STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
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June 5, 2006

VIA INTERNET

Dear Interested Party:

The Sales and Use Tax Department is proposing to revise Audit Manual Chapter 6, *Vehicle, Vessel and Aircraft Dealers,* by incorporating the changes below. The full text of the changes, displayed on the following pages, is provided for the convenience of interested parties who may wish to submit comments.

The proposed changes are:

- **AM Sections 0601.50 & 0609.20**. Deletes the requirement to forward a copy of BOE-1164 to the Department of Motor Vehicles, regarding purchases of a new motor vehicle for resale by a dealer who does not hold a franchise for the type of motor vehicle purchased. The BOE does not currently provide this type of referral.
- **AM Sections 0606.05 & 0606.10.** Updates audit procedures for used car dealers.
- **AM Section 0607.35**. Updates information on DMV contact regarding Report of Sale Books.
- **AM Section 0607.84.** Provides that vehicle registration service fees may not exceed a total of $28 ($25 customer fee and $3 transaction fee) and that tax does not apply to these charges when separately stated. Explains the application of tax to the two-day contract cancellation option for a used motor vehicle.
- **AM Section 0608.55.** Updates audit procedures for courtesy deliveries.
- **AM Section 0611.05.** Explains the use of BOE-447 and BOE-448 (previously included in other sections of AM Chapter 6) and refers to the Board's website for the current version of these forms.
- **AM Section 0611.12.** Creates new section for audit procedures for sales of foreign vehicles with foreign delivery.
- **AM Section 0611.15.** Adds the twelve-month test for vehicles purchased outside the state and brought into the state within 12 months after the date of purchase (Regulation 1620). Deletes information moved to other sections of AM Chapter 6.

AM Section 0611.50. Explains that effective June 1, 2003, the sale or lease of vehicles to foreign consular officers, employees, or members of their families will be exempt from the sales and use tax if at the time of the transaction, the purchaser or lessee provides a tax exemption card to the retailer and the Office of Foreign Missions (OFM) furnishes directly to the retailer or lessor an eligibility letter for the tax exemption for each vehicle. Clarifies that prior to June 1, 2003, the exemption could apply to a purchaser or lessee who did not hold a tax exemption card if OFM furnished an identification letter at the time of purchase.

- **AM Section 0612.50.** Clarifies that charges for hazardous waste fees are generally taxable when the fee is directly (deletes the word "solely') related to the sale of tangible personal property and no repair or installation is involved.
- **AM Section 0614.20.** Replaces the term "extended period" with "period exceeding 12 months" to provide more specific guidelines.
- **AM Section 0614.70.** Deletes reference Exhibit 13 and refers users of the audit manual to the Board's website for the current version of BOE-230-A. See deleted exhibits below.
- **AM Sections 0616.05 to 0616.15.** Updates procedures for handling "Lemon Law" transactions involving replacement vehicles. Explains that the alternative method in which vehicle replacements are treated as two separate transactions, is no longer acceptable.
- **AM Section 0616.20.** Deletes provisions of Civil Code sections 1793.23 and 1793.24 which address what is required of a manufacturer selling or leasing a vehicle reacquired under the Lemon Law (reference to applicable Civil Code sections is included in AM Chapter 6).
- **AM Sections 0616.25 to 0616.35.** Deletes information that is included in other sections of AM Chapter 6.
- **AM Sections 0625.10 & 0625.15.** Explains audit procedures for RTC sections 6388 and 6388.5 exemptions for new and remanufactured trucks, truck tractors, trailers and semitrailers. Deletes reference to Exhibit 5 and refers users of the audit manual to the Board's website for the current version of BOE-837. See deleted exhibits below.
- **AM Sections 0626.00 to 0626.25.** Adds new section for audit procedures for RTC section 6356.5 partial sales and use tax exemption on the sale, storage, use and other consumption of farm equipment and machinery, including qualified vehicles.
- **Exhibits 1, 2, 5 and 13.** These exhibits of blank BOE forms have been removed from the audit manual and replaced with references to the Board's website. Since updated forms are maintained on the Board's website, using these forms ensures that auditors are using the current version of the forms.
- **Exhibits 3 to 12.** Renumbered 1 through 9.

If you have any comments or suggestions *related solely to the proposed changes described above,* you may contact the Department at AM.RevisionSuggestions@boe.ca.gov, or you may submit your comments or suggestions to:

Ms. Nini McCormack
Sales and Use Tax Department
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0050
Fax: (916) 322-2958

Your comments or suggestions regarding the proposed changes must be received by **August 5, 2006** in order to be considered by staff. Thank you for your consideration.

