TAX Information
B·U·L·L·E·T·I·N

e·file BOARD OF EQUALIZATION Publication 388 www.boe.ca.gov June 2010

Redemption of Registered Warrants

The Board of Equalization (BOE) announced on July 21, 2009, that it will accept state-issued registered warrants (IOUs) as payment of taxes or fees due from certain vendors doing business with the State of California. It is important to note; IOUs issued during 2009 will not be redeemed by the State Treasurer's Office after September 3, 2010, even if presented by another state agency. Therefore, if you wish to use a registered warrant issued to you for payment of a tax or fee administered by the BOE, you should mail your warrant with a copy of your return, billing notice, or other payment document postmarked no later than September 3, 2010. After that date, holders of these 2009 IOUs must contact the issuing agency to request a replacement. Please visit *www.boe.ca.gov* for more information.

U.S. veterans selling merchandise from a temporary location; new legislation may affect your sales tax reporting status

Beginning April 1, 2010, and in effect through December 31, 2011, new legislation provides that a "qualified itinerant vendor" is the consumer and not the retailer of tangible personal property (merchandise) under certain conditions.

You are considered a "qualified itinerant vendor" when all of the following apply:

- You were a member of the Armed Forces of the United States, and received an honorable discharge or a release from active duty under honorable conditions.
- You are unable to obtain a livelihood by manual labor due to a service-connected disability.
- For the purposes of selling merchandise, you are a sole proprietor with no employees.
- You have no permanent place of business in this state.

As a "consumer," qualified itinerant vendors are not required to obtain a seller's permit and are only required to pay tax on the purchase price of the products, or the component parts of the products, that you sell. Therefore, you may not issue resale certificates when making purchases from your suppliers.

Please note: These new provisions do not apply to veterans engaged in the catering or vending machine business. Also, veterans selling alcoholic beverages and single items for more than $100 are generally required to obtain a seller's permit and report tax on the sale of those products.

If you qualify as a consumer and currently have a seller's permit, you should complete a BOE-65, *Notice of Closeout for Seller's Permit*. If you issued resale certificates to your suppliers, you should provide them with written notification of your consumer status, so that they may charge tax on your purchases of taxable products. Since this law will only remain in effect until January 1, 2012, you will need to reapply for a seller's permit if you are making sales after that date. For additional information, please visit *www.boe.ca.gov*.

Sellers of medical marijuana

If you sell medical marijuana, your sales in California are subject to tax and you are required to hold a seller's permit. If you do not obtain a seller's permit before the date the first tax return is due, you are subject to penalty and interest charges. Generally, persons who make sales without a seller's permit are also subject to an eight-year audit period.

As part of the BOE's education outreach efforts, special notices were made available in February 2007 and January 2010, clarifying the application of tax to sales of medical marijuana in California. The notices inform marijuana

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sellers of their seller's permit and tax reporting requirements under the California Sales and Use Tax Law.

For information regarding your seller's permit requirements, please contact one of our field offices. A list of addresses and phone numbers is available at *www.boe.ca.gov/info/phone.htm* to allow you to find the office nearest you.

Mandatory tips, gratuities, and service charges subject to tax

Businesses such as restaurants, hotels, caterers, boarding houses, drive-ins and similar establishments often receive payments designated as tips, gratuities, and service charges from customers.

When you negotiate an amount of a tip, gratuity or service charge with your customer in advance of an event that includes serving a meal, food, or drinks, that amount is considered a mandatory charge.

In some cases, menus, brochures, advertisements, or other materials contain printed statements notifying customers that tips, gratuities, or service charges will, or may be added, to the bill. Examples of printed statements include:

- "An 18 percent gratuity (or service charge) will be added to parties of 8 or more."
- "Suggested gratuity 15 percent," itemized on the invoice or bill presented to your customer.
- "A 15 percent voluntary gratuity will be added for parties of 8 or more."

When the menu, brochure, advertisement, or other material contains such printed statements, an amount you automatically added to the bill or invoice is a mandatory charge and subject to tax. An amount is considered automatically added when you add the amount to the bill without first discussing it with the customer and receiving approval to add the amount, or without providing the customer the option to write it in.

