination to use the vehicle in California without regard to the time of receipt of official orders of transfer, if at the time he or she contracts to purchase the vehicle, arrangements are made to take receipt of the vehicle in California. This applies when purchase arrangements are made any time during a scheduled deployment, regardless of the date of orders to return to California.

~~"Date of Contract to Purchase" applies to service personnel and their spouses only, whereas the actual date of delivery governs purchases made by non-service personnel.~~

All the foregoing ~~has~~ have no application to mobilehomes and commercial coaches, as they are~~ not included in RTC section 6249~~ covered in Regulation 1610.2, *Mobilehomes and Commercial Coaches*. Mobilehomes located on military bases or installations are required to be annually registered, and the purchase by resident or non-resident military is subject to tax.

PURCHASES BY AMERICAN INDIANS~~ RESERVATIONS~~ 820.050

In general, except as provided below, use tax applies to the use in this state by an Indian purchaser of tangible personal property (including vehicles, vessels, and aircraft) from an off-reservation retailer for use in this state.

Use tax does not apply to ~~sales~~ purchases of ~~tangible personal property~~vehicles, vessels, and aircraft ~~made to~~by Indian~~s~~ purchasers who reside on an Indian reservation, if

- the property is delivered and ownership transfers to the Indian ~~purchaser and ownership to the property transfers to the Indian~~ purchaser on the reservation, *and*
- the property is thereafter used on the reservation 50~~%~~ percent or more of the time during the first 12 months after the purchase.

This exemption also applies ~~similarly~~ to ~~sales~~ purchases ~~to~~ by ~~partnerships where all of the partners are Indians. In those instances involving purchases by a husband and wife, and both parties claim to be Indians, evidence to support the full exemption is required from both spouses.~~"Indian organizations" and "Indian couples" as defined below.

~~If the property is sold to and delivered to a husband and wife on the reservation, but only one of the purchasing spouses is an Indian, a one-half interest in the property is exempt from tax. The half interest in the property attributable to the non-Indian is subject to use tax. The exemption~~

~~will be prorated exactly 50/50 regardless of the degree of Indian blood of the Indian spouse. A certificate of use tax clearance will only be issued in the name of the Indian spouse and the other spouse must pay the use tax directly to the BOE.~~

"Indian organization" includes Indian tribes and tribal organizations, including tribes that incorporate pursuant to section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. § 477). Partnerships qualify as "Indian organizations" for California sales and use tax purposes only when all of the partners are Indians. Corporations and limited liability companies qualify as Indian organizations only if they are organized under tribal authority and wholly owned by Indians. If an organization does not meet these criteria, it does not qualify, even when owned or operated by Indians.

"Indian couples" includes a married couple or a registered domestic partnership for exemption purposes when it consists of two Indians or of an Indian and a non-Indian that have entered into officially recognized family relationships under California law or tribal law. This generally includes a married couple or a domestic partnership entered into under the Domestic Partner Rights and Responsibilities Act of 2003. Tribes have the authority to establish their own laws and regulations regarding such unions. Tribal laws include not only written laws, but may also include tribal customs and practices. However, such customs and practices must be that of the tribe, not of an individual tribal member. Therefore, if either California law or tribal law recognizes the family relationship, and at least one member of the couple is an Indian, the couple qualifies as an Indian couple

For property purchased for use in tribal self-governance, the sale will not be subject to sales or use tax if:

- The tribal government does not have a reservation, or the principal place the tribal government conducts tribal business cannot be on the reservation because it lacks a building or lacks one or more essential utility services, such as water, electricity, gas, sewage, telephone service, or mail service from the US Postal Service;
- The property is purchased by the tribal government for use in tribal self-governance, including governance of tribal members, the conduct of inter-governmental relationships, and the acquisition of trust land; and
- The property is delivered to the tribal government and ownership of the property transfers to the tribal government at the principal place where tribal business is conducted.

The purchase will not be subject to the above exemption if the property is used for purposes other than tribal self-governance more than it is used for tribal self-governance within the first 12 months following delivery.