Sincerely,

Jeffrey L. McGuire, Chief
Tax Policy Division
Sales and Use Tax Department

JLM:nvm

Unless these transactions are in violation of Vehicle Code section 11713.1(f) (see below for discussion), the autobroker is the retailer when:

(a) The autobroker agrees in advance to secure a motor vehicle for a client at a specified price. It is immaterial that the car dealer bills the autobroker or the autobroker's client.

(b) The car dealer bills the autobroker for the motor vehicle and the autobroker in turn bills the client.

(c) The autobroker files a "Dealer's Report of Sale" for the sale of a motor vehicle that the autobroker arranged between private parties.

Autobrokers are required to report and pay sales tax on sales of vehicles when they are the retailer for sales and use tax purposes.

The Vehicle Code prohibits a dealer-broker from purchasing **a new motor vehicle for resale of a line-make for which the dealer-broker does not hold a franchise**. This violation of the dealer's license would provide sufficient cause to disallow acceptance of a resale certificate in good faith. New car dealers should be advised not to accept a resale certificate for this type of transaction. The violation of Vehicle Code section 11713.1 is sufficient to overcome the presumption of a good faith acceptance of a resale certificate, whether or not it contains a statement that the specific vehicle is being purchased for resale in the regular course of business. (See section 0609.20 for exceptions to this policy)

When these types of transactions are encountered in audits of franchised dealers, BOE–1164 should be prepared for questionable transactions, e.g., a Ford dealer accepting a resale certificate for the purchase of a new Ford vehicle from a dealer not franchised to sell Ford vehicles. ~~*In addition, a copy of the BOE–1164 containing information (selling dealer, purchasing dealer, date of transaction, VIN number, description of the vehicle, etc.) on transactions that appear to violate the Vehicle Code should be forwarded to the Centralized Review Section (CRS) in the Headquarters' packet when the audit is transmitted (similar to FTB information), and a "DMV" comment should be placed on the back of the BOE–414–A indicating that a BOE–1164 is attached. CRS will forward this information to DMV for further investigation.*~~

Autobrokers who intend to bill their clients for the vehicle should advise the dealer of the amount of sales tax to be charged. If the amount of tax charged by the dealer is sufficient to cover the autobroker's selling price to his or her customer, there is no additional liability to the autobroker. However, leads on the dealer charging the sales tax should be prepared, as it sometimes occurs that the dealer's invoice does not reflect this charge. An example follows:

	Invoice in Autobroker's File From Dealer	Invoice in Dealer's File to Autobroker
Motor Vehicle	$12,000	$12,152
Sales Tax on $14,000 (@8.25%)	1,155	1,003*
	$13,155	$13,155

*($12,152)(.0825)

The tax due from the dealer in this case is $1,155. When auditing dealers who sell to autobrokers, auditors should check for evidence of tax on an amount greater than the selling price reflected in the dealer's records.

INITIAL INTERVIEW 606.05

The initial interview is crucial to the audit process~~,~~ and the auditor should ask certain specific industry related questions. The auditor should determine the method of reporting, ~~whether the owner keeps a record or list of his or her profits on each vehicle or deal,~~ and what types of records are maintained that list or summarize the business transactions. The auditor should also determine the source of purchases, if any sales or purchases are made at auctions, if there are sales for resale to wholesalers, ~~and~~ consignment sales, ~~the source of purchases of vehicles,~~ and ~~if there are~~ any in-house dealer financing sales or third party financing ~~sales~~. The specific bank account(s) where sales are deposited should be identified. ~~Along with~~ the auditor should inquire as to expenses paid out in cash. The auditor should determine whether the dealer ~~and~~ or any family members own ~~a car~~their vehicles or ~~whether they~~are allowed to drive ~~cars~~ vehicles off the lot.

AUDIT PROCEDURES — USED CAR DEALER 0606.10

The following audit procedures are recommended for used car dealers. They are not necessarily performed in the order presented.

1. Call the Department of Motor Vehicles (DMV), preferably prior to the initial appointment, for retail and wholesale Report of Sale book numbers issued during the audit period and for information on dealer plates (quantity and plate number). Refer to section 0607.35.

2. Run AUD TR in IRIS to obtain a transcript of returns (BOE-414-M). Run it again near the completion of the audit to verify that no adjustments have been made that affect your audit results.

