

Tax Information Bulletin

STATE BOARD
OF EQUALIZATION

ISSUED QUARTERLY
June 1999

BOARD MEMBERS

JOHAN KLEHS
First District
Hayward

DEAN F. ANDAL
Second District
Stockton

CLAUDE PARRISH
Third District
Torrance

JOHN CHIANG
Fourth District
Los Angeles

KATHLEEN CONNELL
State Controller
Sacramento

EXECUTIVE DIRECTOR
E. L. SORENSEN, JR.

◆ In This Issue

We Want To Hear from You

Visit one of our upcoming "Bill of Rights" hearings. Let us know how we can do a better job. See article 1.

I'm Late. I'm Late.

Maybe you haven't received your return in the mail. Or you ran into an unavoidable delay and would like to extend the due date for your return or tax payment. Read articles 2 and 3 to learn what to do.

Local Tax — How To Make Sure Your Local Governments Receive Their Share of Tax

Let us know if you move. Your local government is counting on it. See article 4.

Handling Charges

You must generally report tax on handling charges related to your taxable sales. But what do you do when your handling charge covers both taxable and nontaxable sales? See article 5.

Do You Want To Settle a Disputed Billing or Refund?

Our reorganized Settlement Section may be able to help you find a solution. See article 6.

Cellular Telephones and Other Telecommunication Devices

As of January 1, 1999, you may be considered a consumer instead of a retailer for certain sales. See article 7.

Tire Recycling Fee

The Tire Recycling Fee on sales of new tires has been extended through December 31, 2000. See article 8.

Automobile Bumpers and Paint Matching

If you sell and install new bumpers, your labor charges for "paint matching" are probably taxable. See article 9.

Safety of Board Employees

Threats against employees are taken seriously. See article 10.

Motor Vehicle Lessors

Learn how to allocate the 1% local use tax. See article 11.

New or Revised Reference Material

See article 12.

1. Annual Taxpayers' Bill of Rights Hearings Scheduled

Each year, the Members of the Board of Equalization hold public hearings to give taxpayers, tax professionals, and other interested parties the opportunity to comment on the tax and fee programs administered by the Board. If you would like to suggest ways to improve our services, or if you want us to look more closely at a tax or fee issue, you are encouraged to present your ideas at these hearings.

Although you do not need to be scheduled in advance to speak at the hearing, it would help us to prepare if you contacted us beforehand to let us know your topic. If your proposal is complex or extensive, we encourage you to submit it in advance and then summarize it in your oral presentation.

Business Tax Hearings

Culver City

Wednesday, October 27, 1999, 1:30 p.m.
Board of Equalization District Office
5901 Green Valley Circle, Suite 207

Sacramento

Wednesday, November 17, 1999, 2:00 p.m.
Board of Equalization Headquarters
450 N Street, 1st Floor Board Room

Property Tax Hearings

Culver City

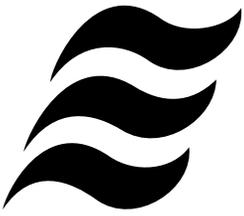
Wednesday, October 27, 1999, 1:30 p.m.
Board of Equalization District Office
5901 Green Valley Circle, Suite 207

Sacramento

Wednesday, December 8, 1999, 2:00 p.m.
Board of Equalization Headquarters
450 N Street, 1st Floor Board Room

To notify us of a topic you wish to discuss or to send written material in advance, please contact the

Taxpayers' Rights Advocate MIC:70
P.O. Box 942879
Sacramento, CA 94279-0070
Toll-free Number 1-888-324-2798
Fax: 916-323-3319



2. Are You Waiting for Your Tax Return To Arrive in the Mail?

You should call the Information Center at 1-800-400-7115 if you have not received your tax return when expected. However, if possible, please wait until after the 15th of the month to call. Most returns are mailed early in the month, and the 15th should allow sufficient time for mail delivery. When you call, we will arrange to mail you a new return, which still must be submitted by the due date for the reporting period.

Staff are developing a blank return form, which we hope to have on our website by this July (<http://www.boe.ca.gov>). The replacement return can be used by persons who file BOE-401-A or BOE-401-EZ returns and who have not received a copy in the mail or who may have lost their copy. If you have a need for a tax return form and cannot find it on our website, please contact our Information Center for assistance. You must file a tax return — even if you did not receive one from the Board.

3. Do You Need More Time To File Your Return?

The Sales and Use Tax Law allows the Board, for good cause, to extend the due date for filing a tax return or paying tax. The maximum period for which the extension may be granted is one month from the due date of the return or payment. Your request for the extension may be filed before the due date, but must be filed no later than one month after the due date of the return or payment.