For more information see Regulation 1616, *Federal Areas*, and publication 146, *Sales to American Indians & Sales in Indian Country.*

PURCHASES FROM U.S. GOVERNMENT 820.055

All purchases of tangible personal property from any unincorporated agency or instrumentality of the U.S. Government are exempt from the use tax, except purchases from the Surplus Property Board or its successor agency and property included in any contractor's inventory.

As such, the following types of transactions are not subject to the use tax:.

- A purchase of property from a U.S. Marshal pursuant to an order of a Federal Court. (See Sales and Use Tax Annotation 560.0260)
- A purchase of property in accordance with the provisions of Title 40 U.S.C.A. section 481(c) from any executive agency authorized by the Office of Federal Procurement Policy. Any transaction carried out under the authority of this section must be evidenced in writing by the Office of Federal Procurement Policy.
- Surplus property from the U.S. Government transferred to any state, county or local government entity without consideration, except for what is called a "nominal service charge."

Note: Sales made under the authority of Title 40 U.S.C.A. section 484 or IRC section 6335 are taxable (See ~~RTC section 6402 and Business Taxes Law Guide~~Sales and Use Tax Annotations 560.0174 and 560.0170).

FOREIGN CONSULS AND CONSULAR OFFICERS 820.060

In general, neither sales nor use tax applies to the sale or use of tangible personal property sold to foreign consular officers, employees, or members of their families identified by a U.S. Department of State Tax Exemption Card. Tax applies to sales of property to foreign consular officers, employees, or members of their families who do *not* hold a Tax Exemption Card. In addition to the exemption provided, the purchase or lease of a vehicle by a foreign consular officer, employee, or member of their family, on or after the date of assumption of duties, who does not hold a Tax Exemption Card will be exempted 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. (Regulation 1619, *Foreign Consuls*)

INVOLUNTARY TRANSFERS 820.065

Tax does not apply to a repossession of property by a seller from a purchaser who has not completed repayment. In order to receive the exemption, the applicant must provide documentation, such as a certificate of repossession.

CORPORATE, PARTNERSHIP, AND LLC DISSOLUTION 820.070

Receiving property as part of the final distribution of corporate, LLC, or partnership assets is normally a nontaxable transfer if the distribution is in proportion to the individual's ownership interest in that entity and the entity receives no consideration. The entity will be deemed to have received consideration when the individual assumes the outstanding liability still owed on the property. The amount of the assumption would be the measure of tax. The taxpayer should provide a statement from the lender which identifies the outstanding balance at the time of assumption. As proof of ownership interest, supporting evidence in the form of partnership agreements or corporate dissolution papers should be provided.

TRANSFERS TO COMMENCING CORPORATIONS, LLC's, OR PARTNERSHIPS 820.080

The contribution of property to a commencing corporation, LLC, or partnership solely in exchange for an interest in the LLC, partnership or corporate stock is not a sale and not subject

to tax. If consideration is received in the form of another asset in exchange, or the assumption of indebtedness, the transfer would be subject to tax. Evidence in the form of partnership agreements or articles of incorporation will be needed to verify the exemption.

CAPITAL CONTRIBUTIONS 820.085

The contribution of property to a corporation by a shareholder is exempt if the corporation merely credits a donated capital or other capital account. The transfer is regarded as a contribution of capital and it is immaterial that the value of the shares held by the person contributing the property may be enhanced. Copies of the corporation's journal entries should be provided to verify that a capital account is credited.

TRANSFERS TO TRUSTS 820.090

Transfers of vehicles, vessels, aircraft, or mobilehomes to revocable trusts are exempt under certain circumstances. The majority of living trusts are revocable and the following rules would apply. In order to qualify for this exemption, all of the following must occur:

1. The seller has an unrestricted power to revoke the trust.
2. The sale does not result in any change in the beneficial ownership of the property.
3. The trust provides that upon revocation the property will revert wholly to the seller.
4. The only consideration for the sale is the assumption by the trust of an existing loan for which the tangible personal property being transferred is the sole collateral for the assumed loan.