3. Find out who prepared the returns during the audit period. Have them show you the source(s) of the figures.

4. Tour the business location. Determine the level of business activity and lot size. Check for additional sources of income such as body shop or repair garage and other items for sale (i.e., boats, recreational vehicles, motorcycles, campers, etc). Keep in mind that used car dealers may not restrict themselves to accepting vehicles as trade-in.

5. Locate all books/records available for audit, including DMV Report of Sale books, dealer jackets, and inventory books.

6. Using the information from DMV, verify all DMV Report of Sale books are on hand. Verify that all sales were posted and reported by tracing sales from the Report of Sale books to ledgers or worksheets.

7. Review the sales tax return worksheets for accuracy, consistency, and method of reporting.

8. Reconcile reported sales per BOE-414-M to books, Federal Income Tax Returns (FITR), and financial statements.

9. Calculate the book markup. Do a short shelf-test, if necessary, to verify the book markup or cite industry standard.

10. If a general ledger exists, scan for unusual entries such as debits to sales and credits to cost of goods sold. Look for miscellaneous sales of assets, sales to employees, brokered sales, consignment sales, etc.

11. Analyze the sales tax accrual account.

12. Examine a representative number of sales contracts for accurate computation of sales tax. Verify that doc fees, smog fees, trade-ins are handled correctly (i.e., trade-ins are not netted from sales price).

13. Trace a representative number of sales contracts to recorded sales. Check for posting accuracy.

14. Verify proper application and allocation of transactions (sales) and use (district) taxes – the registration address is considered place of business, for district tax purposes.

15. Verify proper allocation of the 1% local use tax on certain long-term leases, effective 1-1-96 (section 0618.10).

16. Verify unwinds or rollbacks are handled correctly.

17. Determine accuracy of recorded purchases and contact vendors if necessary. Trace a representative sample of vehicle purchases from source documents to sales records or inventory.

18. If accounting records are nonexistent or incomplete, indirect methods may be employed (section 0406.00), e.g., cash flow analysis. Determine if the net income on FITR or financial statements supports taxpayer's lifestyle.

19. Verify deductions:

    a) Sales for resale – examine resale certificates, qualifying purchase orders, valid Mexican merchant cards, etc.

    b) Interstate commerce – examine bills of lading, shipping documents, notarized out-of-state delivery statements, registration information.

    c) Sales to Indians – examine delivery statement (on reservation), evidence of transfer of title on the reservation, statement of Indian status from tribal council, evidence of residence on reservation, check for sale to Indian and non-Indian spouse.

    d) Repossession losses – examine the original sales documents in the deal jackets for correct repo loss computations.

e) Tax-paid purchases of fuel resold with vehicles – verify accuracy of deduction. If not claimed, obtain claim for refund from the taxpayer and allow credit in audit if properly supported.

20. Check for potential use tax liability:

a) Fixed assets – i.e., loaner cars or shuttle service vehicles

b) Consumable supplies

c) Personal use of ex-tax inventory – i.e., vehicles registered to the owner or family members or friends.

- Check odometer statements (especially on expensive cars), comparing the mileage when purchased to the mileage when sold. Large differences may indicate unrecorded personal use.

- Examine vehicles remaining in inventory for extended periods. This may indicate personal use.

~~The following audit steps are recommended for audits of used car dealers:~~

~~• Contact DMV to obtain total number of DMV Report of Sale Books along with the corresponding book serial numbers issued to the dealer. (See section 0607.35)~~

~~• If available, analyze prior period gross profit percentages and compare to current audit period percentages. Large fluctuations may require further investigation and explanation.~~

~~• If the audit is performed at the accountant's office, visit the business location, checking for additional income sources such as body shop or garage for repair work, level of business activity, lot size, other items for sale such as boats, recreational vehicles, motorcycles, campers, etc. Used car dealers may not restrict themselves to accepting only cars as trade ins.~~

~~• Reconcile recorded sales to reported sales.~~

~~• If a general ledger exists, scan for unusual entries such as debits to sales, credits to cost of goods sold, and cash over/under accounts.~~

~~• If accounting records are nonexistent or incomplete, indirect methods (Section 0406.00) may be employed. Taxpayer's lifestyle may not be supported by the net income reported on the Federal Income Tax Return.~~

~~• A representative number of sales contracts should be examined for accurate computation of sales tax and traced to sales records. Special attention should be given to doc fees and smog fees paid to the seller.~~

~~• Account for all Report of Sales books and depending on the size of the dealership, trace to sales records on an actual basis or test basis.~~

~~• Review statements of checking, savings and other business accounts for the audit~~