Your request will be reviewed and accepted or denied — based on the specific circumstances or reason for the delay, past payment history, and the number of previous extension requests. An extension will not be granted when the reason for the delay is due to cash flow problems or other shortage of funds. Also, an extension may not be granted if you have been delinquent in the past or have a balance due with the Board.

If your request is granted, the late filing or late payment penalty will be waived, whichever is applicable. However, interest for the extension period will apply.

How To Request an Extension

It is not necessary to file the extension request in advance of the due date. However, your request must be received by the Board (hand delivered or by facsimile) or postmarked no later than one month after the due date of the return. Your request must

- Be in writing,
- State the reason for the delay, and
- Include the tax period and permit number.

4. Where Do “Local Taxes” Go?

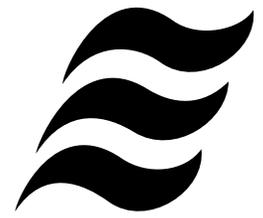
Did you know that the one percent “local tax” portion of the sales and use taxes you pay goes to your local city and county governments? In fact, in fiscal year 1997-98, more than \$4 billion dollars in local tax revenues were returned to the state’s 58 counties and 470 cities.

In order for each local jurisdiction to receive its correct share of local tax, it is important that we have correctly coded your business activity and have your correct business address in our files. If you enter into a new type of business, move to a new business address, or add a new location, please let your local Board office know. When the local tax is distributed correctly, we all benefit.

5. Are Your Handling Charges Taxable?

In general, tax applies to handling charges for taxable sales and does not apply to handling charges for nontaxable sales, such as sales for resale or sales in interstate commerce.

However, when the sale is mixed, partly taxable and partly nontaxable, the handling charge requires a somewhat different treatment. If your sales transaction includes a taxable sale of merchandise and a nontaxable sale and the handling charge applies to both,



the charge should be prorated between the taxable and nontaxable portion of the sale (the proration must be based on the amount properly allocable to the taxable and nontaxable parts of the transaction). Of course, if the handling charge is made in connection with just the taxable portion of the sale, the total charge is subject to tax. Likewise, if the charge is only associated with the nontaxable portion of the sale, the handling charge will be nontaxable.

Note: If a handling charge is taxable, tax applies whether or not the charge is separately stated on the invoice.

6. Would You Like To Settle a Disputed Tax Liability or Refund?

The Board has recently reorganized its Settlement Section to make it easier for fee payers and taxpayers to “settle” disputed civil tax or fee matters without having to present their case before the Members of the Board. The following article briefly explains how the settlement program works. — Editor

Under the Board’s settlement program, you can propose an alternative amount to settle a disputed civil tax or fee matter. The program is intended to expedite the resolution of cases, consistent with a reasonable evaluation of the costs and risks associated with the litigation of these matters.

You can apply for a settlement if you have a petition for redetermination, a late protest, or a claim for refund pending before the Board. To be considered, settlement proposals must be submitted at least 30 days before the first scheduled Board hearing.

How do I apply?

To request a settlement, submit a signed and dated written request that includes the following information:

- Your name and current address
- If applicable, the name, address, fax and phone number of your representative, as well as a copy of the representative’s power of attorney

- Your taxpayer or fee payer account number
- Tax or fee period involved
- Type of tax or fee involved (such as, sales tax, use tax, or diesel fuel tax)
- A good faith settlement offer, including factual and legal grounds in support of the offer

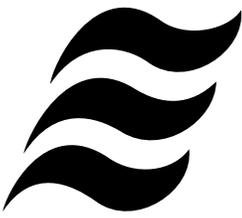
Send your request to:

Assistant Chief Counsel
Settlement and Administration Section
Legal Division
450 N Street MIC:87
P.O. Box 942879
Sacramento, California 94279-0087

After reviewing your request, settlement staff will advise you or your representative whether the case will be accepted into the settlement program. If staff determine that there is a legitimate factual or legal dispute, a case generally will be accepted. However, staff may reject a case for a variety of reasons. For example, if the applicant does not provide enough facts in support of his or her case, the case will not likely be accepted.

If your case is accepted for consideration, staff will evaluate your offer and may accept or reject it. If appropriate, staff may seek to negotiate an agreement to a different amount. If your case is not accepted, or no agreement is reached, your appeal will continue through the normal appeals process. If you and staff reach a tentative agreement, you must sign a formal document setting forth the terms of the agreement. The agreement becomes effective upon approval by the members of the Board of Equalization. Once effective, settlements are final and not appealable except upon a showing of fraud or misrepresentation of a material fact.

