

# Memorandum

To: Honorable John Chiang, Chair  
Honorable Claude Parrish, Vice Chairman  
Ms. Betty T. Yee, Acting Member, First District  
Honorable Bill Leonard, Member, Second District  
Honorable Steve Westly, State Controller  
c/o Ms. Marcy Jo Mandel (MIC 73)

Date: December 6, 2005

From: Kristine Cazadd *K. Cazadd*  
Chief Counsel

Subject: **Board Meeting, December 13, 2005 – Public Hearing**  
**Items F1-F2 Regulation 1699, *Permits*, and Regulation 1802,**  
***Place of Sale and Use for Purposes of Bradley-Burns Uniform***  
***Local Sales and Use Taxes (Revised Staff Recommendation)***

This memorandum sets forth the revised staff recommendation regarding the proposed amendments to Regulation 1699, *Permits*, that the Board authorized for publication at the August 31, 2005, Board meeting. The staff recommends that the Board-authorized language amending Regulation 1699 be adopted with the three non-substantive changes described below, and that the Board-authorized language amending Regulation 1802 be adopted without change. Interested parties MBIA, Al Koch, and Robert Cendejas agree with the staff's recommendation.

The proposed changes to the Board-authorized language for Regulation 1699 were developed because subsequent to the approval for publication of the proposed amendments to Regulations 1802, *Place of Sale and Use for Purposes of Bradley Burns Uniform Local Sales and Use Taxes*, and 1699, *Permits*, at the August 31, 2005 Board meeting, staff found that the Board-authorized language appeared to contradict the language of the existing previous paragraph of Regulation 1699 that was not modified in the language authorized for publication. To remedy this potential lack of consistency, staff prepared alternative language and provided it to Board at the November 15, 2005 public hearing. At the public hearing, interested parties suggested modifications to both the Board-authorized language and the staff's alternative language. Also, interested parties suggested a change to other existing language in Regulation 1699. Therefore, in order to provide additional time to the Board Members and interested parties, the Board Members continued the public hearing for both Regulations to the December 13, 2005 Board meeting.

The second full paragraph of Regulation 1699, subdivision (a), which was not proposed to be amended, states that:

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making

purchases and which are maintained in conjunction with a place of business for which a permit is held, but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale.

The following new language, to be inserted as the third full paragraph of subdivision (a) of Regulation 1699, was authorized for publication on August 31, 2005:

Permits are required for warehouses or other places at which merchandise is stored and which customers do not customarily visit for the purpose of making purchases and from which retail sales of such merchandise negotiated out of state are delivered or fulfilled.

If the authorized language is adopted without change, the regulation would appear to impose contradictory requirements on warehouses from which sales negotiated out of state are delivered and fulfilled. The Office of Administrative Law (OAL) would likely conclude that the proposed regulatory change on the grounds that it fails to meet the criterion of consistency contained in the Administrative Procedure Act. (Govt. Code, § 11349(d)). Thus, the Office of Administrative Law would likely not approve the current language. (Govt. Code, § 11349.1(a).)

Staff Recommendation. Staff and interested parties agree on three changes that are shown in Exhibit 1.

The first is a non-substantive change in the existing language of subdivision (a) of Regulation 1699. This change was suggested by interested parties at the public hearing. It would conform the language of the first example of subdivision (a) to existing administrative practice by replacing the word “and” with the word “or,” as follows:

For example:

A permit is required for a branch sales office at which orders are customarily taken ~~and~~ or contracts negotiated, whether or not merchandise is stocked there.

The second and third are non-substantive changes to the Board-authorized language added to subdivision (a). The second change would remedy the potential lack of consistency between the existing second paragraph of subdivision (a) and the Board-authorized language by deleting the spacing between the paragraphs and adding the word “However” to the beginning of the Board-authorized language. The third change would more accurately reflect the intended changes by deleting a phrase that was carried over from the previous sentence. The recommended changes to the Board-authorized language are as follows:

*[Existing language]* No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held, but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale. *[Begin Board-authorized language with recommended changes]* However, ~~p~~Permits are required for warehouses or other places at which merchandise is stored ~~and which customers do not customarily visit~~

~~for the purpose of making purchases~~ and from which retail sales of such merchandise negotiated out of state are delivered or fulfilled.

