



Tax Information Bulletin

STATE BOARD
OF EQUALIZATION

ISSUED QUARTERLY
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What's Inside

New Legislation

Many changes will take effect next year. For example, the Taxpayers' Bill of Rights has been expanded to include more protections for taxpayers. See article 1.

Y2K and EFT—A Good Match?

If you pay taxes by electronic funds transfer (EFT), you need to read article 2.

Application of Tax to California Recycling Value Charges Remains Unchanged

We recently wrote to retailers and told them to discontinue collecting tax on certain CRV charges. That decision has been reversed. See article 3.

You Have Rights

See article 4 to learn about your rights under the Sales and Use Tax Law.

Application of Tax to Painting Charges Related to Vehicle Repairs — Our Policy Has Changed

In March and June we explained that tax applies to painting new parts for vehicle repairs. Based on further analysis, we have changed our policy. See article 5.

Coffee Cart Sellers: Pass the Latté — Hold the Tax?

See article 6 to learn which sales are taxable and which are not.

Sales Tax I Know. Use Tax I Am Not So Sure About.

You may need to pay use tax on some of your purchases. See article 7.

Employees Cannot Accept or Solicit Gifts

As explained in article 8, if an employee can influence a decision, he or she cannot accept gifts from a potential beneficiary.

This Year's Highlights

If you didn't get to read the past three issues of the bulletin, read article 9 for an overview of some of the topics covered.

New or Revised Reference Material

See article 10 for the latest releases.

1. New Legislation Takes Effect

The following summaries reflect legislative changes enacted in 1999 affecting the Sales and Use Tax Law and selected other tax laws administered by the Board. The changes are effective January 1, 2000, unless otherwise indicated. For copies of bills, please write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814, or access the Internet at www.leginfo.ca.gov/bilinfo.html.

Expanded Taxpayers' Bill of Rights. Assembly Bill 1638 (Stats. 1999, ch. 929), sponsored by the Board of Equalization, makes the following changes:

Sales and Use Taxes

- *Claims for refund made by persons who are financially disabled.* Suspends the statutes of limitations for filing claims for refund for any period of a person's life that the person is financially disabled. To be regarded as financially disabled, it must be established that the claimant is unable to manage his or her financial affairs because of medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A person will not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on his or her behalf in financial matters.
- *Installment payment agreements.* Requires the Board on or before July 1, 2000 to provide each taxpayer who has an installment payment agreement with the Board with an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

Special Taxes and Fees

- *Interest relief.* For interest imposed on tax or fee liabilities arising during periods commencing on or after January 1, 2000, the Board can now relieve some or all in-



terest if a taxpayer's failure to pay the tax or fee is due to an unreasonable error or delay by a Board employee.

- **Installment payment agreements.** The Board, in its discretion, can now enter into a formal written installment payment agreement with a tax or fee payer for the payment of any amounts due. If the Board terminates an agreement due to the failure of a taxpayer to comply with the terms of the agreement, it must mail a notice fifteen days in advance, stating the reason for the termination and informing the tax or fee payer of his or her right to request an administrative review of the termination.
- **Interest waiver.** If the Board issues an erroneous refund to a tax or fee payer and seeks repayment, it can waive the imposition of interest on the repayment for a 30-day period, beginning from the date the Board mails a notice of determination for the repayment.
- **Reimbursement for fees and expenses related to hearings.** In cases where a tax or fee payer alleges that the Board staff is unreasonable, and is seeking reimbursement of fees and expenses related to a hearing before the Board, Board staff must show that its position was substantially justified. Such a claim for reimbursement of fees and expenses must be filed within one year of the date that the Board's decision becomes final.
- **Return of levied property.** The Board can return levied property if 1) the levy was not in accordance with the law, 2) a tax or fee payer has entered into and is in compliance with an installment payment agreement, or 3) the return of the property will facilitate collection of the tax or fee liability or is in the best interest of the state and the tax or fee payer.
- **Relief of penalty.** Under the Underground Storage Tank Maintenance Fee Law, the Board can grant relief of any penalty for a late report or payment if the Board finds that a person's failure to timely make a report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred despite the exercise of ordinary care and the absence of willful neglect.

