



Tax Information Bulletin

Issued Quarterly

September 2006

California State Board of Equalization
P.O. Box 942879, Sacramento, CA 94279-0001

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New tax rates for National City and Woodland starting October 1, 2006

National City voters have approved a 1 percent City of National City Transactions and Use Tax, which will increase the tax rate within city limits from 7.75 percent to 8.75 percent.

In the City of Woodland, voters have approved the City of Woodland Transactions and Use Tax which will increase the tax rate in the City of Woodland from 7.25 percent to 7.75 percent.

A special notice listing the new tax rates was recently mailed to appropriate sellers located in cities where the rate changes occurred and in surrounding counties. The notice explains who must collect tax at the new rates, and which fixed-price contracts are exempt from the tax increases. District boundaries are generally defined by city and county lines. Because many zip codes overlap those lines, contact your city or county to determine what district taxes affect your address. For a copy of the notice, visit www.boe.ca.gov/news/specialnotices.htm or if you have additional questions, please call our Information Center at 800-400-7115.

Tax on sales of cell phones and pagers is different from other merchandise

Cell phones, pagers, and other wireless telecommunications devices are often sold in combination with related airtime services. The sales tax on most cell phone sales is applied differently from most other property. Most cell phones are sold at a discount from the list price. In order to get the discount, the customer must purchase a service contract of greater than one month

(typically one or two years) with a particular service provider. Regulation 1585, *Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices*, describes these sales as "bundled" transactions.

A retailer also may sell a cell phone without the requirement that a customer buy a service contract. The price charged by the retailer

for this type of sale is referred to in Regulation 1585 as the "unbundled sales price." This price is nearly always higher than the bundled price.

When a retailer makes a bundled sale, the law requires that the retailer report sales tax based on the *unbundled* price of the phone whether or not the price of the phone is itemized on the invoice. The retailer is allowed to collect sales tax from the customer based on the unbundled sales price, and then pass the amount to the state.

The unbundled price is either

- The price the retailer charges for the phone without requiring the purchase of a service contract.
- The fair retail selling price (if the above cannot be established by the seller's records).
- The retailer's cost of the phone plus a minimum markup of 18 percent.

For example, Fine Phones, a California retailer, may sell a wireless phone for \$19.99, but require a

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Tax on sales of cell phone and pagers is different from other merchandise

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customer to purchase a two-year service/airtime contract in order to receive this price. Fine Phones would sell this phone for \$199 if the customer did not purchase a service contract. In this case, Fine Phones would be responsible for sales tax based on \$199 (the unbundled price) or tax of \$16.42 (assuming an 8.25 percent tax rate).

Fees for one-time activation and charges for wireless service are generally not taxable.

If you have questions about sales of cell phones or service, please see Regulation 1585 or call our Information Center, 800 400-7115.

Some food products are not exempt from tax

Many products that we might consider foods, and therefore exempt from sales tax, are not exempt under the sales and use tax law. These items, which include vitamins, herbal supplements, and weight loss aids, are taxable when sold to consumers.

Even though these products are for human consumption, their description on their packages or labels as food supplements, food adjuncts, dietary supplements, or dietary adjuncts excludes them from being exempt food products.

Also, any products that are designed to correct specific dietary deficiencies or to increase or decrease vitamins, minerals, proteins, or caloric intake are taxable because the law does not consider them to be food products.

One feature of taxable supplements is that the manufacturer mixes in-

gredients in order to provide a specific nutritional effect. This is the reason that multi-vitamin pills are taxable.

However, complete dietary foods that provide the user with recommended daily dosage of vitamins, proteins, minerals, and calories are exempt from sales tax as food products. In addition, prescription medicines (as defined in Regulation 1591, Medicines and Medical Devices) are exempt under certain circumstances.

If you are uncertain as to the application of sales tax to a particular product, please call our Information Center at 800-400-7115.

You are entitled to a refund if you overpay your taxes

The Board strives to serve the public through fair, effective, and efficient tax administration. Therefore, both overpayments and underpayments are treated equally. If you overpay your taxes, you may file a claim for refund and we will review the claim.

Although a claim doesn't require a specific format, it must be in writing, and should state the following:

- The specific reasons you paid too much.
- The excess amount paid.
- The reporting period or periods for which you paid too much tax.

The Board has a claim form available for you to use, BOE-101, *Claim for Refund or Credit*. When submitting a claim for refund, you should submit copies of detailed documents that support your claim. Refunds are treated with priority. Therefore, providing complete supporting documentation will expedite the process.

You should also include the following information:

- Your name and account number.
- Business name.
- Your social security number or federal employer identification number.
- Signature and title or position of the person who files the claim.
- Contact person.
- Telephone number.

There are deadlines for filing your claim for refund. Whichever of the following dates occurs last is your filing deadline.

- Three years from the due date of the return on which you paid too much tax.
- Six months from the date you overpaid tax.
- Six months from the date a determination (billing) becomes final.
- Three years from the date we collected an involuntary payment, such as a levy or lien.

For additional information, publication 117, *Filing a Claim for Refund*, is available on our website at: www.boe.ca.gov/sutax/staxpubsn.htm. The publication includes the form BOE-101.

Will your appeal be heard by the Board? A new video can help

When you request that your appeal of a tax or fee billing be heard by the Board members, the process can be confusing. The Taxpayers' Rights Advocate, along with our other departments, has developed a new video to help you prepare for your hearing.

