



Tax Information Bulletin

STATE BOARD
OF EQUALIZATION

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1. Tax Rate Changes Take Effect April 1, 1996, in San Diego and Monterey Counties

On April 1, 1996, the following sales and use tax rates will take effect:

- San Diego County: 7.75% (see *note* below)
- Monterey County: 7.25%

As many retailers are aware, the tax rate in both counties was offset by 0.75 percent to compensate for special district taxes that had been collected but which were ruled unconstitutional. Businesses have been allowed to claim a credit of 0.75 percent on their returns for taxable sales in each county (so long as they also reduced the amount of

sales tax reimbursement collected from their customers by the same 0.75 percent).

The rate offset, or rollback, will terminate in each county as of midnight, March 31, 1996 (sales and use tax returns for reporting periods after March 31, 1996, will be modified to remove the 0.75 percent tax credit for those counties).

Note—San Diego County. The 7.75 percent rate applies to transactions that are subject to the 0.50 percent San Diego County Regional Transportation Commission tax. If a transaction is not subject to this tax, as explained below, a tax rate of 7.25 percent should be used.

Your transactions are subject to the San Diego County Regional Transportation tax and should be reported at the full 7.75 percent tax rate if:

- You are a retailer located in San Diego County and you sell or deliver merchandise within the county.
- You are a retailer located outside San Diego County who is "engaged in business" there (for example, you have any type of business location in the county; you deliver into the county using your own vehicles; or you have an agent or representative there who makes sales, takes orders, or makes deliveries).
- You collect tax on lease payments from lessees who use the leased property in San Diego County.

For additional information, please contact your local Board office.

2. Tax Rate in Parts of Fresno County May Decrease

The following article is based on information available at the time we went to press. It is possible that by the time you receive this article a final decision regarding the tax will have been made.—Editor

Retailers are advised that the sales and use tax rate for parts of Fresno County may decrease from 7.85 to 7.75 percent, pending the outcome of an appeal regarding the constitutionality of the Fresno Metropolitan



Projects Authority (FMPA) tax. The FMPA 0.10 percent tax applies to transactions in the City of Fresno and in surrounding areas that are part of the FMPA's "sphere of influence."

The 5th District Court of Appeal upheld a superior court decision that the Authority could not impose taxes because the Authority was a private entity. On January 19, 1996, the Authority filed a Petition for Review with the California State Supreme Court.

Due to uncertainties in the appeals process, we are unable to predict whether the tax will be terminated and if terminated, the effective date of the termination. Consequently, we may not be able to provide you with direct, timely written notice of a rate change. We will issue press releases once we learn the outcome of the appeal. If there is a rate change, we will update our World Wide Web page (<http://www.boe.ca.gov/boe/>) to show the new rate.

3. Due Dates for Special Second Quarter Sales Tax Prepayments

Businesses with average taxable sales of \$17,000 per month or more are required to make prepayments. Prepayments must be made until the business is advised in writing by the Board to stop —Editor

If you make sales and use tax prepayments (by paper or through electronic funds transfers), you should mark your calendar to remind yourself of the upcoming second quarter prepayment due dates. Every year at this time special quarterly sales tax prepayment and EFT prepayment requirements take effect for the second calendar quarter (April through June), and every year a number of taxpayers who make prepayments are taken by surprise.

The first prepayment is due on or before May 24, 1996. One of the following amounts is payable:

- 95 percent of the tax liability due for the month of April 1996, or
- One-third of the measure of tax liability reported for the same quarterly period of the preceding year (second quarter 1995), multiplied by the current tax rate. To use this second method of calculating the

prepayment, you or your predecessor (the previous owner) must have been in business during all of the second quarter 1995.

The second prepayment is due on or before June 23, 1996. One of the following amounts is payable:

- 95 percent of the tax liability due for the period from May 1, 1996, through June 15, 1996, or
- 142.5 percent of the tax liability due for the month of May 1996, or
- An amount equal to one-half the measure of the tax liability reported for the same quarterly period of the preceding year (second quarter 1995), multiplied by the tax rate in effect when the payment is made. Again, to use this method you or your predecessor must have been in business during all of the second quarter 1995.