No changes are being recommended to the language of Regulation 1802 that was authorized for publication (see Exhibit 2).

Because they are non-substantive in nature, if the staff-recommended changes are adopted by the Board, the rulemaking file may be sent to OAL without delay. Please feel free to contact Senior Tax Counsel Carole Ruwart at (916) 322-3682 or me at (916) 445-4380 if you have any questions or concerns.

KC:cr

Attachments

cc: Mr. Chris Schutz, Board Member's Office, Fourth District (MIC 72)  
Mr. Neil Shah, Board Member's Office, Third District  
Ms. Sylvia Tang, Board Member's Office, First District (MIC 71)  
Mr. Steven Kamp (MIC 71)  
Mr. Lee Williams, Board Member's Office, Second District (MIC 78)  
Ms. Marcy Jo Mandel (MIC 73)  
Mr. Ramon J. Hirsig (MIC 73)  
Ms. Randie L. Henry (43)  
Ms. Deborah Pellegrini (MIC 81)  
Ms. Diane Olson (MIC 80)  
Mr. Randy Ferris (MIC 82)  
Mr. Jeffrey L. McGuire (MIC 92)  
Mr. Geoffrey E. Lyle, (MIC 50)  
Ms. Leila Khabbaz, (MIC 50)  
Ms. Cecilia A. Watkins (MIC50)  
Ms. Lisa Andrews, (MIC 50)

**Note:** *The Board-authorized language (“Permits are required...are delivered or fulfilled.”) and additional recommended changes are shown in underlines and strikeouts. The three proposed changes (in the first example, changing “and” to “or,” the addition of the word “However” to the Board-authorized language, and the deleting of the words “ and which customers do not customarily visit for the purpose of making purchases” to the Board-authorized language) are agreed to by staff and interested parties.*

## Regulation 1699. PERMITS

References: Sections 6066-6075, Revenue and Taxation Code.

**(a) IN GENERAL – NUMBER OF PERMITS REQUIRED.** Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A permit is required for a branch sales office at which orders are customarily taken ~~and~~ or contracts negotiated, whether or not merchandise is stocked there.

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale. However, pPermits are required for warehouses or other places at which merchandise is stored and which customers do not customarily visit for the purpose of making purchases and from which retail sales of such merchandise negotiated out of state are delivered or fulfilled.

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one permit for both activities.

**(b) PERSONS SELLING IN INTERSTATE COMMERCE OR TO UNITED STATES GOVERNMENT.** A permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

**(c) PERSONS SELLING FEED.** Effective April 1, 1996, a permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

If a seller of hay is also the grower of the hay, this exemption shall apply only if either:

1. The hay is produced for sale only to beef cattle feedlots or dairies, or
2. The hay is sold exclusively through a farmer-owned cooperative.

**(d) CONCESSIONAIRES.** For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer’s own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is *not* operating as a concessionaire are that he or she:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer’s

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premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.

- Maintains separate business records, particularly with respect to sales.
- Establishes his or her own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

- The permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location)
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Appendix A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owed by the lessee or grantee.

**(e) AGENTS.** If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.

**(f) INACTIVE PERMITS.** A permit shall be held only by persons actively engaging in or conducting a business as a seller of tangible personal property. Any person not so engaged shall forthwith surrender his or her permit to the Board for cancellation. The Board may revoke the permit of a person found to be not actively engaged in or conducting a business as a seller of tangible personal property.

Upon discontinuing or transferring a business, a permit holder shall promptly notify the Board and deliver his or her permit to the Board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:

- (1) Oral or written statement to a Board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered

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to the Board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.

(2) Receipt of the transferee or business successor's application for a seller's permit may serve to put the Board on notice of the transferor's cessation of business.

Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the Board.

Unless the permit holder who transfers the business notifies the Board of the transfer, or delivers the permit to the Board for cancellation, he or she will be liable for taxes, interest and penalties (excluding penalties for fraud or intent to evade the tax) incurred by his or her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way; e.g., by displaying the permit in transferee's place of business, issuing any resale certificates showing the number of the permit thereon, or filing returns in the name of the permit holder or his or her business name and under his or her permit number. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor, the liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.

Stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity shall be regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.

