

Tax Information

Bulletin

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California State Board of Equalization
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Regulation 1602, Food Products, now provides a clear standard for how tax applies to combination packages

If you sell gift baskets—or any other kind of combination package that includes both food and non-food items—a recent amendment to Regulation 1602, *Food Products*, provides a clear standard for how tax is applied to your product. As of April 2007,

- If you have records that verify the cost of the individual items in the package, and the retail price of the nonfood product is more than 10 percent of the retail value of the entire package (not including the container), you must continue to separate the retail value of the nonfood products. The tax is based on the retail sales price of the nonfood products including the value of the container.*
- If the retail value of the non-food product exceeds 10 percent of the retail price of the entire package, not including the container, and you do not have records to establish the*

cost of the individual items of the combination package, the tax may be measured by the retail sales price of the entire package, including the value of the container.

- The sales price of the package is nontaxable if the retail value of the nonfood products is 10 percent or less (not including the container) and the container's retail value is 50 percent or less of the entire package value.*

A "container" is generally considered the box, basket, or any other packaging material that holds the product being sold.

Here's an example of a scenario as outlined in guideline 3.

You sell a gift basket for \$60, the package includes

Cheeses, retail value \$45.00

Small knife, retail value \$5.00

Total value of contents \$50.00

Container, retail value \$10.00

Total price of gift basket \$60.00

The nontaxable combination package meets both conditions explained in guideline number 3. The value of the nonfood items, \$5.00, is 10 percent

of the \$50 total value of the contents (\$50 X 10% = \$5). The value of the container, \$10.00, is less than 50 percent of the retail value of the entire package (\$60 X 50% = \$30). Your sale qualifies as a nontaxable sale.

For more information, please visit our website at www.boe.ca.gov/sutax/staxregs.htm or call our Information Center at 800-400-7115.

Some portable DVD players added to Electronic Waste Recycling Fee Program

The Department of Toxic Substances Control (DTSC) has added Portable DVD players with liquid crystal displays (LCD) to the Electronic Waste Recycling Fee Program's list of common hazardous waste. Retailers who sell or lease these DVD players will need to collect the recycling fee beginning July 1, 2007.

Currently, the fee applies to specific new or refurbished televisions, LCD and Plasma televisions, computer monitors, laptop computers, and other video display devices. The fee runs from \$6 to \$10, depending on the size of the screen, measured diagonally.

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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.

For your convenience, a list of electronic devices covered by the program is posted on DTSC's website at http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/OEAR_ER_DVD_TEXT.pdf.

Environmental fee expands to include more businesses

The environmental fee has been in effect since 1989, but only applied to certain corporations. Beginning January 1, 2007, Assembly Bill 1803 (Stats. 2006, ch.77), expands the fee to also include general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and sole proprietorships. In general, the fee applies to businesses that have 50 or more employees who are employed more than 500 hours in this state in a calendar year. These businesses must 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 businesses fall into this category. We are responsible for collecting the fee, which provides revenue for hazardous waste cleanup and pollution prevention programs administered by the DTSC. The fee for the 2007 calendar year is due on February 29, 2008.

For more information about this and other environmental programs we administer, or to obtain an application or publication, please visit our webpage: www.boe.ca.gov/sptaxprog/spenvirofees.htm.

Prepared cold food products may be taxable

Many people assume that all prepared cold food products are exempt from tax. If you sell cold food products and your customers consume them at dining facilities provided at your place of business (they "dine in"), these sales are subject to tax.

You are providing dining facilities if

- You provide your customers with tables and chairs or counters, or
- You are located in a mall or shopping center in which your landlord provides a common area for dining (such as a food court) and you pay your landlord for these services.
- You provide your customers with returnable trays, glasses, dishes or other tableware along with their cold food.

For more information about the taxable sales of food, please refer to publication 22, *Tax Tips for the Dining & Beverage Industry*. All of our publications are available on our website or by calling our Information Center at 800-400-7115.