~~period. It may be necessary to obtain personal account information as well as business accounts information. Reconcile banks statement deposits to reported sales. Adjustments will be needed for sales tax and registration fees included in deposited amounts. Another adjustment may be necessary if the dealer has a line of credit with a local bank or deposits personal money to cover periods of cash shortfall. Cash paid-out needs to be added back prior to comparing to reported sales.~~

~~• If financing is available, check the financing file to verify the sales price listed in the sales records and to determine if the sale was recorded in the first place. Determine if cars are sold on consignment and if the sales are properly reported. (Section 0608.40)~~

~~• Determine accuracy of recorded purchases and contact vendors if necessary. Trace a representative amount of vehicle purchases from source documents to sales records or inventory.~~

~~• Determine if the owners and family members drive cars off the lot and if merchandise, such as parts, is withdrawn for personal use. Review the odometer statements (especially on expensive cars), comparing the mileage when dealer purchased the vehicle to the mileage when the vehicle was sold. Large differences may indicate unrecorded personal use. Also, examine vehicles remaining in inventory for extended periods. This may indicate personal use.~~

~~• If a general ledger is not available, scan depreciation schedule for fixed asset purchases.~~

~~• Secure all car jackets pertaining to repossessions and examine the original sales documents for correct repo loss computations.~~

~~• Exempt sales test to be performed as outlined in the earlier sections.~~

USE OF DEALER'S REPORT OF SALE BOOKS IN AUDITING GROSS RECEIPTS 0607.35

It is apparent from the preceding sections that an examination of some or all of the dealer's copies of ~~r~~Report~~s~~ of S~~s~~ale books can be of great value in auditing a dealer's records~~.~~ in the examination, notations of self-registrations, sales to leasing companies, sales to out-of-~~-~~state residents, and registration~~s~~ to other dealers should be made for reference in auditing self-consumed merchandise and deductions.

The auditor should verify that all ~~dealer's~~ Report of Sale books are available and have been accounted for in the taxpayer's records. ~~As a routine procedure prior to beginning~~ all ~~used car dealer audits, a member of the district office staff must call DMV's Occupational Licensing Unit in Sacramento and~~ To obtain the serial numbers, year of issue, and total number of DMV Report of Sale Books issued to the dealer during the audit period, the auditor must call the DMV's Occupational Licensing Information Service Voicemail at (916) 229-3151[1]. ~~to assist the auditor in verifying whether all the dealer's Report of Sale books are available. The telephone numbers for this DMV Sacramento office is (916) 657-6621 or CalNet 437-6621~~. At the end of the voicemail announcement, ~~T~~the auditor will be asked to ~~give~~ leave a message, including the Board's requester code, information requested (include the dealer's name and the dealer's license number), the date the requested information is needed (i.e., start date of the audit) and the auditor's name, work phone number and district office address. (To skip the voicemail announcement, press the pound (#) key to leave a message.)

[1] As of February 8, 2006, the procedure on how to obtain information from the DMV is accurate. Any problems in contacting the DMV should be directed to the Tax Policy Division, Audit and Information Section.

~~This~~Unless requested sooner, the DMV will provide the information requested within two weeks. To follow up on a request, the auditor may call the DMV at (916) 229-3127. The information obtained from the DMV must be included in~~entered on the reverse side of the Form BOE-414 for use during~~ the audit.

In new car dealer audits, the information should be obtained from DMV only when poor records, loose internal control or other special circumstances warrant.

Occasionally, dealer's Report of Sale books may not be available and must be obtained from DMV by the auditor.~~,~~ ~~because~~ This may occur when DMV has secured ~~them~~ the Report of Sale books for audit or the dealer has ceased operations.

OTHER CHARGES 0607.84

Dealer Installed Extras. These include accessories such as radios, heaters, air conditioning units, trailer hitches, etc. made prior to delivery of the vehicle to the customer. The charges for these dealer installed extras, including installation labor, are subject to tax.

Federal Excise Tax. A federal excise tax imposed on retail sales is not subject to tax.

Financing, Interest, and Insurance Charges. Separately stated charges for financing, interest and insurance are not subject to tax.

Vehicle Registration Service Fees

Under the Business Partner Automation Program, the Department of Motor Vehicles has partnered with vehicle dealers to facilitate the processing of vehicle registration and licensing by electronic means. The dealer will process registration transactions, print registration cards, and issue license plate stickers. Starting January 1, 2004, the maximum amount that the dealer may charge for these services is $28.00 ($25 maximum customer fee and $3 transaction fee). These services are optional. In lieu of these services, the customer may demand in writing the certificate of ownership of the vehicle from the dealer (Vehicle Code §5753, subdivision(b)). Therefore, the $25 customer fee and the $3 transaction fee, if separately stated, are not included in the measure of tax. This exemption applies also to registration renewals. (Vehicle Code §1685).