**(g) DUE DATE OF RETURNS - CLOSEOUT OF ACCOUNT ON YEARLY REPORTING BASIS.** Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

**(h) BUYING COMPANIES - GENERAL.**

(1) DEFINITION. For the purpose of this regulation, a buying company is a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. It is presumed that the buying company is formed for the operational reasons of the entity which owns or controls it or to which it is otherwise related. A buying company formed, however, for the sole purpose of purchasing tangible personal property ex-tax for resale to the entity which owns or controls it or to which it is otherwise related in order to re-direct local sales tax from the location(s) of the vendor(s) to the location of the buying company shall not be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall not be issued a seller's permit. Sales of tangible personal property to third parties will be regarded as having been made by the entity owning, controlling, or otherwise related to the buying company. A buying company that is not formed for the sole purpose of so re-directing local sales tax shall be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases.

(2) ELEMENTS. A buying company is not formed for the sole purpose of re-directing local sales tax if it has one or more of the following elements:

(A) Adds a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses.

(B) Issues an invoice or otherwise accounts for the transaction.

The absence of any of these elements is not indicative of a sole purpose to redirect local sales tax.

**(i) WEB SITES.** The location of a computer server on which a web site resides may not be issued a seller's permit for sales tax purposes except when the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit under this regulation.

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**Regulation 1802. PLACE OF SALE AND USE FOR PURPOSES OF BRADLEY BURNS UNIFORM LOCAL SALES AND USE TAXES.**

References: Sections 6012.6, 6015, 6359, 6359.45, 7202, 7203.1, 7204.03 and 7205, Revenue and Taxation Code.

**(a) IN GENERAL.**

(1) RETAILERS HAVING ONE PLACE OF BUSINESS. For the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law, if a retailer has only one place of business in this state, all California retail sales of that retailer in which that place of business participates occur at that place of business unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination.

(2) RETAILERS HAVING MORE THAN ONE PLACE OF BUSINESS.

(A) If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business.

(B) If a retailer has more than one place of business in this state which participate in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.

(3) PLACE OF PASSAGE OF TITLE IMMATERIAL. If title to the tangible personal property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

**(b) PLACE OF SALE IN SPECIFIC INSTANCES.**

(1) VENDING MACHINE OPERATORS. The place of sale is the place at which the vending machine is located. If an operator purchases property under a resale certificate or from an out-of-state seller without payment of tax and the operator is the consumer of the property, for purposes of the use tax, the use occurs at the place where the vending machine is located.

(2) ITINERANT MERCHANTS. The place of sale with respect to sales made by sellers who have no permanent place of business and who sell from door to door for their own account shall be deemed to be in the county in which is located the seller's permanent address as shown on the seller's permit issued to him or her. If this address is in a county imposing sales and use taxes, sales tax applies with respect to all sales unless otherwise exempt. If this address is not in a county imposing sales and use taxes, he or she must collect the use tax with respect to property sold and delivered or shipped to customers located in a county imposing sales and use taxes.

(3) RETAILERS UNDER SECTION 6015. Persons regarded by the Board as retailers under Section 6015(b) of the Revenue and Taxation Code are regarded as selling tangible personal property through salespersons, representatives, peddlers, canvassers or agents who operate under or obtain the property from them. The place of sale shall be deemed to be:

(A) the business location of the retailer if the retailer has only one place of business in this state, exclusive of any door-to-door solicitations of orders, or

(B) the business location of the retailer where the principal negotiations are carried on, exclusive of any door-to-door solicitations of orders, if more than one instate place of business of the retailer participates in the sale.

The amendments to paragraph (b)(3) apply only to transactions entered into on or after July 1, 1990.

(4) AUCTIONEERS. The place of sale by an auctioneer is the place at which the auction is held. Operative July 1, 1996, auctioneers shall report local sales tax revenue to the participating jurisdiction (as defined in subdivision (e~~d~~) below) in which the sales take place, with respect to auction events which result in taxable sales in an aggregate amount of \$500,000 or more.

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~~(5) OUT-OF-STATE RETAILERS WHO MAINTAIN A STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA. Operative October 1, 1993, if an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.~~

(5)(6) FACTORY-BUILT SCHOOL BUILDINGS. The place of sale or purchase of a factory-built school building (relocatable classroom) as defined in paragraph (c)(4)(B) of Regulation 1521 (18 CCR 1521), Construction Contractors, is the place of business of the retailer of the factory-built school building regardless of whether sale of the building includes installation or whether the building is placed upon a permanent foundation.

