

# Memorandum

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

**Date:** May 7, 2015

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



**Subject** : **Board Meeting May 27 - 28, 2015**  
**Item N: Administrative Agenda**  
**Proposed Revision to Audit Manual, Chapter 10,**  
***Occasional Sales – Sale of a Business***

I am requesting approval to forward the attached revision to Audit Manual (AM) Chapter 10, *Occasional Sales – Sale of a Business*, to the Board Proceedings Division to be placed as a consent item on the Administrative Agenda at the May 2015 meeting.

The proposed revision adds new section 1004.50, *Contingent Sales Price*, to the AM. The new section incorporates current audit policies and management guidelines.

The revision has been reviewed and approved by SUTD management, provided to Board Members, and posted on the Board’s website at <http://www.boe.ca.gov/sutax/pmr.htm> to solicit comments from interested parties. No comments were received from Board Members or other interested parties.

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

JLM:ljm

Attachment

Approved:

  
Ms. Cynthia Bridges  
Executive Director

**STATE BOARD OF EQUALIZATION**

BOARD APPROVED



At the May 27, 2015 Board Meeting

Joann Richmond  
Joann Richmond, Chief  
Board Proceedings Division

cc: (all with attachment)  
Mr. David Gau (MIC 101)  
Mr. Wayne Mashihara (MIC 46)  
Ms. Susanne Buehler (MIC 92)  
Ms. Lynn Bartolo (MIC 57)  
Mr. Richard Parrott (MIC 88)  
Mr. Kevin Hanks (MIC 49)  
Mr. John Thiella (MIC 73)  
Mr. Marc Alviso (MIC 101)  
Mr. Chris Lee (MIC 101)  
Mr. Gary Lambert (MIC 43)

Some sales of a business that include the sale of tangible personal property contain a contingent sales price. A sales price is subject to a “contingency” if there is some uncertainty as to the sales price, which will ultimately be resolved when one or more future events occur or fail to occur.

*For example:* The parties may agree to a contingent sales price for machinery by agreeing to a specific sales price for the machinery and also agreeing that the purchaser will pay a higher sales price if the machinery is able to exceed certain predetermined production levels over a specified period of time.

When there is a sale of a business that includes the sale of tangible personal property and the transaction contains a contingent sales price, the following guidelines should be used to determine the proper measure of tax, the period in which the sale should be reported, and whether the taxpayer will need to subsequently file an amended return or claim for refund.

### **Specific Price Agreed To**

When the parties to a transaction have agreed to a specific price for the tangible personal property included in the taxable sale of a business, then that price should be used to determine the taxable measure to be reported for the period in which the sale occurs. In addition, when the parties have agreed to a contingent sales price for the sale of a business, but have also agreed to a specific price for the sale of taxable tangible personal property included in the sale, any subsequent adjustment to the total sales price of the business will **not** affect the specific sales price of the taxable tangible personal property, unless the adjustment actually relates to the value of the taxable tangible personal property.

### **No Specific Price Agreed To**

In instances where there is a bulk sale of a business and the parties have not agreed to a specific price for the taxable tangible personal property, the parties have implicitly agreed to buy and sell the taxable tangible personal property at its current value, regardless of whether the total selling price for the business is fixed at the time of sale or is subject to a contingency. Therefore, when the parties agree to the sale of a business for a contingent sales price, but do not agree to a specific price for the taxable tangible personal property included in the sale, the taxable measure should be determined by following the procedures set forth in AM section 1004.25 for determining the sales price of tangible personal property included in a bulk sale.

To determine the sales price of taxable tangible personal property staff should look to one of four indicia of value:

- 1) Book value,
- 2) Appraised value for property tax purposes,
- 3) Value determined by an independent appraisal, and
- 4) Taxpayer’s estimate.

Staff should then use at least one of the remaining three indicia to verify the accuracy of the value indicated by the first indicia. As a result, the value of the tangible personal property—and thus the measure of tax— will generally be equal to the book value of such property. The taxable measure from the bulk sale should be reported on the return for the period in which the sale occurred because the value of tangible personal property can be determined by reference to its book value at the time of the sale, and there should not be a need to subsequently file an amended return or claim for refund.