Sales of cigarette packages labeled for sale outside the U.S. Senate Bill 702 (Stats. 1999, ch. 935), specifies that as of October 10, 1999, cigarette and tobacco products distributors can no longer affix a California cigarette tax stamp to cigarette packages that are labeled for sale outside the U.S. Any cigarette packages labeled for sale outside the U.S. that were stamped after October 10, 1999 are subject to seizure.

Prepayment due dates and amounts have changed. Assembly Bill 384 (Stats. 1999, ch. 484), sponsored by the Board of Equalization, changes the prepayment due dates and amounts so that all prepayments require a payment of 90 percent of the previous month's liability and all are due on the 24th of the month.

Taxpayers will continue to be required to include the first 15 days of June with the prepayment due on June 24th. Alternatively, if a taxpayer or his or her successor was engaged in the same business during all of the corresponding quarterly periods of the preceding year, one-third of the amount subject to tax for that same quarter in the previous year multiplied by the current tax rate is due for all of the prepayments for the first, third, and fourth quarters and the first prepayment for the second quarter. For the second quarter prepayment that is due June 24, these taxpayers may pay an amount equal to one-half of the amount subject to tax for that same quarter in the previous year multiplied by the current tax rate.

Board is authorized to compute separate rates for the precollection of sales tax on diesel fuel and aircraft jet fuel. Senate Bill 1302 (Stats. 1999, ch. 865), sponsored by the Board of Equalization, authorizes the Board to compute the jet and diesel fuel sales tax prepayment rates independently of the sales tax prepayment rate calculated for gasoline. The Board is required to make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate.

Board is now authorized to accept returns electronically. Senate Bill 1302 (Stats. 1999, ch. 865), allows the Board to accept sales and use tax returns filed through the use of electronic media. The



Board is currently studying the best method of implementation for an electronic filing program.

Penalties related to electronic funds transfers of prepayments have been modified. Senate Bill 1302 (Stats. 1999, ch. 865) clarifies that a taxpayer who is required to remit his or her sales and use tax payments by electronic funds transfer and who fails to both remit a timely prepayment and remit that prepayment by an appropriate electronic funds transfer, shall be assessed a maximum penalty of 6 percent of the prepayment amount.

Top 12 tax delinquencies will now be made public. Assembly Bill 790 (Stats. 1999, ch. 443), sponsored by the Board of Equalization, requires the Board, after providing a 30-day advance written notification to taxpayers, to make available as a matter of public record, a quarterly list of the top 12 delinquent taxpayers who are delinquent for amounts collected as tax or tax reimbursement in excess of one million dollars. If taxpayers respond within the 30-day period, and either remit payment or make arrangements for payment, the bill provides that the taxpayer shall not be included within the list.

Art transferred at social gatherings for entertainment purposes is no longer subject to sales or use tax. Senate Bill 330 (Stats. 1999, ch. 799, operative April 1, 2000), exempts from sales and use tax the transfer of original drawings, sketches, illustrations, or paintings by an artist or designer at a social gathering for entertainment purposes if *all* of the following conditions are met:

- Eighty percent or more of the drawings, sketches, illustrations, or paintings are delivered by the artist or designer to someone other than the purchaser.
- Eighty percent or more of the drawings, sketches, illustrations, or paintings are provided to someone other than the purchaser, at no cost to the person who becomes the owner of the drawings or sketches.
- The charge for the drawings, sketches, illustrations or paintings is based on a preset fee, and that fee is contingent upon a minimum number of at least three drawings, sketches, illustrations or paintings to be created by the artist or designer at the social gathering.