If you would like additional information on settlements, you may visit our website at <http://www.boe.ca.gov/boe393n.htm>. Or call our Information Center and request a copy of Publication 17, *Appeals Procedures*.



7. Sales of Cellular Telephones and Pagers—New Rules Apply

If you sell cellular telephones, pagers, and other telecommunication devices, you should be aware that, as of January 1, 1999, the tax reporting requirements for such sales have changed. As explained below, if your sales price is less than 50 percent of your cost, you are considered the consumer for tax purposes.

Note: Different rules apply to consignment and “sale or return” transactions. For more information on such sales, please call our Information Center and request a copy of Regulation 1585. See page 8.

The following discussion refers to bundled and unbundled sales, which are explained later.

- ***If your sales price is less than 50 percent of your cost (your purchase price).***

As of January 1, 1999, you are considered the consumer for tax purposes. As the consumer, you owe tax based on your purchase price for the device, rather than your sales price. This is true whether you sell the device for resale or at retail, bundled or unbundled. Accepting a resale certificate from your customer does not relieve you of your tax liability as a consumer. As a consumer you may not collect tax reimbursement from your customer.

- ***If your sales price is 50 percent or more of your cost (your purchase price).***

You owe tax based on your sales price. This is true whether the sale is bundled or unbundled. If you are making a sale for resale (you accept a properly completed resale certificate from your customer), you are not liable for tax on your sale.

Bundled Sales vs. Unbundled Sales

In deciding whether you are a consumer of the device you sell, you must first make sure you understand when your sales are bundled and when they are unbundled. If your sale is bundled (as explained in the next column), your “unbundled” sales price must be used to determine if your sale is more or less than 50

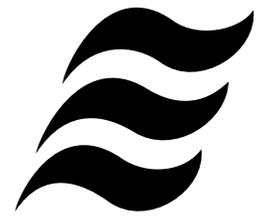
percent of your cost. When your sale is bundled, the amount you charge your customer is generally not the same as your “unbundled” sales price, it is usually much lower.

If your sale is unbundled (your customer is not required to activate or contract for utility service as a condition of the sale), the sales price you would use to determine if you are a consumer of the device is the actual price you charged and received from your customer. This price is commonly referred to as the “unbundled” sales price.

For example, you sell a cellular telephone to your customer for \$50 on the condition that he or she activates or contracts for service with a specific service provider for a one-year period. Customers who have chosen not to activate and contract for service have been sold the same model cellular telephone for a price of \$120. The sales price you would use to determine whether you are the consumer of the device is \$120 — the “unbundled” sales price — *not* the \$50 price your customer pays at the time of activation. If the unbundled sales price is less than 50 percent of your cost (purchase price), you are the consumer of the device and tax is due based on your cost. You may not collect tax reimbursement from your customer. If the unbundled sales price is 50 percent or more of your cost, tax is due on the *unbundled* sales price and you may collect tax reimbursement from your customer.

For the sales to your customers who have chosen not to activate or contract for utility service and have paid \$120 for the device, the sales price you would use in determining whether you are a consumer is again, \$120, the unbundled sales price.

Bundled transactions are those sales in which your customer is required to activate or contract for utility service with a wireless telecommunications service provider for a period greater than one month as a condition of the sale. Generally, in order for your customers to receive the promotional or discounted sales price of the wireless tele-



communications devices, they must agree to activate or sign up for utility service with a provider for more than a one-month period.

Unbundled sales price is the price at which you have sold specific types of wireless telecommunication devices to customers who are not required to activate or contract for utility service as condition of the sale. If you have not previously sold a specific device in other than a bundled transaction, the unbundled sales price shall equal the fair retail selling price of the device.

8. Tire Recycling Fee Extended through December 31, 2000

The California Tire Recycling Fee, which was set to expire on June 30, 1999, has been extended through December 31, 2000.

Purchasers of new tires pay the 25-cent per tire fee to tire retailers, who in turn remit the fee to the state on a quarterly basis (the seller is authorized to retain 10 percent of the fee).

The fees are appropriated to the Integrated Waste Management Board and are used for specified purposes with regard to tire recycling, enforcement, remedial action, studies, a shredding program, purchase preferences, waste hauler program, and the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program.