If you pay your prepayments by check, money order or in cash, all the appropriate forms for making the prepayments will be sent to you about a month before the due dates. If you pay by EFT, you will not receive any prepayment forms. Consequently, you should note the due dates on your calendar. The penalty for late EFT prepayments is six percent of the amount of the prepayment. If you have any questions, please contact your local Board office.

4. Veterinarians and Medication Used for Animals Held for Resale

In the December 1995 *Tax Information Bulletin*, we advised readers of a legislative change that exempted medication administered to food animals and nonfood animals held for resale when the medication is administered in feed or water for the primary purpose of the prevention and control of disease. It should be noted that this exemption also applies to veterinarians.

Operative April 1, 1996, tax does not apply to the purchase or use by licensed veterinarians of drugs or medicines that are administered to animal life as an additive to the feed or drinking water, when the primary purpose of the drugs or medicines is the prevention and control of disease in food animals or in nonfood animals that are held for sale in the regular course of business.



5. Incorrect Written Sales and Use Tax Advice May Relieve Taxpayer's Obligation

The Sales and Use Tax Law provides that the Board may relieve taxpayers of paying tax, interest, and penalties if it finds that the failure to make a timely return or payment of sales or use tax was due to the taxpayer's reasonable reliance on written advice from the Board. This relief is available if the advice provided by the Board staff was in response to a written request from a specific taxpayer and if the taxpayer fully described the specific facts and circumstances of the activities or transaction for which the advice was requested.

Individuals or businesses seeking such relief must file with the Board:

- A copy of their written request for advice on the taxability of an activity or transaction.
- A copy of the Board's written advice.
- A statement under penalty of perjury stating the facts on which the claim for relief is based.
- Any other information that the Board may require.

If you have any questions about this relief, please contact your nearest Board office.

6. Sales of Cold Food Products to Go by Sellers Who Report Taxes Under the 80/80 Rule

If you are required to report taxes under the 80/80 rule, you pay tax on nearly all food and beverage sales (the 80/80 rule is explained in the next column). Under new legislation that becomes operative April 1, 1996, you may now elect *not* to report tax on sales of cold food products "to go" (see exceptions in the next column).

To make that election, you must maintain adequately segregated records to support your claimed exemptions. If you do not, you are liable for and must report tax on those sales. Likewise, you cannot collect sales tax reimbursement from your customers for sales of cold food products to go if you claim an exemption for those sales on your return.

Exceptions: To-Go Cold Food Product Sales That Remain Taxable

For the seller who makes the election, the sale of an individual cold food product to go is *not* taxable. However, the sale of a cold food product as part of a combination package may be subject to tax. Combination packages are two or more items sold together for a single price.

The sale of a combination package is taxable if it includes any of the following items:

- A carbonated beverage (such as soda or sparkling water)
- A hot prepared food (such as a hot sandwich or hot bakery item)
- A hot beverage (such as coffee or hot chocolate)
- An alcoholic beverage

For example, assume you sell a combination of a cold turkey sandwich and a soda for a single price of \$4.50. Because the package includes a carbonated beverage, the sale is taxable (it is taxable even though you may maintain a separate accounting of cold food products sold to go).

Sales of carbonated and alcoholic beverages are taxable—whether you sell them to go or for consumption at your place of business.

80/80 Rule

As a food seller, you generally come under the 80/80 rule if:

- Over 80% of your gross receipts come from the sale of food products, and
- Over 80% of your retail sales of food products are subject to tax.

Under this rule, you must generally report tax on food and beverages that are sold in a form suitable for consumption on the premises (with the exception of cold food products sold to go, as explained above). Some sales are exempt from tax under the 80/80 rule, such as cold food products sold in a form not suitable for consumption on the premises (for example, a frozen pizza, a whole pie, or a quart of milk), or food sold to the U.S. Government. See Regulation 1603, *Taxable Sales of Food Products*, for more information.



