



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco

BILL LEONARD  
Second District, Ontario/Sacramento

MICHELLE STEEL  
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

**March 13, 2009**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulation 1668, *Sales for Resale***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposed regulatory changes to Sales and Use Tax Regulation 1668, *Sales for Resale*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Wednesday May 27, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by Wednesday, May 27, 2009.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

CURRENT LAW: Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If

each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase “for resale” and may include comparable terminology, such as “resale = yes,” “nontaxable,” “taxable = no,” or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale.

The proposed revisions will prevent confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale”. Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser’s ability to claim, later, that the purchase was not intended as a purchase for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

Board staff met with interested parties on November 25, 2008, to discuss the proposed revisions to the regulation and, incorporated revisions suggested by the interested parties into the proposed regulations. On February 3, 2009, the Business Taxes Committee of the State Board of Equalization voted to approve and authorize for publication the proposed regulatory amendments.

## **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

## **EFFECT ON BUSINESS**

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

## **COST IMPACT ON PRIVATE PERSON OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## **SIGNIFICANT EFFECT ON HOUSING COSTS**

No significant effect.

## **FEDERAL REGULATIONS**

Proposed Regulation 1668 Sales *for Resale*, has no comparable federal regulations.

## **AUTHORITY**

Sections 6596 and 7051 Revenue and Taxation Code.

## **REFERENCE**

Sections 6091 and 6241 Revenue and Taxation Code

## **CONTACT**

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130,

fax (916) 324-3984 , e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

### **ALTERNATIVES CONSIDERED**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

### **ADDITIONAL COMMENTS**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

**Initial Statement of Reasons  
Overview/Non-Controlling Summary**

**PROPOSED REGULATION 1668, SALES FOR RESALE**

Regulation 1668 is proposed to be revised to clarify the documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale.

**Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. This regulation is necessary to provide guidance to taxpayers affected by this statute.

**Factual Basis**

Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the purchaser is responsible for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

This issue was referred to the Board's Business Taxes Committee (BTC) to clarify whether a sale for resale is valid when the instructions on the resale certificate state "see purchase order" and the purchase order identifies the property is being purchased for resale by using terminology such as "not taxable" or "taxable: no" as opposed to "for resale." If valid and accepted in good faith, the seller accepting the purchase order combined with a qualified resale certificate will be

relieved from the liability for tax if the transaction is later found to be taxable and the liability to pay the tax will rest with the purchaser. In July 2008, Board staff was instructed by memo that the provisions of subdivision (b)(4) of Regulation 1668 require that a purchase order issued in support of a qualified resale certificate is valid and relieves the seller from the liability for tax only if the purchase order includes the phrase "for resale." In response to such interpretation, a number of taxpayer representatives and consultants (hereafter referred to as "interested parties") objected to this policy and questioned whether Board staff consistently followed such interpretation in the past. Interested parties organized meetings with representatives from the Board's Sales and Use Tax Department and Board Members' offices to discuss this issue. As a result, the BTC Chair referred this matter to the BTC for analysis and recommendation. Staff met with interested parties on November 25, 2008, to discuss proposed revisions to the regulation and agreed to incorporate additional revisions suggested by the interested parties to bring consensus to the proposal.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

**Regulation 1668. SALES FOR RESALE.**

References: Sections 6012.8, 6012.9, 6072, 6091–6095, 6241–6245, 6484, 6485, and 7153, Revenue and Taxation Code.

**(a) RESALE CERTIFICATE.**

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

**(b) FORM OF CERTIFICATE.**

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate: If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) Qualified Resale Certificate: If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. ~~or whether tax applies to the order.~~ The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase

\*\*\*\*\*

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

order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ assumed that the property covered by that purchase order was ~~not~~ purchased for use, and not for resale and that the sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials ~~produced parts~~ for resale and also for tooling used to ~~produce the parts~~ process the raw materials should specify that the raw materials parts are purchased for resale and that the sale of the tooling is subject to tax.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

**(c) GOOD FAITH.** In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

**(d) IMPROPER USE OF CERTIFICATE.** Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

**(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY.** A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

\*\*\*\*\*

**(f) USE OF XYZ LETTERS.** A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

**(A)** Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

**(B)** Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

**(C)** Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

**(D)** Purchased for resale but consumed or used (whether or not subsequently resold); or

**(E)** Purchased for use.

**(F)** When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

**(g) PURCHASER'S LIABILITY FOR TAX.** A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who

\*\*\*\*\*

thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

**(h) MOBILEHOMES.** A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

**(i) MOBILE TRANSPORTATION EQUIPMENT.** Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

\*\*\*\*\*



**APPENDIX B**  
**California Resale Certificate**  
**for the Auto Body Repair and Painting Industry**

**I HEREBY CERTIFY:**

1. I hold valid California seller's permit number: \_\_\_\_\_.
2. I am engaged in the business of selling the following type of property: \_\_\_\_\_.
3. This certificate is for the purchase from \_\_\_\_\_ of the item(s) I have *initialed* in paragraph 5 below.  

[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (**not** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			

6. I have read and understand the following:  
**Note:** Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may not be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

- |                  |                        |                     |                   |
|------------------|------------------------|---------------------|-------------------|
| Abrasives        | Equipment repair parts | Masks               | Reducers          |
| Books            | Goggles                | Metal conditioners  | Respirators       |
| Cans             | Hand cleaners          | Paint remover       | Rubbing compounds |
| Cleaning solvent | Manuals                | Plastic bottles     | Rubbing machines  |
| Color charts     | Masking paper          | Polishing compounds | Thinners          |
| Equipment        | Masking tape           | Polishing machines  | Touch-up bottles  |

7. I have read and understand the following:  
**For Your Information:** A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

\*\*\*\*\*

## Regulation History

**Type of Regulation:** Sales and Use Tax

**Regulation:** 1668

**Title:** 1668, Sales for Resale

**Preparation:** Cecilia Watkins

**Legal Contact:** Robert Tucker

Clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase “for resale” and may include comparable terminology such as “not taxable.” The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller’s sale for resale transaction.

### History of Proposed Regulation:

March 13, 2009 OAL publication date; 45-day public comment period begins; IP mailing  
March 3, 2009 Notice to OAL  
February 3, 2009 BTC, Board Authorized Publication (Vote 5-0)  
February 3, 2009 Business Taxes Committee  
November 25, 2008 First Interested Parties (IP) meeting

Sponsor: NA

Support: NA

Oppose: NA