9. Do You Replace and Install Automobile Bumpers?

When repairing automobiles that have been in accidents, it is often necessary to replace and install new bumpers. This is especially true on newer model automobiles since most of these are now equipped with bumpers that cannot be readily repaired. As part of the replacement process, many of the bumpers must be painted to match the color of the vehicle. In doing so, the body shop operator will paint the bumper before it is installed on the vehicle since it is not practical to paint the bumper after installation.

The painting of the new replacement bumper, although part of the total repair of the vehicle, is considered fabrication labor and should be included in the taxable charge for the bumper. In general, fabrication labor is labor that is associated with the creation of new tangible personal property.

In performing audits of many new motor vehicle dealers, audit staff have noted that such fabrication labor has been erroneously recorded in the dealer's books and records as nontaxable repair labor. Thus, body shop operators and other retailers should be aware of potential tax understatements due to this type of recording error.

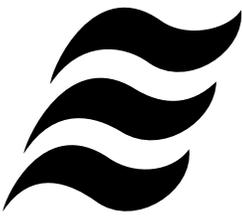
10. Safety of Board Employees

Paying taxes seldom comes under the category of "pleasurable things to do." Although dealing with deadlines and legal requirements is not always easy, most people make an effort to carry out these responsibilities with little friction, or even with a degree of equanimity.

Unfortunately, this is not always the case, as when Board employees are threatened with physical harm. Whether such threats are made in jest or with serious intent, the Board must take them seriously. Employees have the right to feel safe and secure in their jobs. Because of this, it is the Board's policy that threats to staff — whether made by other employees or from the public — be reported to management and, if necessary, to law enforcement personnel for further action.

There are many administrative procedures in place for resolving disputes and complaints. Taxpayers are encouraged to take full advantage of those procedures.

For more information on your rights as a taxpayer, please call the Information Center and request a copy of Publication 70, *The California Taxpayers' Bill of Rights*. If you have a problem you have been unable to resolve, you can contact the Taxpayers' Rights Advocate at 1-888-324-2798.



11. Motor Vehicle Leases and Allocation of Local Use Tax

The following article applies to motor vehicle lessors who report use tax based on rental receipts. It explains how motor vehicle lessors should allocate the 1% local use tax due on leases entered into 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 AB 1946.

For lease contracts entered into before January 1, 1999, lessors should continue to allocate the local use tax as instructed in the past.—Editor

General Tax Reporting Requirements for Motor Vehicle Leases

If you report tax based on rental receipts, you are required to report tax at the rate of 7.25% (the minimum statewide rate) plus any applicable district taxes if the vehicle is registered in a special tax district. The 7.25% tax rate is comprised of the state tax rate of six percent, the local tax rate of one percent, and the county tax rate of 0.25 percent.

You are also required to report local and district taxes based on the place where the lessee is assumed to use the vehicle. Generally, if the lease is short-term, local and district use taxes are reported to the business location of the lessor, on the assumption that the vehicle will be used in the same general area. If the lease is long-term, the place of use for reporting district taxes is generally where the lessee resides and/or registers the vehicle. It is also the place of use for reporting local use taxes for motor vehicle leases entered into *prior* to January 1, 1996. However, as explained below, the place of use for local use tax purposes on certain long-term leases changed on January 1, 1996 and January 1, 1999. These changes do not affect your reporting of district taxes.

Special Reporting Requirements for Long-term Leases

The reporting requirements described below

apply to long-term leases of the following new or used vehicles:

- Traditional family passenger vehicles (vehicles designed to carry no more than 10 persons, including the driver, such as an automobile, minivan, or sport-utility vehicle), and
- Light duty pickup trucks (pickup trucks with a payload capacity of under one ton).

For long-term leases (lease term that exceeds four months) of the above vehicles, the place of use for reporting the 1% local use tax due on rental receipts is as follows:

- ① *Lessor is a California new motor vehicle dealer (Vehicle Code Section 426) or a qualifying leasing company (as defined below)*

The place of use for reporting the local use tax is the city in which the lessor's place of business is located.

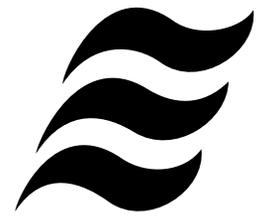
- ② *Lessor is not a California new motor vehicle dealer or a qualifying leasing company (as defined below)*

- *Lessor purchases the vehicle from a California new motor vehicle dealer or a qualifying leasing company.* The place of use for reporting the local use tax is the city in which the dealer from whom the lessor purchased the vehicle is located.
- *Lessor purchases the vehicle from another source.* The local use tax shall be reported and distributed through the countywide pool of the county in which the lessee resides.

