



**BOARD OF EQUALIZATION**

**BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: JULY 26, 2011, TIME: 10:00 A.M.

**ACTION ITEMS & STATUS REPORT ITEMS**

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**Agenda Item No: 1**

**Title: Proposed amendments to Regulation 1616, *Federal Areas*, regarding  
Sales to Governments of Officially Recognized Indian Tribes**

**Issue/Topic:**

Request approval and authorization to publish proposed amendments to Regulation 1616 to provide a limited exemption from tax for sales to and purchases by the tribal governments of officially recognized Indian tribes of tangible personal property for use in tribal self-governance under specified circumstances.

**Committee Discussion:**

Staff presented the proposed amendments to Regulation 1616. Interested parties addressed the Board thanking them for working with tribal governments to understand their concerns and address this important issue. Ms. Yee indicated the necessity to establish a tribal advisory council to facilitate working with tribal governments, and expressed her intent to bring back to the Board a recommendation to establish such council in the future.

**Committee Action/Recommendation/Direction:**

Upon motion by Mr. Horton, seconded by Ms. Mandel, the Committee unanimously approved and authorized for publication Alternative 1 – Staff Recommendation. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed revisions to Regulation 1616 is attached.

**Agenda Item No: 2****Title: Amending Regulation 1684, *Collection of Use Tax by Retailers*****Issue:**

Whether the Board should initiate an interested parties process to discuss amending Sales and Use Tax Regulation 1684, *Collection of Use Tax by Retailers*, to implement, interpret, and make specific the amendments made to Revenue and Taxation Code section 6203 by ABx1 28 (Stats. 2011, ch. 7), which changed the definition of “retailer engaged in business in this state.”

**Committee Discussion:**

Staff presented the issue explaining the need to initiate discussions with interested parties regarding the regulatory clarification and interpretation of the various provisions of the statute. Staff also provided general overview of the implementation for ABx1 28, and a possible timeline for the interested parties process. A speaker addressed the Board, noting the impact the legislation had on affiliate programs and expressed the need for expediting clarification with respect to distinguishing between advertising agreements and the affiliate agreements that would establish nexus for out-of-state retailers.

Staff answered Board members questions concerning the impact of the referendum on implementation, the interested parties process, and the effective date of the legislation. Mr. Runner expressed concern with moving forward with the interested parties process when there is uncertainty in regard to the referendum and the effective date of the legislation. Ms. Yee stated the Board has an obligation to enforce existing law until such time the law is suspended. Mr. Horton indicated it is best to be prepared and requested staff begin discussions with interested parties to understand the issues and to identify areas of the law that need clarification.

Staff was directed to request a formal opinion from the Attorney General with respect to the impact of the referendum on the effective date of the legislation.

Agenda Item No: 2 (Continued)

**Committee Action:**

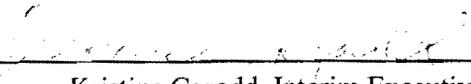
Upon motion by Ms. Mandel, seconded by Mr. Horton, the Committee referred the matter to the interested parties process.

The vote was as follows:

<b>MEMBER</b>	Horton	Steel	Yee	Runner	Mandel
<b>VOTE</b>	Yes	No	Yes	No	Yes



Honorable Betty T. Yee, Committee Chair



Kristine Cazadd, Interim Executive Director

BOARD APPROVED

at the 7/27/2011 Board Meeting



Diane Olson, Chief  
Board Proceedings Division

## Proposed Amendments Regulation 1616, *Federal Areas*

### Regulation 1616. FEDERAL AREAS.

*Reference:* Sections 6017, 6021, Revenue and Taxation Code.  
Public Law No. 817-76<sup>th</sup> Congress (Buck Act).  
Vending machine sales generally, see Regulation 1574  
Items Dispensed for 10c or less, see Regulation 1574  
Additional reference: Section 6352, Revenue and Taxation Code.