Pet adoptions and related services are now exempt from tax. Assembly Bill 563 (Stats. 1999, ch. 361), exempts from sales and use tax the transfer by a city, city and county, county, or other local government animal shelter or non-profit animal welfare organization of any animal to an individual for use as a pet, or any charges made by the government shelter or non-profit organization for services in connection with the transfer of that animal, including, the spaying or neutering or future spaying or neutering of the animal, or any vaccination, future vaccination, or similar service.

This bill applies only to transfers of pets by organizations that are formed and operated for the primary purpose of prevention of abuse, neglect, or exploitation of animals, and that qualify for an exemption from income tax pursuant to Section 23701(d) of the Revenue and Taxation Code.

Sales and purchases of oxygen for disease control or prevention for food animals is now exempt. Senate Bill 963 (Stats. 1999, ch. 289), exempts from sales and use tax oxygen that is administered to animal life the products of which ordinarily constitute food for human consumption when the oxygen is administered for the primary purpose of preventing or controlling disease.

Certain returnable food containers are now exempt from tax. Senate Bill 1210 (Stats. 1999, ch. 758, operative April 1, 2000), exempts from sales and use tax any container, when sold without the contents to persons who place food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged for sale.

Town of Yucca Valley authorized to impose a transactions and use tax. Assembly Bill 1371 (Stats. 1999, ch. 110), authorizes the Town of Yucca Valley to levy a transactions and use tax at a rate of $\frac{1}{4}$ percent or multiple thereof, not to exceed one percent, for purposes of funding transportation and park repair, replacement, construction and reconstruction. The tax must be approved by a majority of the members of the town council and by two-thirds of the town's voters.



2. How Will Y2K Affect Your Electronic Payments?

As the new millennium approaches, the Board is actively working to take all necessary precautions to prevent any possible disruptions to taxpayer services. With this in mind, the Board is encouraging all taxpayers required to make tax payments by electronic funds transfer (EFT) to check with their respective financial institutions well in advance of the due date of their fourth quarter 1999 return, December 1999 return, and/or any payments due in January 2000 to ensure that their EFT process is properly functioning. A special notification letter will be mailed to all EFT accounts outlining the procedure to follow should a Y2K problem be encountered.

If any EFT account is unable to electronically transfer funds due to a Y2K disruption between January 1, 2000 and January 31, 2000, taxpayers will be allowed to mail a check with their return along with a signed copy of the special notice. EFT taxpayers will also be able to call the EFT helpline at (916) 327-4229 for assistance.

3. California Redemption Value (CRV) Charges Remain Subject to Sales Tax

On August 26, 1999, the Board mailed a notice to retailers announcing the publication of proposed Regulation 1589.5, *Redemption Payments on Beverage Containers*. The notice informed retailers that they should immediately stop applying sales tax to California Redemption Value (CRV) charges for beverage containers, under certain conditions.

On October 6, 1999, the Board cancelled proposed Regulation 1589.5. As a result, *CRV charges on taxable beverages remain subject to sales tax* and you should *not* follow the direction given in the Board's August 26, 1999, notice.

If you continued to apply sales tax to CRV charges after receiving the August notice, no further action is required. However, if you stopped applying sales tax to CRV charges as a result of the notice, you should immediately resume collecting an amount for sales tax on CRV charges for taxable beverages. Examples include:

- Carbonated soft drinks
- Carbonated water
- Alcoholic beverages including beer, malt beverages, wine coolers, and distilled spirit coolers

In addition, you should retain documentation in your records to show that you did not apply tax to CRV charges after receiving the August notice. If you relied on that notice, no additional tax will be due on your untaxed CRV charges for sales you made from August 26, 1999, through October 31, 1999.

If you have any questions regarding this article, please call our Information Center.