For those trusts that are not revocable or if the transfer does not meet the above criteria, there is no special exemption for property transferred merely because the transferor (settlor) is both the creator of the trust (trustor) and administrator of the trust (trustee). A trust is a "person" under the Sales and Use Tax Law and any transfer to the trust for a consideration would normally be subject to tax.

To properly document transfers to a trust, you will need to obtain copies of the trust agreement which identify:

- the parties involved and their signatures.
- the property being transferred. If the property is not clearly identified in the trust agreement, a statement (including the I.D. number) should be obtained that describes the property included in the transfer.
- the assumption of liabilities.
- whether or not the trust is revocable.

OTHER EXEMPTIONS 820.0953~~5~~

In addition to the above, there are other types of exemptions or exclusions ~~not listed on the various Consumer Use Tax returns~~ that can be claimed with the required documentation. The exemption or exclusion claimed should be explained upon registration at DMV or HCD or on the use tax return under “Other exemptions.”

INTERVENING OWNERS 820.100

A vehicle may change ownership or possession from the original user in whose name it is registered to several subsequent owners before a request is made for clearance and transfer of registration. Whenever this occurs, the tax liability of each person having subsequent ownership of the vehicle, other than the person to whom the vehicle is to be transferred, must be determined.

If any person other than the registered owner had ownership of the vehicle prior to the time of transfer, obtain information concerning the names and addresses of the intervening owners and determine whether or not a tax liability has been incurred. If there were sales of vehicles between private parties and use tax would be applicable, sufficient information should be obtained so the proper amount of tax can be assessed against and collected from each purchaser.

A memo, along with any supporting documentation obtained, should be sent to CUTS to investigate possible intervening owners. The following information should be included:

- Owner(s) name, address, and telephone number,
- Purchase date,
- Purchase price,
- Registration number (vehicle license plate number, vessel CF number), and
- Make, model, and year.

REFINANCING OF VEHICLES 820.105

The addition or change of a legal owner or filing of a chattel mortgage on a vehicle does not constitute a transfer of registration, and consequently, the DMV does not require a tax clearance certificate for such transactions.

The BOE will not furnish tax clearance certificates for the purpose of refinancing equipment. Should any finance company having an interest in a vehicle of the user insist upon assurance that the user is not delinquent in the payment of the tax, the finance company should be informed by letter with respect to the taxes due from the user.

CERTIFICATE OF USE TAX CLEARANCE (BOE-111 AND BOE-111-B) 825.000

BOE–111 (VEHICLES/MOBILEHOMES/COMMERCIAL COACHES) AND BOE–111–B (VESSELS) 825.005

When a registrant claims exemption from the use tax on a transfer of a vehicle/mobile home/ commercial coach or undocumented vessel, the Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD) may require a ~~Form~~ BOE–111/111–B, *Certificate of Use Tax Clearance*, to complete registration without payment of the use tax. The ~~Form~~ BOE–111/111–B is issued by the BOE in the following situations:

- ~~1.~~ The registrant claims an exemption and provides sufficient documentation to confirm that
- use tax is not due.
- ~~2.~~ The registrant claims an exemption that may qualify, but the qualifying period for the exemption has not expired. The registrant must provide documentation that shows delivery/ possession took place out of state to proceed with this claim.
- ~~3.~~ The registrant pays the use tax to the BOE.
- ~~4.~~ The registrant has requested an Installment Payment Agreement and will be paying the use tax under that agreement.

A ~~Form~~ BOE–111/111–B is never issued for a documented vessel or an aircraft because their registration is handled by ~~either~~ the U~~.~~S~~.~~ Coast Guard or the Federal Aviation Administration, respectively and neither federal entity acts as an agent of the BOE to collect use tax.