7. Trucker Registration Requirements

The following article describes California fuel tax licensing requirements for diesel and "use" fuels. If you have questions, please call the Fuel Taxes Division at 916-322-9669.—Editor

Interstate Truckers

If you are an interstate trucker and use diesel or "use" fuels (e.g., propane, LNG, CNG, or alcohol fuels) to operate a qualified motor vehicle* in California, you must have one of the following credentials:

- An active International Fuel Tax Agreement (IFTA) license issued by the Board of Equalization or your base jurisdiction.
- A valid California trip permit.
- An active interstate diesel fuel user license (DI License) from the Board of Equalization. This license is issued only to persons whose travel outside California is restricted to Mexico, or to persons who are not based in an IFTA jurisdiction.
- An active Use Fuel User Permit (AU permit) from the Board of Equalization. This permit is issued to persons using "use" fuels.

* **Qualified motor vehicle.** A vehicle used or designed to transport people or property is a qualified motor vehicle if (1) it has three or more axles, (2) it has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms, or (3) when used in combination, it has a combined gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms. Recreational vehicles such as motor homes or pickups with campers are not considered qualified motor vehicles.

In-State Truckers

Diesel Fuel Users. If you use diesel fuel to operate any motor vehicle in California and do not travel out of state, you are not required to be registered with the Board of Equalization. Rather than reporting diesel fuel taxes to the Board, you will pay tax to your supplier at the time you purchase the fuel. (See also Article 8, "Diesel Fuel Tax Refunds.")

"Use" Fuel Users. If you use "use" fuels to operate any motor vehicle in California, you

are required to be registered with the Board of Equalization as a use fuel user (AU permit). You may either pay an annual "flat rate tax" or pay tax to your vendors and file regular returns to report your purchases and claim credits for any exempt uses of fuel.

All Truckers

You are subject to fines and penalties if you do not obtain a required license or permit to operate a vehicle in California, as described above. If you are operating on a license issued by the Board of Equalization prior to July 1, 1995, please contact us immediately, as the license is no longer valid.

8. Diesel Fuel Tax Refunds

If you have paid tax on diesel fuel, you may be entitled to a refund if you use the diesel fuel for an exempt purpose. For example, tax does not apply to diesel fuel used:

- In pleasure boats
- In construction equipment that is exempt from vehicle registration under the Vehicle Code or operated in the confines of a construction project
- In vehicles operated on highways under the jurisdiction of the U.S. Department of Agriculture where the user contributes to the cost of the construction or maintenance of the highway

To request a refund, you must write to the Fuel Taxes Division and provide the following information:

- The name, address, telephone number, and permit number of the person who sold you the diesel fuel, and the date of purchase
- A statement from the you (the claimant) that the diesel fuel covered by the claim did not contain visible evidence of dye
- A statement, which may appear on the invoice or similar document, by the person who sold the diesel fuel that it did not contain visible evidence of dye
- The total amount of diesel fuel covered by the claim
- The refundable use made of the diesel fuel

For your convenience, the Board has prepared a Claim for Refund form (SP-770-DU), which



can be requested from the Fuel Taxes Division at 916-322-9669.

9. Nonprofit Organizations That Provide Services to Children with Severe Emotional Disturbances

If your nonprofit organization provides services to children with severe emotional disturbances, it may no longer be required to hold a seller's permit or pay sales tax on certain sales.

As of August 3, 1995, the Sales and Use Tax Law (Section 6361.1) was amended to provide that qualifying nonprofit organizations are not required to report sales tax on their sales of fund-raising merchandise if all of the following conditions are met:

- The merchandise is of a handcrafted or, effective August 3, 1995, of an artistic nature and is designed, created, or made by individuals with developmental disabilities or, effective August 3, 1995, by children with severe emotional disturbances, who are members of, or receive services from, the qualified organization.
- The price of each item of tangible personal property sold does not exceed twenty dollars (\$20), or ten dollars (\$10) if sold prior to August 3, 1995.
- The qualified organization's sales are made on an irregular or intermittent basis.
- The qualified organization's profits from the sales are used exclusively in furtherance of the purposes of the organization.