When you receive your notice of hearing and written instructions you will also receive the video, *Your Appeal Hearing Before the Board Members*. It will make the hearing process less intimidating by showing the forms you will be asked to complete, explaining how to submit materials and how to ask for help, and by showing scenes of actual Board hearings.

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Cigarettes sold in state must soon be self-extinguishing

Starting January 1, 2007, no cigarettes may be sold in California unless they are certified by their manufacturer as self-extinguishing, and marked accordingly.

Distributors, wholesalers, retailers, or others who knowingly sell or offer to sell cigarettes not in compliance with the California Cigarette Fire Safety and Firefighter Protection Act (Assembly Bill 178, Stats 2005, ch. 633), could face civil penalties of up to \$1,000. Manufacturers could face penalties of up to \$10,000 for violation of the Act. The Board can inspect, cite, and seize cigarette packages that are not marked, or do not meet performance standards.

Manufacturers must certify to the State Fire Marshal that the cigarettes they tested met the performance standards as established by the American Society of Testing and Materials.

The Act was passed to help reduce the number of fires caused by burning cigarettes, which are the leading cause of fire deaths in the U.S.

For more information, contact our Information Center, 800-400-7115.

Filing for bankruptcy? What you should know

How do I notify the Board when I file my bankruptcy case?

The Board receives notice of the start of a bankruptcy case directly from the bankruptcy court. To receive this notice from the bankruptcy court, the Board must be correctly listed as a creditor in your bankruptcy schedules and in the mailing matrix of creditors which is filed with your bankruptcy petition. The address is:

California State Board of Equalization
Account Reference Group, MIC:29
P.O. Box 942879
Sacramento, CA 94279-0029

Is the Board prohibited from taking any action while I'm in bankruptcy?

While in effect, the bankruptcy automatic stay prevents the Board from starting or continuing collection actions. The Board may, however, conduct an audit to determine tax liability, issue a notice of determination and redetermination, make a demand for tax returns, and continue an administrative appeal.

Buy Cigarettes or Tobacco Online or by Mail?

You must pay state taxes if the seller does not collect them from you.

California taxes apply to all purchases of cigarettes and tobacco products.

If you buy online or by mail, the Board of Equalization may contact you.

For more information call:

916-327-4208

Excise Taxes and Fees Division
State Board of Equalization
www.boe.ca.gov

Retailers of cigarettes and tobacco products: Watch for a new blue and white decal that has been enclosed with your 2006 Cigarette and Tobacco Products Retailers' License. The decal pictured above reminds consumers that *all* purchases of cigarettes and tobacco products bought on the Internet or by mail order are subject to California taxes. If the seller does not collect the taxes from the buyer at the time of sale, then the buyer must pay them. We encourage you to post this decal in a visible location for the benefit of your customers.

If you would like to order additional decals or have any questions, contact the Excise Taxes and Fees Division at 916-327-4208, or go to www.boe.ca.gov.

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Will your appeal be heard by the Board? A new video can help

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The video is now provided to all appellants on a compact disk (or on a videotape upon request) and will soon be available for viewing on the Board's website.

Written information is also available. For answers to frequently asked questions about the hearing process, download publication 142, *Board Hearings, an Introduction* from our website, or request a copy from our Information Center at 800-400-7115.

More extensive information can be found in publication 143, *Your Appeal Hearing Before the Board Members*.

Filing for bankruptcy?

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Doesn't filing for bankruptcy mean I no longer have to file returns?

No. You are required to continue to file the necessary returns and pay taxes for each tax period while you are in bankruptcy.

Will I have to pay my tax liabilities after my bankruptcy?

It depends. If the tax liability was discharged in your bankruptcy, you will not have to pay it. Whether a tax liability will be discharged depends on a number of factors, such as when the tax liability was assessed, the type of tax, and under which bankruptcy chapter the case was filed. If a tax liability is not discharged through bankruptcy, after the automatic stay ends the Board

will resume collection action.

Taxpayers should consult with an attorney to determine if their tax liability would be dischargeable.

One-year use period for out-of-state vehicles is extended

A vehicle, vessel or aircraft purchased out of state and brought into California within one year of its purchase, is generally presumed to have been purchased for use in California and is taxable. The requirement of the one-year period was to end June 30, 2006, but is extended through June 30, 2007.

Please read the special notice concerning the one-year extension on our website at www.boe.ca.gov/news/specialnotices.htm.

Small Business Fairs

We invite current and potential business owners to attend one of our upcoming Small Business Fairs, which offer information workshops on federal, state, and local taxes as well as other government requirements. The fairs are free, but reservations are recommended.

Upcoming Fairs

Marin, October 13, 2006

Marin Center, San Rafael
For more information, contact our Santa Rosa Office Small Business hotline at 707-576-2300.

To check for other upcoming fairs in September and October, please visit our website at www.boe.ca.gov/sutax/tpsched.htm.

Revised Reference Material

New or Revised Regulations

No new or revised regulations this period.

Revised Publications

- 24 Tax Tips for Liquor Stores (May 2006)
- 28 Tax Information for City and County Officials - Local Sales and Use Tax (May 2006)
- 42 Resale Certificate Tips (July 2006)
- 80 Electronic Funds Transfer Information Guide (May 2006)
- 93 Cigarette and Tobacco Products Taxes (June 2006)

Translated Publications

- 17-S Appeals Procedure: Sales and Use Taxes and Special Taxes (February 2003) new translation, Spanish
- 73-S Your California Seller's Permit (May 2004) revised translation, Spanish
- 117-S Filing a Claim for Refund (June 2003) new translation, Spanish

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