Contract Cancellation Option For A Used Motor Vehicle

On or after July 1, 2006, used motor vehicle dealers are required to offer a two-day contract cancellation option to purchasers of used vehicles under $40,000. This agreement allows the purchaser to return the vehicle without cause. Tax does not apply to the charge for the contract cancellation option or the portion of the sales price returned to the purchaser.

Vehicle Code section 11713. limits the amounts that dealers may charge for both the contract cancellation option and the restocking fee for a returned vehicle to a sliding scale based on the selling price of the vehicle. Refer to Regulations 1566, *Automobile and Sales Representative,* and Regulation 1655, *Returns, Defects and Replacements.*

COURTESY DELIVERIES — FACTORY DIRECTED 0608.55

A factory directed courtesy delivery is a transaction in which an out-of-state dealer sells a vehicle ~~to a customer~~ but directs the manufacturer to ~~make~~ deliver~~y~~ the vehicle ~~-~~to the customer at a specified location in California. The manufacturer delivers the vehicle to a local California dealer who redelivers it to the customer. The delivering dealer normally charges the manufacturer for new car preparation but the vehicle is not entered in the dealer's inventory and very often the dealer does not prepare a ~~R~~report of ~~S~~sale.

If the courtesy deliveries ~~to customers are~~ by the California dealer is made at the direction of a manufacturers ~~not engaged in business in California or~~ who ~~do~~is not ~~have California seller's permits and~~ a licensed dealers~~' licenses from DMV,~~ in this state, ~~they should be included in the audited sales of the delivering California dealer. T~~the California dealer is the ~~considered to have made a~~ retailer of the vehicle ~~sale under the second paragraph of Law~~ under section 6007~~.~~ of the Revenue and Taxation Code. If the California dealer collects the tax, it is normally recorded in the accrual account. If the California dealer does not collect the tax, a courtesy delivery may easily go undetected. The auditor should ask the taxpayer how the dealership records these transactions in order to save audit time.

Information on courtesy deliveries might be found in one of the following places:

- Separate courtesy delivery folders.
- Customer car folders under either the customer's name or the out-of-state dealer's name.
- Other income posting from any of the journals.
- Separate billing on a miscellaneous invoice.

~~Courtesy deliveries are not sales by the dealer, and the dealer adds the taxable measure to the financial statement sales on the sales tax worksheets. Courtesy deliveries may be recorded in the new car sales journal, cash receipts journal, and sometimes booked in the general journal. The auditor should ask the taxpayer's representative how the dealership records these transactions in order to save audit time.~~

NEW CAR RESALES TO USED CAR DEALERS 0609.20

Vehicle Code section 11713.1(f)(1) prohibits a dealer from purchasing a new motor vehicle for resale in a line — make for which the dealer does not hold a franchise.

This violation of the dealer's license would be cause to disallow acceptance of a resale certificate in good faith. New car dealers should be advised not to accept a resale certificate for this type of transaction. The violation of Vehicle Code section 11713.1 is sufficient to overcome the presumption of a good faith acceptance of a resale certificate, whether or not it contains a statement that the specific vehicle is being purchased for resale in the regular course of business.

A resale certificate may be accepted in good faith from a leasing company that is purchasing a new vehicle to lease. A resale certificate may also be accepted in good faith from a dealer for the following transactions listed in Vehicle Code section 11713.1(f):

- Mobilehomes
- Recreational vehicles as defined in Health and Safety Code section 18010
- Commercial coach as defined in Health and Safety Code section 18001.8

- Off-highway motor vehicles subject to identification as defined in Vehicle Code section 38012
- Commercial vehicles.

An audit memorandum (BOE–1164) should be prepared on all sales of new cars by new car dealers, for resale~~,~~ to used car dealers. ~~*A copy of the BOE-1164 containing information (selling dealer, purchasing dealer, date of transaction, VIN number, description of car, etc.) on transactions that appear to violate the Vehicle Code should be forwarded to the Centralized Review Section (CRS) in the Headquarters' packet when the audit is transmitted (similar to FTB information), and a "DMV" comment should be placed on the back of the BOE-414-A indicating that a BOE-1164 is attached. CRS will forward this information to DMV for further investigation.*~~

GENERAL 0611.05

In verifying sales where delivery is claimed to have been made outside this state, it is usually necessary to review correspondence, factory delivery orders, acknowledgments, DMV Dealer Reports of Sale and other documents.