It is presumed that an amount you add as a tip to the bill or invoice you present to the customer is mandatory. A statement on the bill or invoice that the amount is suggested, optional, or may be increased, decreased or removed by your customer does not change the mandatory nature of the charge. This presumption may be disputed by documentary evidence maintained in your records showing that your customer specifically requested and authorized the gratuity be added to the bill. It is important to retain guest checks and any additional separate documents to show that the payments of tips, gratuities, or service charges are optional.

For additional information please see Regulation 1603, *Taxable Sales of Food Products*, publication 115, *Tips, Gratuities, and Service Charges*, and publication 22, *Dining and Beverage Industry*.

Electronic Waste Recycling Fee

How is it calculated and is the fee subject to sales or use tax?

The eWaste Recycling Fee applies to new or refurbished electronic devices that contain video displays measuring more than four inches diagonally and are identified as "covered electronic devices" by the Department of Toxic Substances Control (DTSC). These devices include computer monitors, laptop computers, portable DVD players, LCD and plasma televisions and other video display devices.

The amount of the fee is determined by the viewable screen size, measured diagonally. The fee rate ranges from $8 to $25 for a screen size of 35 inches or more.

Viewable screen size, measured diagonally	Fee Amount (2009)
More than four inches, less than 15 inches	$8.00
15 inches to less than 35 inches	$16.00
35 inches or more	$25.00

The eWaste Recycling Fee should be listed separately on the sales invoice and is not subject to sales or use tax. For more information, please visit *www.boe.ca.gov/sptaxprog/ewaste.htm* or contact us at 916-341-6906, or by fax at 916-341-6951.

Do you purchase cigarettes or tobacco products from out-of-state vendors?

Vendors who purchase cigarettes or tobacco products from out-of-state

As a vendor, if you purchase cigarettes or tobacco products for resale in California, from a vendor located outside of California, and that vendor does not collect the appropriate California excise taxes from you, then you owe the excise taxes to the BOE. If you consume these products rather than sell them, in addition to the excise taxes, you also owe California use tax to the BOE.

Cigarettes or tobacco products purchased by consumers from out-of-state

When consumers purchase cigarettes or tobacco products for their own use from outside the state without paying California use tax and excise taxes to the vendor, the

consumer is required to pay the tax directly to the BOE. This includes products purchased through the mail, by telephone, or the Internet, and shipped into California. Consumers also owe these taxes if they physically bring tobacco products or more than 400 cigarettes into California.

Cigarette and tobacco sales in California

- Retailers may only purchase cigarettes and tobacco products from California licensed wholesalers or distributors that hold valid cigarette and tobacco licenses issued by the BOE.
- Licensed wholesalers may only purchase cigarettes and tobacco products from California licensed distributors that hold valid cigarette and tobacco licenses issued by the BOE.
- Licensed distributors may purchase cigarettes and tobacco products from out-of-state or in-state vendors. Distributors must report and pay the excise tax to BOE.

Please note: Manufacturers and original importers of cigarette and tobacco products manufactured outside the United States should not charge the excise tax to licensed cigarette and tobacco products distributors. The distributor is responsible for the tax. Licensed distributors may be subject to additional excise taxes if the manufacturer or original importer erroneously collects the excise tax.

For additional information on the application of excise taxes, see publication 93, *Cigarette and Tobacco Products Taxes.*

Before making purchases of any cigarette or tobacco product, please check the California Tobacco Directory at the Office of the Attorney General's website at *www.ag.ca.gov* to ensure that the product is authorized for sale.

If you have 50 or more employees, then you may be responsible for paying the environmental fee

In general, the fee applies to organizations with 50 or more employees, each employed more than 500 hours in this state in a calendar year. These organizations must register with the BOE and pay an annual environmental fee if they use, generate, or store hazardous materials or conduct activities related to those materials. The Department of Toxic Substances Control (DTSC) has determined that most organizations fall into this category. The Environmental Fees Division is responsible for collecting the fee, which provides revenue for hazardous waste cleanup and pollution prevention programs administered by the DTSC. Organizations with fewer than 50 qualifying employees are not required to register or pay the fee.

When is it time to close out your Environmental Fee Program account?

If your business is registered with an environmental fee account and you have changes to your business ownership, you must notify the BOE's Environmental Fees Division. Business ownership changes include any of the following:

- You are no longer actively engaged in business.
- You sell your business to someone else.
- You change the type of business ownership (for example, from a sole proprietorship to a corporation or partnership).
- You make changes to the partnership (for example, the partnership dissolves, a new partnership is formed, or there is a change in the partners).