Organizations meeting all the above guidelines must also:

- Be exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code,
- As its primary purpose, provide services to individuals with developmental disabilities or, effective August 3, 1995, to children with severe emotional disturbances, and
- Not discriminate on the basis of race, sex, nationality or religion.

10. Filing Your Sales and Use Tax Return—Remember, You Must . . .

It is frustrating to file a tax return only to learn you left out important information or must file an amended return. It is even worse if the "error" costs money in the form of interest or penalties. Staff in our Return Analysis Section have listed their recommendations for how to avoid some of the more common filing mistakes. We hope you find their tips helpful.—Editor

- Try not to wait until the last day to file your return. Late postmark dates may result in penalty and interest charges.
- Don't take a credit on a tax overpayment from a prior period unless you have written authorization from the Board.
- Don't try to redesign the tax return. If you have a "tough" problem, contact your nearest Board office or a trained tax preparer.
- Don't change tax percentage figures on the return.
- If you have special tax district sales, be sure to complete lines A-1 through A-4 on Schedule A.
- Requests for relief from penalty must be signed "under penalty of perjury of the laws of the State of California."
- If you have no sales during a reporting period, write the word "None" on Line 1 of your return.
- Always sign your return and include a telephone number.

11. For Copies of Legislative Bills Mentioned in This Bulletin . . .

. . . write to Department of General Services, Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. The Legislative Bill Room does not provide copies of Board forms or publications.



12. Method for Allocating Tax on Certain Motor Vehicle Leases Changed January 1, 1996

The following information applies to taxpayers who report use tax on vehicle leases based on rental receipts. For additional information, please call the Board's Local Revenue Allocation Section at 916-324-3000.—Editor

If you are a lessor, leaseholder, or are responsible for reporting the use tax due on leases of new or used motor vehicles, you may be required to change how you allocate the local use tax for leases entered into on or after January 1, 1996. This reporting change is the result of the passage of Senate Bill (SB) 602 (Chapter 676, Statutes 1995).

The change in allocation methods applies only to your allocation of the one percent local use tax and does not affect your current method of allocating district taxes (Schedule A of your sales and use tax return). The applicable district use tax due on motor vehicle leases will continue to be allocated to the place where the vehicle is registered.

What SB 602 Changes

SB 602 affects the following areas:

- The determination of "place of use" for the allocation of the one percent local use tax
- The definition of long-term and short-term leases for certain motor vehicles
- What schedule to use when allocating the one percent local use tax due on qualified leases

How the One Percent Local Use Tax Was Reported before SB 602

Prior to SB 602, lessors allocated the one percent local use tax to the "place of use" by the lessee. Generally, if the lease was short term (30 days or less), it was assumed that the place of use was the business location of the lessor. If the lease was long term (over 30 days), the place of use was assumed to be where the lessee resided and/or registered the vehicle.

Lessors calculated the one percent local tax on Line 17 of their sales and use tax return and allocated the amount on Schedule B to the appropriate local jurisdictions.

How the One Percent Local Use Tax Is Reported under SB 602

New or Used Motor Vehicles (and pickup trucks rated under one-ton capacity)

The one percent local use tax is still allocated to the assumed place of use by the lessee, and the assumed place of use is still based on whether the lease is short term or long term. However, the definitions of short-term and long-term leases have been changed.

Long-Term Leases

A long-term lease is now defined as a lease that exceeds four months. For long-term leases, the assumed place of use for reporting the one percent local use tax is as follows:

- If the lessor is a California new motor vehicle dealer (defined in Section 426 of the Vehicle Code), the place of use for reporting the local use tax is the dealer's place of business.
- If the lessor is not a California new motor vehicle dealer, but purchases the vehicle from a California dealer (defined in Section 285 of the Vehicle Code), the place of use for reporting the local use tax is the business location of the dealer from whom the lessor purchases the vehicle.