New Rancho Mirage location for taxpayer assistance

Michelle Steel, Third District Member of the Board of Equalization, has announced a new location for the agency's Rancho Mirage tax assistance field office. Formerly at 42-700 Bob Hope Drive, the Rancho Mirage field office will now be located at

Rancho Mirage Field Office
Board of Equalization
35-900 Bob Hope Drive, Suite 280
Rancho Mirage, CA 92270-1768

Phone: 760-770-4828
Fax: 760-770-6876

You may visit the office to file returns, make payments, register for permits, or find basic taxpayer assistance. Representatives are available weekdays from 8 a.m. to 5 p.m. Monday-Friday, excluding state holidays.

E-Services are on the move!

We've listened to your requests to add features to e-services! Here are the details:

E-file program—new payment option available

As of this spring, if you have a sellers permit and are eligible to e-file your returns, you will now have the option of paying with either your bank account or your credit card.

E-file program expansion—Sales and Use Tax quarterly prepayment return

If you file sales and use tax returns on a quarterly prepayment basis, you may now be eligible to e-file. If you have a single sales location and are not required to pay by electronic funds transfer (EFT), you may be able to e-file your prepayments and returns! Additionally, if you would like to "toss the paper," you can choose to discontinue receipt of paper returns. In lieu of receiving paper returns, you will receive e-mail reminders of upcoming due dates.

Credit card program expansion—Special Taxes returns and accounts receivable liabilities

We've expanded the credit card program! Now, in addition to paying your sales and use tax return, you may also pay your Special Taxes return by credit card. You may also make payments on existing liabilities for most tax and fee programs administered by the Board using your credit

card. On the left hand menu of our home page (www.boe.ca.gov) under Featured Services, click "Make a Payment" then choose "Credit Card Payment over the Internet" and follow the simple step by step instructions. It's that easy! We accept Discover, MasterCard, Visa and American Express cards. A convenience fee is charged by the credit card processing vendor and is not revenue to the Board.

To learn about e-services programs and to check e-filing eligibility requirements, visit our website at www.boe.ca.gov and view the overview page on the "E-Services" menu at the top of the page. You can obtain general information and read answers to frequently asked questions.

Join us as we continue to move forward with e-services...toss the paper and file your taxes online today!

Relief from penalty for late payments or returns

It is possible to have interest or penalty charges (or both) waived under limited circumstances.

You may apply for relief from penalty charges if, because of circumstances beyond your control, you

- Are unable to file your return or make a tax payment on time, or
- Are unable to make a payment by electronic funds transfer (applies to taxpayers who are required to pay by EFT).

If you wish to file for relief from penalty you must file a statement with us stating the facts that apply. Use form BOE-735, *Request for Relief from Penalty*. We will review your material and determine if the penalty can be waived. If you are relieved of the penalty charges,

you must still pay the interest due on late return payments and prepayments.

If your payment or return filing was late because of failure to exercise ordinary care, because of willful neglect, or lack of funds, you will not be granted relief from the penalty.

Late penalty imposed in error

If you mailed your payment or return on time but we show it was late, you may file form BOE-135-A, *Declaration of Timely Mailing*, stating that the payment in question was mailed on time, was properly addressed, and included sufficient postage.

If you made your payment by electronic funds transfer (EFT) on time but we show it was late, you may file form BOE-129-EFT, *EFT Transmission Declaration*, stating that the payment in question was made on time.

If we conclude that you did mail your payment or return on time, or the EFT transmission was on time, we will correct the records to show that no late penalty or interest is due. As proof of the timely mailing or filing of your return, we may need to examine your records or bank account.

For relief of penalties and interest resulting from other situations such as disaster, reliance on incorrect written advice, errors or delays caused by the Board of Equalization or the Department of Motor Vehicles, please refer to publication 75, *Interest and Penalties*. All of our publications and forms are available on our website at www.boe.ca.gov or by calling our Information Center at 800-400-7115.