**(a) IN GENERAL.** Tax applies to the sale or use of tangible personal property upon Federal areas to the same extent that it applies with respect to sale or use elsewhere within this state.

**(b) ALCOHOLIC BEVERAGES.** Manufacturers, wholesalers and rectifiers who deliver or cause to be delivered alcoholic beverages to persons on Federal reservations, shall pay the state retailer sales tax on the selling price of such alcoholic beverages so delivered, except when such deliveries are made to persons or organizations which are instrumentalities of the Federal Government or persons or organizations which purchase for resale.

Sales to officers' and non-commissioned officers' clubs and messes may be made without sales tax when the purchasing organizations have been authorized, under appropriate regulations and control instructions, duly prescribed and issued, to sell alcoholic beverages to authorized purchasers.<sup>1</sup>

**(c) SALES THROUGH VENDING MACHINES.** Sales through vending machines located on Army, Navy, or Air Force installations are taxable unless the sales are made by operators who lease the machines to exchanges of the Army, Air Force, Navy, or Marine Corps, or other instrumentalities of the United States, including Post Restaurants and Navy Civilian Cafeteria Associations, which acquire title to and sell the merchandise through the machines to authorized purchasers.

For the exemption to apply, the contracts between the operators and the United States instrumentalities and the conduct of the parties must make it clear that the instrumentalities acquire title to the merchandise and sell it through machines leased from the operators to authorized purchasers.

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<sup>1</sup>The following is a summary of the pertinent regulations which have been issued:

**(a) GENERAL.** Air Force Regulation 34-57, issued under date of February 9, 1968, Army Regulation 210-65, issued under date of May 4, 1966, and Navy General Order No. 15, issued under date of May 5, 1965, authorize the sale and possession of alcoholic beverages at bases and installations subject to certain enumerated restrictions.

**(b) AIR FORCE.** Air Force Regulation 34-57, Paragraph 5, permits commissioned officers' and noncommissioned officers' open messes, subject to regulations established by commanders of major air commands to sell alcoholic beverages to authorized purchasers at bars and cocktail lounges, and provides that commanders will issue detailed control instructions. Paragraph 8 and 9 require commanders of major air commands to issue regulations relative to package liquor sales and to procurement of alcoholic beverages, respectively.

**(c) ARMY.** Army Regulation 210-65, Paragraph 9, provides that major commanders are authorized to permit at installations or activities within their respective commands the dispensing of alcoholic beverages by the drink or bottle. Paragraph 11 of AR 210-65 provides that when authorized by major commanders as prescribed in Paragraph 9, AR 210-65, officers' and non-commissioned officers' open messes may, subject to regulations prescribed by the commanding officer of the installation or activity concerned, dispense alcoholic beverages by the drink, and operate a package store.

**(d) NAVY.** Navy General Order No. 15 provides that commanding officers may permit, subject to detailed alcoholic beverage control instructions, the sales of packaged alcoholic beverages by officers' and noncommissioned officers' clubs and messes and the sale and consumption of alcoholic beverages by the drink in such clubs and messes.

**(d) INDIAN RESERVATIONS.**

(1) IN GENERAL. Except as provided in this regulation, tax applies to the sale or use of tangible personal property upon Indian reservations to the same extent that it applies with respect to sale or use elsewhere within this state.

(2) DEFINITIONS. For purposes of this regulation "Indian" means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior. Indian organizations are entitled to the same exemption as are Indians. "Indian organization" includes Indian tribes and tribal organizations and also includes partnerships all of whose members are Indians. The term includes corporations organized under tribal authority and wholly owned by Indians. The term excludes other corporations, including other corporations wholly owned by Indians. "Reservation" includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

(3) SALES BY ON-RESERVATION RETAILERS.

**(A) Sales by Indians.**

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, Indian retailers are required to collect use tax from such purchasers and must register with the Board for that purpose.

Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation.