Leasing Company Defined

A "leasing company" is a motor vehicle dealer (as defined in Vehicle Code Section 285) that meets all of the following criteria:

- The dealer originates long-term lease contracts for motor vehicles in which tax is reported based on rental receipts.
- The dealer does not sell or assign the long-term lease contracts that it originates.
- The dealer has annual motor vehicle lease receipts of fifteen million dollars (\$15,000,000) or more per location.



Note: In determining whether the dealer meets the \$15 million dollar threshold, only those periodic payments required by the lease should be considered. Amounts received by lessors attributable to capitalized cost reductions or amounts paid by lessees upon exercising an option should not be considered.

vehicles that are considered MTE under Regulation 1661, except for light duty pickup trucks. Although light duty pickup trucks are still considered MTE, when the special reporting provisions apply, you should report the local use tax due on rental receipts as shown in the table below.

Mobile Transportation Equipment (MTE)

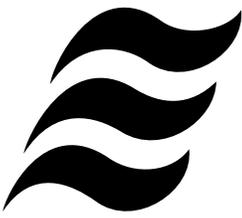
The special reporting requirements discussed in this article do not apply to leases of motor

**Guidelines for Allocating the 1% Local Use Tax Due on Lease of Motor Vehicles
Effective January 1, 1999**

Type of Lessor	Leases Exceeding 4 Months	Leases for 4 Months or Less
Allocate 1 % Local Tax To		
California New Motor Vehicle Dealer Lease of new or used motor vehicle* and MTE	Dealer-lessor's sales location (Schedule F not needed)	Dealer-lessor's sales location (Schedule F not needed)
California "Leasing Company" (as defined) Lease of new or used motor vehicle* and MTE	Lessor-dealer's sales location (Schedule F not needed)	Lessor-dealer's sales location (Schedule F not needed)
California Lessor other than a New Motor Vehicle Dealer or "Leasing Company" (as defined) Lease of a motor vehicle* purchased from a California new motor vehicle dealer or qualifying "leasing company" (as defined). Lease of motor vehicle, other than a motor vehicle* purchased from a California new motor vehicle dealer or qualifying "leasing company" (as defined). Lease of MTE, other than a light duty pickup truck purchased from a California new motor vehicle dealer or qualifying "leasing company" (as defined).	California new motor vehicle dealer or "leasing company's" sales location (Schedule F) Lessee's place of registration (Schedule B) Lessor's sales location (Schedule F not needed)	Lessor's sales location (Schedule F not needed) Lessor's sales location (Schedule F not needed) Lessor's sales location (Schedule F not needed)
Out-of-State Lessor Lease of motor vehicle* purchased from a California new motor vehicle dealer or qualifying "leasing company" (as defined). Lease of motor vehicle and MTE, other than a motor vehicle* purchased from a California new motor vehicle dealer or qualifying "leasing company" (as defined).	California new motor vehicle dealer or "leasing company's" sales location (Schedule F) Lessee's place of registration (Schedule B)	Lessee's place of registration (Schedule B) Lessee's place of registration (Schedule B)

* Traditional passenger vehicle (designed to carry, including the driver, no more than 10 passengers), but not including any mobile transportation equipment except light duty pickup trucks.

Note: Please see page 6 for definition of "leasing company" for the specific purposes of Section 7205.1.



12. 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 downloaded or viewed from our web site: <http://www.boe.ca.gov>.

Sales and Use Tax Publications

- 32 Tax Tips for Purchasers from Mexico (March 1999)
- 52 Vehicles and Vessels: How To Request an Exemption from California Use Tax (March 1999)
- 71 California City and County Sales and Use Tax Rates (April 1999)
- 72 Summary of Statutory and Constitutional Authority (February 1999)
- 74 Closing Out Your Seller's Permit (January 1999)
- 93 Cigarette and Tobacco Products Tax (January 1999)

Sales and Use Tax Regulations

- 1521 Construction Contractors (February 13, 1999)
- 1525.2 Manufacturing Equipment (April 3, 1999)
- 1541.5 Printed Sales Messages (February 4, 1999)
- 1585 Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices (February 12, 1999)
- 1588 Seeds, Plants and Fertilizer (April 1, 1999)
- 1620 Interstate and Foreign Commerce (February 7, 1999)
- 1702 Successor's Liability (March 31, 1999)

How To Contact Us

Information Center. Call at any time to use our automated services, including our fax-back 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 <http://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, call our automated voice response system at 1-888-225-5263 or visit our website at <http://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, **1-888-324-2798** (toll-free).

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

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