DMV/HCD PROCESSING 825.010

Initial contact with the taxpayer may occur~~s~~ when the taxpayer presents the application for registration of a vehicle/mobilehome or undocumented vessel to DMV/HCD. Sales tax transactions are recognized by the presence in the registration documents of a vehicle dealer's Report of Sale or a Vessel Dealer or Manufacturer's Sales Tax Certification (DMV form BOAT110). On non-dealer transactions, the DMV/HCD interviewer must make a decision as to the applicability of the use tax. If the DMV/HCD interviewer determines the use tax is due and the taxpayer disagrees, the taxpayer is instructed to request a Certificate of Use Tax Clearance from the BOE. Requests of this type are filed using ~~Form~~a BOE–106, *Vehicle/Vessel Use Tax Clearance Request*. This is a fill-in form available on the BOE~~'s~~ web-site to persons making claims. The form is also available in publication 52, *Vehicles and Vessels: How to Request a Use Tax Clearance for DMV Registration.*

If the registrant has purchased a vessel/trailer combination and does not have a breakdown of the purchase price for each item, DMV will allocate $1.00 in use tax to the trailer with the balance applied to the vessel.

CUTS PROCESSING 825.015

Requests for a *Certificate of Use Tax Clearance* received by CUTS are assigned a source information file (SIF) number in pending registration for review and recommendation.

All requests claiming exemption for the principal use test are monitored by CUTS at the end of the ~~6-month~~ test period. ~~. If there is insufficient documentation to substantiate the claim, CUTS will set up the taxable activity registration (TAR) and issue a notice of determination for the use tax due.~~For each "Test Period Not Yet Expired" BOE-111/111-B packet received in CUTS, a Taxable Activity Registration (TAR) account will be created. CUTS assigns each TAR account a status code that will prompt further action at the end of the "12-month Test" period or at the end of the "90-Day or 6-Month Principal Use Test" period.

If the documentation provided by the taxpayer at the end of the test period supports the claimed exemption, the taxpayer will be notified that his or her claim has been granted. If the taxpayer fails to provide sufficient documentation, or the documentation indicates the taxpayer has not qualified for the exemption from use tax, a Notice of Determination will be issued.

DISTRICT OFFICE PROCESSING 825.020

Requests by mail, ~~/~~fax, or ~~walk-ins~~in person for a *Certificate of Use Tax Clearance* should be resolved in the district office and should not be forwarded to CUTS for a decision. If necessary, district staff may obtain assistance from CUTS by phone or email.

If the taxability cannot be determined at the time of the request (e.g. test period not yet expired or pending receipt of additional documentation), staff should encourage the taxpayer to pay the use tax. The use tax due may be paid either directly to the BOE to obtain a ~~Form~~ BOE–111/111–B, or to DMV to complete the registration process. However, ~~I~~if a claim for exemption ~~is~~will be pursued by the taxpayer at the end of the test period, ~~a request for refund of the tax can be made through the BOE~~the taxpayer should be informed to file a timely claim for refund on the payment. ~~Under RTC section 6902, t~~Taxpayers who pay the use tax have six months from the date of overpayment, or three years from the due date of the tax return (when use tax is paid with the tax return) in which to file a claim for refund.

If the transaction is taxable and payment is made in the district office, please refer to CPPM section 840.005, Voluntary Payments, for processing instructions.

District Responsibilities under 90-Day Presumption and 6-Month Principal Use Test:
District office staff must require the registrant to provide documentation that shows delivery/possession took place out of state (i.e., copy of purchase agreement, an out-of-state delivery statement, and any additional supporting documentation) and that the vehicle or vessel was first functionally used out of state to proceed with the claim. If the applicable test period has expired, it is the responsibility of the district to review the appropriate documentation and make the determination as to the taxability of the transaction before issuing a use tax clearance.

If the applicable test period has not yet expired, a copy of the BOE-111/111-B and the entire packet, clearly flagged "Test Period Not Yet Expired" should be forwarded to the CUTS with the district contact's name and phone number included. District office staff should continue to follow established procedures with regard to security and retention of the BOE-106, BOE-111/111-B, and supporting documentation.

District Responsibilities under 12-Month Test:
District office responsibilities for issuance of a use tax clearance under the 12-Month Test are generally the same as for purchases subject to the 90-Day Test, with one major exception: **Do not issue a BOE-111 for a "Test Period Not Yet Expired" request if:** (1) the claimant is a California resident, and (2) the vehicle has entered California within the first 12 months of ownership (unless it is a claim for the interstate and foreign commerce exemption, e.g., semi-trailer). If the vehicle or undocumented vessel has been brought into the state, the taxpayer should be advised the transaction is taxable and the use tax should be remitted to the DMV at the time of registration.