If you do not notify us of these changes, you may be responsible for payment of fees, interest, and penalties incurred after the business has closed.

When is your final closing return due?

If you close your account before the end of your normal reporting period, your final closing return is due the first month of the following quarter. The due date is the same day of the month your return is normally due.

Where can I learn more about environmental fee programs?

More information about the environmental fee programs can be found in publication 90, *Environmental Fee,* and publication 412, *Introduction to Environmental Fee Programs,* or by visiting *www.boe.ca.gov/sptaxprog/spenvirofees.htm.*

BOE's online educational seminars

The BOE announced the expansion of its available online educational products to include the virtual replication of Small Business Fairs and Nonprofit Seminars.

These online products are a cost effective, convenient way for taxpayers to learn about the BOE tax programs and how to comply with California tax laws. The virtual seminars are designed specifically to enhance the in-person attention taxpayers can get through sales and use tax classes offered in BOE offices, and seminars offered throughout the state.

The BOE also offers a total virtual one-stop-shop option for Small Business Fairs and Nonprofit Seminars. The site

includes links to our seminar partners: the Internal Revenue Service, Franchise Tax Board, Employment Development Department, U.S. Small Business Administration, and other local, state, and federal agencies. There you will find contact information, presentations, videos, audio recordings, and much more.

The BOE will provide online educational and learning product training, and facilitation guides on how to use the products as a convenient resource. In turn, the other agencies will be capable of assisting their clients in using the BOE online products.

The virtual seminars currently available include:

- Basic Sales and Use Tax
- Nonprofit Organizations
- Small Business Fairs
- eFile
- Retail Sales of Cigarettes and Tobacco Products

Please visit our online tutorials at *www.boe.ca.gov/info/VirtualSeminars/seminars_online.htm*.

We also have other presentations on topics that include: how nonprofit organizations qualify and file for property tax exemptions, and how to prepare for an in person appeal hearing. These virtual workshops are available at *www.boe.ca.gov/info/video.htm.*

GeoTax—free sales and use tax rate locator

The BOE's website now includes a link *www.geotax.com* to a free sales and use tax rate locator that allows any person to determine tax rates based on address. We are providing this site as a service to taxpayers and consumers who are trying to obtain the tax rate for any address in the state. We provide the GeoTax link only as a public service and do not maintain the website. The BOE is not responsible for the content or accuracy of the information shown on that site. Problems or suggestions concerning the information on *geotax.com* should be sent to Group 1 Software at *www.geotax.com*. Also, please contact the BOE webmaster at *www.boe.ca.gov/info/webmail.html* if you experience any difficulties with the link to geotax.com. Additionally, some cities have developed a database of addresses to help retailers and consumers in identifying addresses located within special taxing jurisdictions for district tax rates. In cooperation with these cities, we are providing links to their address databases located on our website at *www.boe.ca.gov/sutax/pam71.htm*. If you have questions about the addresses, contact the cities directly.

Know Your Rights

As a taxpayer, you have many rights under the law, including the right to:

- Receive information and assistance to help you comply with the law
- Be treated fairly and courteously, and receive prompt service
- Appeal a decision or claim a refund as allowed by law

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 and fees when due
- Maintain adequate records

For more information about your rights, you may wish to order publication 70, *Understanding Your Rights as a California Taxpayer*.

Civil behavior in trying times

We know that you may find yourself frustrated with the difficulties of the tax law or pressed for time when dealing with our staff. Still, we ask that you treat our employees just as you would like to be treated in a business situation. Any statement or gesture made to a BOE employee that seems remotely like a threat—even a statement made in jest—will be referred to our Internal Security and Audit Division for investigation.

For More Information

All telephone numbers are toll-free.

Internet
www.boe.ca.gov
www.taxes.ca.gov

Taxpayer Information Section
800-400-7115
TDD/TTY: 800-735-2929

Requests for Fax Copies
800-400-7115
(Choose automated services)

Seller's Permit Verification
888-225-5263
www.boe.ca.gov

Taxpayers' Rights Advocate
888-324-2798
www.boe.ca.gov

Tax Evasion Hotline
888-334-3300

State Legislation
www.leginfo.ca.gov/bilinfo.html

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