Lessors who are required to allocate the local use tax to the location of the dealer, will do so using Schedule F. The schedule will be provided to lessors with their sales and use tax return.

Note: You are not required to use Schedule F to allocate the local tax to your location if you are a dealer who initiates a lease (for instance, you collect the first lease payment and/or an amount for capital cost reduction). This is because the local tax due on your sales or lease receipts are automatically allocated to your location unless you provide information to the contrary.

Lessors who are not California new motor vehicle dealers, or who do not purchase their motor vehicles from California dealers, should continue to use Schedule B to allocate the tax due on their long-term motor vehicle leases.

Short-Term Leases

A short-term lease is now defined as a lease of four months or less. For short-term leases, the local use tax shall go to the business location of



the lessor, unless the lessor is located outside of California (see the table below).

Mobile Transportation Equipment

Except for certain pickup trucks, the provisions of SB 602 do not apply to leases of motor vehicles that are considered mobile transportation equipment under Regulation 1661, *Leases of Mobile Transportation Equipment*

For pickup trucks rated under a one-ton capacity, the place of use for allocating the local use tax is as described in the previous column (see also the table below).

NOTE

Assigned Leases

The place of use for the one percent local use tax will remain the same for the duration of the lease, even if the lessor sells the vehicle and

assigns the lease contract to a third party.

Accordingly, if you are a lessor who assigns lease contracts to another lessor, you are required to provide that lessor with copies of the original purchase contract for each vehicle and/or copies of prior schedules showing how the use tax has been allocated.

Out-of-State Lessors

Out-of-state lessors must allocate local tax as prescribed by SB 602 if the vehicle is purchased from a California dealer or if the purchase involves a courtesy delivery by a California dealer. A courtesy delivery generally occurs when the California lessee is delivered a vehicle from a California dealer's inventory at the direction of the out-of-state lessor). See the table below.



Click Here to View
**New Guidelines for Allocating 1% Local
Use Tax Due on Leases of Motor Vehicles
(Effective January 1, 1996)**



13. Common Errors Discovered in Audits: Lack of Adequate Books and Records

If you have been advised that your business will be audited, you can significantly reduce the time required for the audit if you have the needed books and records at hand when the auditor arrives.

In general, you should have the following types of records available for examination:

- A record of all of your sales, as well as receipts from rentals or leases, subtotaled by location if appropriate.
- Documentation to support deductions claimed on your returns (for example, copies of resale certificates for claimed nontaxable sales for resale).
- Records that show the total purchase price for tangible personal property you purchased for sale, lease or consumption in California.
- All bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in your books of account, including the schedules or working papers used to prepare your tax returns.

It should be noted that Regulation 1698, *Records*, requires sellers to keep adequate and complete records (penalties can apply for failure to do so). They must be available for examination, and they must be kept for a period of not less than four years unless the Board authorizes in writing their earlier destruction.

14. New or Revised Reference Material

You can obtain copies of reference materials from a nearby Board office, or you can write to: Board of Equalization, Supply Unit, 3920 West Capitol Avenue, Suite 200, West Sacramento, CA 95691. The FAX number for the Supply Unit is (916) 372-6078.

Regulations

- 1618 United States Government Supply Contracts (effective November 10, 1995)
- 1620 Interstate and Foreign Commerce (effective November 4, 1995)
- 1642 Bad Debts (effective October 12, 1995)

5010-5087

These "Rules of Practice" replace the following: hearing procedures regulations 5001-5010, and property tax regulations 136, 451-458, 905-916, and 1002.

New Pamphlets

- 26 Tax Information Bulletin Index (Cover date January 1996—index for calendar year 1995)
- 50 Guide to the International Fuel Tax Agreement (December 1995)
- 90 Environmental Fee (September 1995)
- 91 Tire Recycling Fee (October 1995)

Revised Pamphlets

- 81 Franchise and Income Tax Appeals (January 1996)