For claims of "Not Purchased for Use in California" under the 12-month test period, if the taxpayer is a California resident, the BOE-106 should include the taxpayer's statement that the vehicle/undocumented vessel will not enter California during the first 12 months of ownership. If the taxpayer is not a California resident, the request should include the reason the vehicle/undocumented vessel is being registered in California (since registration in California presumes the vehicle/undocumented vessel is for use in California and subject to the use tax) and a statement that the vehicle/undocumented vessel will not be used in California more than one-half of the time during the first 12 months of ownership. Exemption claims for vehicles/undocumented vessels "not purchased for use in California" by a taxpayer that is not a California resident, even if approved by the district office, should be forwarded to CUTS for referral to the appropriate state in which the vehicle was claimed for use.

If the BOE-111 is issued for a "Test Period Not Yet Expired" for a 12-month test period, the district office staff must provide to the taxpayer a BOE-111-AT (vehicle cover letter) or BOE-111-AT-B (undocumented vessel cover letter). These letters are available on eBOE and advise taxpayers that they will be required to provide documentation to support their claim for exclusion at the end of the 12-month test period. A copy of the BOE-111 and the entire packet, clearly flagged "Test Period Not Yet Expired" should be forwarded to CUTS with the district contact person's name and phone number included. District office staff should continue to follow established procedures with regard to security and retention of forms BOE-106 and BOE-111, and supporting documentation.

PREPARATION OF THE~~FORM~~ BOE–106, VEHICLE/VESSEL USE TAX CLEARANCE REQUEST~~INFORMATION~~ 825.025

When a request for a certificate of use tax exemption is received, a ~~Form~~ BOE–106, *Vehicle/ Vessel Use Tax Clearance Request*, should be prepared for each request. The front of the form is completed by the taxpayer. The back of the form is to be completed by staff and approved by a supervisor or designee.

The completed form should indicate that the documentation required to verify the exemption has been provided, and copies of the documentation should be attached to the request.

For "Test period Not Yet Expired" clearance requests, the designated checklist on the back of the BOE-106 must be completed. The issuance of this clearance is to allow registration at DMV, and does not grant an exemption or exclusion or relieve the taxpayer of any tax that may later be found due.

REFERRALS TO CUTS 825.030

Taxpayers should not be told to contact CUTS directly unless a CUTS account number (SA, SB, SP, or SI indicator) has been assigned. Districts should refer BOE–111 packets to CUTS under the following circumstances:

- ~~1.~~ A BOE–111 or BOE-111-B was issued for registration purposes, but tax was not collected because ~~taxpayer was adamant about qualifying for the 6-month principal use exemption~~the test period has not yet expired. CUTS will follow~~-~~ up at the end of the ~~6-month~~ test period to obtain documentation to support the claim. In these circumstances, the taxpayer must be provided with BOE-111-AT, *Certificate of Use Tax Clearance Cover Letter* or BOE-111-AT-B, *Certificate of Use Tax Clearance Cover Letter for Vessel,* along with the BOE-111 or BOE-111-B. ~~(See CPPM 820.005)~~
- ~~2.~~ Information from a request discloses a multiple transfer in which the prior owner did not register the vehicle or vessel after a prior sale (intervening owner). Copies of documentation on all parties involved should be forwarded to CUTS.
- ~~3.~~ A Certificate of Use Tax Clearance was issued pursuant to an installment payment agreement.

Referrals should include a complete copy of the BOE–111/111-B packet, along with a brief explanation and the district contact's name and phone number. The packet should also contain copies of any documentation submitted by the taxpayer.

