



**BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: APRIL 28, 2015, TIME: 10:00 A.M.

Action Items & Status Report Items

Agenda Item No: 1

Title: Proposed revisions to Regulation 1505, *Morticians*

Issue:

Whether the Board should amend Regulation 1505, *Morticians*, to update the title, general information, tax rates, examples, and add new definitions for clarity.

Committee Discussion:

Staff introduced the issue. Staff answered Chairman Horton's question regarding treatment of tangible personal property sold or consumed by funeral directors.

Committee Action/Recommendation/Direction:

Upon motion by Chairman Horton, seconded by Ms. Ma, the Committee approved and authorized for publication the proposed regulatory amendments. There is no operative date, and implementation will take place after approval by the Office of Administrative Law. A copy of the proposed amendments to Regulation 1505 is attached.

Honorable Diane L. Harkey, Committee Chair

Cynthia Bridges, Executive Director

BOARD APPROVED

at the April 29, 2015 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

REGULATION 1505, MORTICIANS FUNERAL DIRECTORS

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

(a) DEFINITIONS.

(1) FUNERAL DIRECTOR. Any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.

(2) BURIAL. Means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.

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

(#b) IN GENERAL.

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

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

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

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

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Funeral director's invoice to client:

Maple Casket (t)	2,895.00
Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)	250.00
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>
 Traditional Chapel Burial Package	 \$4,945.00
<u>Fees for Cash Advance items:</u>	
County filing fee	12.00
Certified copy of Death Certificate	21.00
Organist	225.00
<u>Total Fees</u>	<u>\$258.00</u>
<u>Total Nontaxable</u>	<u>\$5,203.00</u>
<u>Total Taxable</u>	<u>\$3,145.00</u>
<u>Sales Tax (\$3,145.00) x 8.25%</u>	<u>259.46</u>
<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

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

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

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

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

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

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services. None are to be allocated to accommodation cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a ~~mortician~~funeral director has made a specific charge.

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

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

~~Mortician's invoice to client:~~

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

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Example 1. Funeral allowance only.

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

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

Computation of Tax:

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

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

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

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

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

Computation of Tax:

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

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

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

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

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

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

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