Sales for resale—make sure your records protect you

Unsupported sales for resale is a consistent problem area in audits. As a retailer, you are responsible for supporting any sale you claim as a nontaxable resale. Without proper documentation, you could be held responsible for tax on a sale you thought was nontaxable. To avoid this problem, make sure your customer gives you a timely, valid resale certificate certifying that the purchase is for resale. You also want to make sure that your records show that the sale was made to the same customer as on the resale certificate.

Example – Furniture Store:

An interior decorator who normally purchases items for resale brings in a client to select furniture. The furniture retailer helps the decorator and the decorator's client to select a living room set. Since the retailer has been working with the decorator, he assumes the decorator is purchasing the furniture for resale, however, the decorator asks that the sales invoice be made out directly to the client. Payment is also made directly from the decorator's client to the furniture retailer. In this situation, the furniture retailer has not made a sale for resale. The sale is to the decorator's client (the end user of the furniture) and is taxable.

Obtaining specific resale certificates

As a seller, you should note the general nature of your customer's business. If the nature of the business is such that the property purchased would not normally be resold, you should question the use of the certificate.

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Example – Jewelry Mart:

A jewelry mart retailer helps a customer select a set of bridal rings for \$5,000. The customer owns a women's clothing store that also sells jewelry. The customer gives the jeweler a resale certificate stating that she is in the business of selling "clothing and jewelry" and describes the property she is purchasing as "jewelry." The jeweler is unsure whether to accept the certificate.

While it seems more likely that an owner of a clothing store would purchase numerous amounts of costume jewelry for resale rather than a single set of expensive rings, the customer may be validly purchasing the rings for resale. Sellers occasionally sell items outside their normal product line. However, since the sale seems unusual, the jeweler should protect himself by asking for a resale certificate describing the specific property being purchased. That is, instead of listing "jewelry" on the property description line, the certificate should state something like, "1 carat white gold bridal ring set invoice #1234." This specific resale certificate will protect the jeweler in the event the sale is questioned in an audit.

For more information about resale certificates, please see publication 103, *Sales for Resale*, and Regulation 1668, *Sales for Resale*, available on our website.

Small business fairs

To help you with the ins and outs of running your business, we've developed a FREE "one-stop-shop" event for small business owners. Representatives from government agencies and nonprofit organizations will be there to assist you in learning how to manage a successful business.

There are many benefits to attending our Small Business Fairs:

- Meet with representatives from over 20 government agencies and nonprofit organizations—who are ready to answer your specific business questions.
- Learn about federal and state tax laws and how they apply to your business.
- Get advice about record keeping, including specifics about what business records you must keep.

Below are the dates and locations for the 2007 Small Business Fair Workshops and Resource Expos.

June 26	Anaheim
July 27	San Diego
September 26	West Covina
October 17	San Leandro
October 26	Torrance

To register for an event in your area, visit our website at www.boe.ca.gov/sutax/tpsched.htm or contact us at 916-341-7389.

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 made to a Board of Equalization 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.

New or revised reference material

Revised publications:

25	Tax Tips for Auto Repair Garages and Service Stations, February, 2007
27	Tax Tips for Drug Stores, March, 2007
31	Tax Tips for Grocery Stores, January, 2007
44	Tax Tips for District Taxes, January, 2007
71	California City and County Sales and Use Tax Rates, April, 2007
90	Environmental Fee, January, 2007
94	Occupational Lead Poisoning Prevention Fee, January, 2007
117	Filing a Claim for Refund, February, 2007

New translated publications:

18-S	Tax Tips for Non Profit Organizations, April, 2005
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Revised translated publications:

31-C	Tax Tips for Grocery Stores, July, 2004
31-S	Tax Tips for Grocery Stores, July, 2004
31-V	Tax Tips for Grocery Stores, July, 2004
73-V	Your California Sellers Permit, May, 2004

For More Information

All telephone numbers are toll-free

Internet	www.boe.ca.gov ■ www.taxes.ca.gov
Information Center	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