4. Understanding Your Rights as a Taxpayer

As a taxpayer, you have many rights under the Sales and Use Tax Law. These include the right to

- Know how the law affects you
- Be treated fairly, courteously, and promptly
- Question those actions and decisions of Board staff members and officers that affect your business operations

Of course, along with those rights, you have certain responsibilities, including the responsibility to

- Keep informed about tax laws and regulations
- Report and pay taxes when due
- Maintain adequate records of your business operations

For information on your rights as a taxpayer, you should order publication 70, *The California Taxpayers' Bill of Rights*. The Board also provides many other publications designed to answer your questions about how to apply sales and use taxes. These publications include general information pamphlets and single page *Tax Facts*, as well as pamphlets for specific types of businesses. A complete listing of our publications can be found in publication 51, *Guide to Board of Equalization Services*.

To request a publication, call our Information Center at 1-800-400-7115 and speak to a representative or leave a recorded message telling us where to mail you a copy. Many publications,



including publications 51 and 70, are also available on the Internet at www.boe.ca.gov.

5. Policy Change — Applying Tax to Labor Charges for Painting New Repair Parts

In our March and June 1999 *Tax Information Bulletins*, we included articles that explained how tax applies to labor charges for repair jobs that involve replacing damaged automobile parts such as bumpers, fenders, panels and mirrors. We explained that when body shop operators paint new replacement parts, the painting labor is considered taxable fabrication labor when the part is painted prior to installing it on the vehicle.

After further review of this policy, the Board's Legal Division has decided that labor charges for painting a *new or used* part in conjunction with a vehicle repair are **not taxable**.

Our previously published guidelines were based on an annotation,* which staff has determined to conflict with Sales and Use Tax Regulation 1551, "Repainting and Refinishing." That regulation provides that charges for repainting used articles are nontaxable, except when a separate charge is made for the paint or similar finishing materials that become a component part of the item being repaired. When a separate charge is made, the repairer becomes the retailer of the paint or finishing materials and tax applies to those separate charges. The labor charges, however, remain nontaxable.

Note: Sales of parts and labor charges for fabricating parts (for example, you fabricate a part because a replacement part is not available) remain subject to tax and should be shown separately on your customer invoice and in your records.

* *Annotation 315.0220.* Annotations are published in the Business Taxes Law Guide and are intended to provide guidance regarding the interpretation of Board statutes and regulations as applied by staff to specific factual situations. They are not regulations of the Board and do not have the force or effect of law. We will be deleting Annotation 315.0220 from our law guides and revising appropriate pamphlets and manuals to reflect this change in interpretation.

6. Coffee Cart Sales

With the growing number of coffee carts throughout California, a common question arises: Are coffee and bakery items sold from a cart taxable?

Coffee carts can be either mobile or permanent and can be located almost anywhere. They typically offer no seating arrangements, compared to regular coffeehouses that have full seating facilities. A majority of coffee cart sales consist of beverage and bakery items sold strictly on a "to go" basis and served in disposable cups or on disposable plates.

Generally speaking, sales of hot beverages such as coffee, tea, cocoa or cider are not taxable if sold for a separate price on a "to go" basis. Similarly, bakery items such as bread, croissants, pastries, muffins, cookies, and the like are also not taxable if sold on a "to go" basis. However, when a hot beverage and bakery item are sold for a single combination price, the sale is taxable. For example, if the menu states you can buy a cup of coffee and pastry "to go" for \$1.50, then the entire charge is taxable.

Remember, carbonated beverages are not considered food products for sales tax purposes. The law provides that carbonated beverages such as sodas and carbonated water are taxable regardless whether "to go" or consumed at the facilities provided.

A key point to keep in mind is that coffee carts do not provide seating arrangements and most coffeehouses do. The law generally states that once the business provides eating facilities, items consumed on the premises are taxable. This is usually not true of coffee carts, which have a limited menu of beverages and bakery items with no seating.

Please note: Sales from a coffee cart may be taxable if the cart is located in a place where common seating is provided for the consumption of food (such as a shopping mall food court) or if the cart is located in a place where admission is charged (such as at a county fair). Similarly, if items are served in returnable containers like crockery mugs or glass plates, the sale of the items will not be considered "to go" and will be taxable.