(6)(7) JET FUEL.

(A) In General. The place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft, if both of the following conditions are met:

- 1. The principal negotiations for the sale are conducted at the retailer's place of business in this state;
- and
- 2. The retailer has more than one place of business in the state.

(B) The local sales or use tax revenue derived from the sale or purchase of jet fuel under the conditions set forth in this subdivision shall be transmitted by the Board, to the city, county, or city and county where the airport is located at which such delivery occurs.

(C) Multi-Jurisdictional Airports. For the purposes of this regulation, the term "multi-jurisdictional airport" means and includes an airport that is owned or operated by a city, county, or city and county, that has enacted a state-administered local sales and use tax ordinance and as to which the owning or operating city, county, or city and county is different from the city, county, or city and county in which the airport is located. Through June 30, 2004, the local tax rate is imposed at 1.25% by Revenue and Taxation Code section 7202 (a). Operative July 1, 2004, the local tax rate is imposed at 1% by Revenue and Taxation Code section 7203.1 The local tax revenue derived from sales of jet fuel at a "multi-jurisdictional airport" shall, notwithstanding subdivision (B), be transmitted by the Board as follows:

1. In the case of the 0.25% local sales tax imposed by counties under Government Code section 29530 and Revenue and Taxation Code section 7202(a), or operative July 1, 2004, imposed by counties under Revenue and Taxation Code section 7203.1(a)(1), half of the revenue to the county which owns or operates the airport (or in which the city which owns or operates the airport is located) and half to the county in which the airport is located.

2. In the case of the remaining 1% of the local sales tax imposed by counties under Revenue and Taxation Code section 7202(a), or operative July 1, 2004, the remaining 0.75%, imposed by counties under Revenue and Taxation Code section 7203.1(a)(2), and in the case of the local sales tax imposed by cities at a rate of up to 1%, or operative July 1, 2004, at a rate of up to 0.75% under Revenue and Taxation Code section 7203.1(a)(2), and offset against the local sales tax of the county in which the city is located under Revenue and Taxation Code section 7202(h), half of the revenue to the city which owns or operates the airport and half to the city in which the airport is located. If the airport is either owned or operated by a county or is located in the unincorporated area of a county, or is owned or operated by a county and is located in the unincorporated area of a different county, the local sales tax revenue which would have been transmitted to a city under this subdivision shall be transmitted to the corresponding county.

3. Notwithstanding the rules specified in subdivisions 1. and 2., the following special rules apply:

a. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft, as described in subdivision (A), is San Francisco International Airport, the Board shall transmit one-half of the

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local sales tax revenues derived from such sales to the City and County of San Francisco, and the other half to the County of San Mateo.

b. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft, as described in subdivision (A), is Ontario International Airport, the Board shall transmit local sales taxes with respect to those sales in accordance with both of the following:

c. All of the revenues that are derived from a local sales tax imposed by the City of Ontario shall be transmitted to that city.

d. All of the revenues that are derived from a local sales tax imposed by the County of San Bernardino shall be allocated to that county.

(D) Otherwise, as provided elsewhere in this regulation.

**(c) TRANSACTIONS NEGOTIATED OUT OF STATE AND DELIVERED FROM THE RETAILER'S STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA**

(1) If an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.

(2) If a retailer has a permanent place of business in this state in addition to its stocks of tangible personal property, the place of sale, in cases where the sale is negotiated out of state and there is no participation by the retailer's permanent place of business in this state, is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to the city, county, or city and county from which delivery or shipment is made.

**(d)(e) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.**

Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term "participating jurisdiction" means any city, city and county, or county which has entered into a contract with the Board for administration of that entity's local sales and use tax.

**APPLICATION OF USE TAX GENERALLY.**

(1) When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made. Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684), the seller shall report the local use tax revenues derived therefrom directly to such participating jurisdiction.

(2) Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.

The amendments to paragraph (b)(4) and new paragraph (d)(e) shall apply prospectively only to transactions entered into on or after July 1, 1996. ~~New p~~Paragraph (d)(e) shall not apply to lease transactions.

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