**(B) Sales by non-Indians.**

1. Sales by non-Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by retailers when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on a reservation. The sale is exempt whether the retailer is a federally licensed Indian trader or is not so licensed. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by non-Indians to non-Indians and Indians who do not reside on a reservation. Either sales tax or use tax applies to sales of tangible personal property by non-Indian retailers to non-Indians and Indians who do not reside on a reservation.

**(C) Resale Certificates.** Persons making sales for resale of tangible personal property to retailers conducting business on an Indian reservation should obtain resale certificates from their purchasers. If the purchaser does not have a permit and all the purchaser's sales are exempt under paragraph (d)(3)(A) of this regulation, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number (see Regulation 1668, "Resale Certificates").

(4) SALES BY OFF-RESERVATION RETAILERS.

**(A) Sales Tax - In General.** Sales tax does not apply to sales of tangible personal property made to Indians negotiated at places of business located outside Indian reservations if the property is delivered to the purchaser and ownership to the property transfers to the purchaser on the reservation. Generally ownership to property transfers upon delivery if delivery is made by facilities of the retailer and ownership transfers upon shipment if delivery is made by mail or carrier. Except as otherwise expressly provided herein, the sales tax applies if the property is delivered off the reservation or if the ownership to the property transfers to the purchaser off the reservation.

**Proposed Amendments Regulation 1616, Federal Areas**

**(B) Sales Tax - Permanent Improvements - In General.** Sales tax does not apply to a sale to an Indian of tangible personal property (including a trailer coach) to be permanently attached by the purchaser upon the reservation to realty as an improvement if the property is delivered to the Indian on the reservation. A trailer coach will be regarded as having been permanently attached if it is not registered with the Department of Motor Vehicles. Sellers of property to be permanently attached to realty as an improvement should secure exemption certificates from their purchasers (see Regulation 1667, "Exemption Certificates").

**(C) Sales Tax - Permanent Improvements - Construction Contractors.**

1. Indian contractors. Sales tax does not apply to sales of materials to Indian contractors if the property is delivered to the contractor on a reservation. Sales tax does not apply to sales of fixtures furnished and installed by Indian contractors on Indian reservations. The term "materials" and "fixtures" as used in this paragraph and the following paragraph are as defined in Regulation 1521 "Construction Contractors."

2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.

**(D) Use Tax - In General.** Except as provided in paragraphs (d)(4)(E) and (d)(4)(F) of this regulation, use tax applies to the use in this state by an Indian purchaser of tangible personal property purchased from an off-reservation retailer for use in this state.

**(E) Use Tax - Exemption.** Use tax does not apply to the use of tangible personal property (including vehicles, vessels, and aircraft) purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation unless, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

**(F) Leases.** Neither sales nor use tax applies to leases otherwise taxable as continuing sales or continuing purchases as respects any period of time the leased property is situated on an Indian reservation when the lease is to an Indian who resides upon the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs on the reservation if the lessor delivers the property to the lessee on the reservation. Tax applies to the use of leased vehicles registered with the Department of Motor Vehicles to the extent that the vehicles are used off the reservation.

**(G) Property Used in Tribal Self-Governance.** Sales and use tax does not apply to sales of tangible personal property to and the storage, use, or other consumption of tangible personal property by the tribal government of an Indian tribe that is officially recognized by the United States if:

1. The tribal government's Indian tribe does not have a reservation or the principal place where the tribal government meets to conduct tribal business cannot be its Indian tribe's reservation because the reservation does not have a building in which the tribal government can meet or the reservation lacks one or more essential utility services, such as water, electricity, gas, sewage, or telephone, or mail service from the United States Postal Service;

2. The property is purchased by the tribal government for use in tribal self-governance, including the governance of tribal members, the conduct of inter-governmental relationships, and the acquisition of trust land; and

3. The property is delivered to the tribal government and ownership of the property transfers to the tribal government at the principal place where the tribal government meets to conduct tribal business.

The purchase of tangible personal property is not exempt from use tax under this paragraph 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.