For more information regarding how tax applies to food and beverages in general, please contact our Information Center and request a copy of Publication 22 *Tax Tips for the Dining & Beverage Industry*.

7. Common Errors Discovered in Audits: Reporting Purchases Subject to Use Tax

Many businesses are unaware that they owe tax on items they purchased without paying California sales or use tax and used for a purpose other than for resale (or demonstration and display while holding the property for sale in the regular course of business). Typical purchases subject to use tax include items (1) purchased for resale, but withdrawn from inventory and used for another purpose, or (2) purchased for use from an out-of-state retailer who does not collect California tax.

Examples:

- You buy office supplies over the Internet from an out-of-state vendor. The vendor's activities in California are limited to shipping merchandise by UPS into the state, and the vendor does not collect California sales and use tax. Since you will use the items in your business, you owe use tax on their purchase price.
- You operate a grocery store and purchase soda for resale without payment of California sales tax. However, instead of selling the soda, you give five cases to employees for the store's summer picnic. Since you used the soda instead of reselling it, you owe California use tax on the cost of the soda. Please note, if you gave employees food items to eat at the picnic (e.g., hot dogs, buns and chips), you would not owe use tax because you are consuming exempt food items.

You should report your use tax liability by listing your purchase price on Line 2 of your tax return, "Purchases Subject to Use Tax."

Note: There are some instances where donations to certain charitable organizations are not subject to tax. For more information on these types of donations, please contact our Information Center.

8. Policy Regarding Employee Solicitation or Acceptance of Gifts

It is against Board policy for an employee to solicit or accept—either directly or indirectly—any gift, favor, entertainment, or any other thing of monetary value from a person whom the employee knows or has reason to believe

- Has, or is seeking to obtain, contractual or other business or financial relations with the Board of Equalization; or
- Conducts business or other activities that are monitored by the Board, under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee in his or her official actions or was intended as a reward for any official actions performed by the employee.

If a Board employee violates this policy, it should be reported to Ms. Darlene Allen, Chief, Internal Security and Audit Division. Call 916-445-2918.

9. Highlights of 1999 Tax Information Bulletin Articles

The following is a summary of articles that were printed in the previous three issues of the Tax Information Bulletin. If you have questions about any of the following summaries, please call our Information Center at 1-800-400-7115. You can read or download the complete articles online by visiting our website at www.boe.ca.gov.

If you receive only our December bulletin (that is, you pay taxes on an annual calendar basis), you can receive all four bulletins by asking to be added to Mailing List 15. Send your request to Mail Services Unit, MIC: 12; Board of Equalization; PO Box 942879; Sacramento, CA 94279-0012.

(1) Tax Rates Increase in Fresno County and in the City of Placerville. (March 1999 issue)

Fresno County: Voters approved a new 0.125 percent Fresno County Public Library Transactions and Use Tax (FCPL), which increased the sales and use tax rate in the county to 7.875 percent on April 1, 1999. This tax increase applies to the entire county.



City of Placerville (El Dorado County): Voters approved a new 0.25 percent City of Placerville Public Safety Transactions and Use Tax (PLPS) which increased the sales and use tax rate within the city limits of Placerville to 7.50 percent on April 1, 1999. The tax rate in El Dorado County outside the City of Placerville remained at 7.25 percent.

How to Apply District Tax

Except for certain fixed-price contracts, you must report the two new district taxes if you:

- Are a retailer in the district and your merchandise is sold and delivered within the district.
- Are a retailer located outside the district who is engaged in business in the district and you sell merchandise for use in the district. You are considered to be engaged in business in the district if you (1) have any type of business location there, (2) deliver into the district using your own vehicles, or (3) have an agent or representative in the district who makes sales, takes orders, or makes deliveries.
- Are a dealer of vehicles, vessels or aircraft, and you sell those items to persons who will register them in the district.
- Collect tax on lease payments you receive for leased property used by the lessee in the district.