EXEMPTIONS NOT REQUIRING A CERTIFICATE OF CLEARANCE 825.035

DMV may complete the transfer and registration of vehicles and undocumented vessels without payment of use tax or presentation of a ~~Form~~ BOE–111/111-B in certain circumstances, such as:

- ~~**1.**~~ **Family transfers**~~.~~ These types of registration transactions should not be forwarded by DMV to BOE. If the family transfer is between members that are not exempt (e.g., siblings over the age of 18), DMV will collect the tax.
- ~~**2.**~~ **Gift transactions**~~.~~ Gift transfers between individuals do not require an exemption form. The word "gift" entered on the back of the title or *Statement of Facts* (REG-256) is acceptable.
- **Deceased** – An *Affidavit for Transfer Without Probate* (REG-5) is used by DMV when the transfer is to the next of kin upon the owner's death.
- **Questionable bill of sale** – Regardless of the purchase amount stated on the bill of sale, DMV will accept these at face value and complete the registration. A partial safeguard is already in place that allows the seller to report the proper sales price.
- **Transfers to revocable trusts** – An exemption form is not required when the current registered owner transfers a vehicle/vessel into his/her own trust, regardless of whether there is a lienholder. A transfer out of a trust, as long as there is no consideration, will also not require an exemption form.
- **Tax paid to another state** – DMV policy is to give credit for tax paid to another state and complete the registration process.

- **3. Special taxing jurisdictions.** In cases where a zip code may be both within and outside of a special taxing jurisdiction, DMV has been authorized to accept a statement of facts that the address of the registrant is outside of the jurisdiction's boundaries.

Each claim for exemption should be well documented, with the understanding that~~although~~ the evidence submitted to substantiate a claim may~~might~~ vary. Please refer to CPPM section 820.000 for specific information on exemptions.

If DMV is unsure of the taxability of the transaction, that agency will refer the applicant to the local BOE office to request a Certificate of Use Tax Clearance. There will also be times when a customer comes directly to the BOE, or is erroneously referred to a BOE office by DMV staff. In providing good customer service, staff will not send the customer back to DMV; a clearance should be issued if the transaction is exempt. If there is a consistent pattern of misdirected customers, staff should provide the customer and vehicle information to CUTS staff who will contact the DMV field office.

PREPARATION OF ~~FORM~~THE BOE–111 OR ~~FORM~~ BOE–111–B 825.040

~~Forms~~ The BOE–111 and BOE–111–B are press-numbered for control purposes. Voided forms will be retained for three years. The forms should be maintained and accessible only to the Receipts Custodian and the District Administrator or CUTS Supervisor.

The use tax clearance certificate is prepared only in original and is delivered to the person requesting the clearance. The certificate is to be typewritten. If an error is made, a new form must be prepared. Any alteration or erasure voids the certificate.

The Certificate of Use Tax Clearance is completed to show the following:

1. Name of the applicant as it will appear on the vehicle/vessel, mobilehome or commercial coach registration records.
2. Make/year and model of the vehicle or vessel.
3. License/decal or CF number.
4. Vehicle/hull identification number or serial number.
5. Date of issuance.
6. Issuing office.

~~Forms~~The BOE–111 and BOE–111–B are issued by ~~the district, branch~~field office staff or staff in CUTS ~~by an employee~~ authorized by the District Administrator or CUTS ~~s~~Supervisor. A list of employees authorized to sign and issue certificates must be maintained in each office. The person who approves the ~~Form~~ BOE–106 is also authorized to sign the ~~Form~~ BOE–111. However, if an authorized person prepares and approves the ~~Form~~ BOE–106, a different authorized person must sign the ~~Form~~ BOE–111. Rubber stamp signatures will not be used.

A single BOE–111/111–B may be issued for bulk transfers. The following should be noted on the BOE–111/111–B (under year model and VIN areas): "See Attached Schedule" and attach the schedule to the BOE–111/111–B.

After the ~~Form~~ BOE–111/111–B is issued, the press-number of the form and the name of the employee who signs the form are entered on the respective lines of the ~~Form~~ BOE–106.

In those situations where the use tax is collected when the ~~Form~~ BOE–111 or BOE–111–B is issued, the certificate press-number should be entered on the tax return below the name and address of the taxpayer.