Fixed-Price Contracts

If you entered into a fixed-price contract or lease in one of the new tax districts prior to the effective date of the new district tax (April 1, 1999), you should report tax at the rate specified in the contract or lease. To qualify as a "fixed-price" contract or lease, neither party can have the unconditional right to terminate the contract or lease [Revenue and Taxation Code section 7261(g) and 7262(a)(2)(F)]. In addition, the tax amount or rate must be specifically stated in the contract or lease agreement.

(2) Underground Storage Tank Maintenance Fee (March 1999 issue)

If you own an underground storage tank and store petroleum products in your tank, you are responsible for paying the Underground Storage

Tank Maintenance Fee (UST fee). The UST fee is based on the number of gallons of petroleum products placed into your tanks. Petroleum products include, but are not limited to, gasoline, diesel, kerosene, motor oil and waste motor oil.

If you own an underground storage tank and are not registered to pay the fee, please contact our Fuel Taxes Division at 916-322-9669 to register. If you are the operator and not the owner of an underground storage tank, please provide a copy of this article to the owner so that the owner is made aware of his or her responsibilities to pay the fee.

(3) Motor Vehicle Leases and Allocation of Local Use Tax (June 1999 issue)

This article explains how motor vehicle lessors should allocate the 1% local use tax due on leases entered on or after January 1, 1999. The reporting requirements are based on section 7205.1 of the Sales and Use Tax Law, as amended in 1998 by Assembly Bill 1946.

Because the article is too complex to be adequately summarized here, we ask that you order or download a copy of our June 1999 *Tax Information Bulletin* for a complete understanding of how to allocate local tax collected on motor vehicle leases.

(4) Did the Dog Eat Your Return? Here's How to Get a Replacement (September 1999 issue)

If you file either the BOE-401-A or BOE-401-EZ return, a replacement return is now available if you lose your tax return. The replacement return is form number BOE-401-A2, *State, Local and District Sales and Use Tax* and is available from our Information Center or web site.

If you file a return other than the BOE-401-A or the BOE-401-EZ, or if you require additional schedules, please contact our Information Center for assistance.



10. New or Revised Reference Material

If you would like to obtain a copy of any of the following reference material, please call the Information Center. Copies of some publications can also be obtained from our website, www.boe.ca.gov.

Sales and Use Tax Publications

- 66 Tax Tips for Retail Feed and Farm Supply Stores (July 1999)
- 104 Sales to Residents of Other Countries (September 1999)

Special Taxes Publications

- 90 Environmental Fee (August 1999)

Sales and Use Tax Regulations

- 1587 Animal Life, Feed, Drugs and Medicines (October 1, 1999)
- 1589 Containers and Labels (October 15, 1999)
- 1630 Packers, Loaders and Shippers (October 27, 1999)
- 1702 Successor's Liability (October 27, 1999)

How To Contact Us

Information Center. Call at any time to use our automated services, including our faxback service. To speak to a representative, call between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding State holidays.

1-800-400-7115

Telephone devices for the deaf

1-800-735-2929 (TDD phone)

1-800-735-2922 (voice phone)

Internet. Visit us at www.boe.ca.gov to obtain information on tax rates, publications, legislation, regulations, telephone numbers, education programs, public meetings, and so forth.

Seller's Permit Verification. To verify permit numbers, you can call **1-888-225-5263** to use our automated voice response system. Or you can visit our website, www.boe.ca.gov.

Taxpayers' Rights Advocate. Call the Advocate's office if you need help with a problem you have been unable to resolve at other levels. Call toll-free, **1-888-324-2798**.

Tax Evasion Hotline. Call to report suspected tax evasion. Call toll-free, **1-888-334-3300**.

Copies of Legislative Bills. Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. Or visit the following website: www.leginfo.ca.gov. The Bill Room does not provide copies of Board forms or publications.