The Board has developed forms BOE-447, *Statement Pursuant to Section 6247 of the CA Sales and Use Tax Law* and BOE-448, *Statement of Delivery Outside CA*, for dealer's use in documenting out-of-state delivery. If these statements are properly and fully completed and notarized, the auditor may accept them as the evidence of an out-of-state delivery. However, the use of these forms is not mandatory. The dealer may document and support an exempt sale by means of other satisfactory evidence, such as receipts for meals, lodging, fuel and transportation, and/or statements by the delivering and receiving parties.

The current version of forms BOE-447 and BOE-448 is published on the Board's website.

FACTORY DELIVERIES AT POINTS OUTSIDE THE STATE 0611.10

Where a dealer in this state makes a sale to a consumer at a point outside this state, the dealer must retain in the files the necessary data and documents to prove that the car was not sold for use or storage in this state. A substantial number of such sales are factory deliveries. When such sales are made, the California dealer requests the factory or dealer located in another state to deliver a car to:

(a) A consumer residing in this state, or

(b) A consumer residing in another state.

In (a), the California dealer must ordinarily collect use tax. This is particularly true in cases where the purchaser takes California license plates to be placed on the new car. In the absence of evidence to the contrary, the fact that California plates were obtained will be regarded as proof that the car was purchased for use in this state. In (b), the California dealer should retain complete data concerning the transaction. Shipping or delivery orders and any other documents should be retained showing the purchaser's address, the point at which delivery was made, and indicating that the car was purchased for use outside of California. ~~The Board has developed forms BOE-447 & BOE-448 for dealers use in documenting exempt transactions. (See section 0611.15~~)

SALES OF FOREIGN VEHICLES WITH FOREIGN DELIVERY 0611.12

California dealers of foreign manufactured cars often sell them to California residents with delivery being made in Europe and other countries. Exempt transactions should be supported by the same documents as provided in section 0611.05 and 0611.10.

When it is determined that a foreign delivered vehicle has been purchased for use in California, it is necessary to determine who the retailer is for purposes of sections 6203 and 6247. Generally, under European tourist delivery programs where the California dealer acts as an agent for the manufacturer, the manufacturer will be considered the retailer and will be responsible for the collection of use tax if it is registered as a licensed dealer with the Department of Motor Vehicles (DMV). If the manufacturer is not a licensed dealer and the California dealer acts as an agent in the transactions, the purchaser will be liable for the use tax when the vehicle is registered with DMV. Conversely, where the California dealer acts as principal in the transaction, such dealer will be considered the retailer liable for collection of use tax.

Factors which would indicate that the dealer is the retailer include such actions as: taking title to the vehicle, preparing DMV reports of sale, accepting trade-ins on the sale, and/or issuing separate purchase orders to the manufacturer. The amount of tax required to be collected by the retailer in taxable situations constitutes a debt owed by the dealer to this State. An offset maybe allowed for use tax the retailer can establish has been paid by the purchaser to DMV. Therefore, when auditing firms dealing in foreign manufactured automobiles, the auditor should verify any unreported sales of vehicles whose delivery was made at a point outside the United States and question their exemption as sales in interstate or foreign commerce.

INTERSTATE DELIVERIES FROM CALIFORNIA STOCKS 0611.15

Claimed interstate sales from a dealer's California stock usually fall into one of the following categories:

(a) Delivery to a carrier for shipment out-of-state

(b) Delivery out-of-state by dealer's employee or agent

(c) Delivery in-state to an out-of-state purchaser or purchaser's agent

(d) Delivery out-of-state to a known California resident

Under (a), the sale is exempt if delivery is made to a carrier, consigned to an out-of-state point, and actually shipped to the out--of--state point, provided the vehicle was not purchased for use in California. The dealer should retain a copy of the bill of lading to support the deduction and evidence of customer's out-of-state address. The auditor should ascertain who delivered the unit to the carrier, and that the vehicle was not in the possession of the purchaser or the purchaser's agent in this state at any time before the shipment. The use of form BOE-448, *Statement of Delivery Outside CA*, is not necessary when the out-of-state delivery is properly supported by a bill of lading or other shipping documents (section 0611.05). ~~Even if the vehicle is delivered outside California, a dealer must collect use tax if the buyer purchased the vehicle for use in this state.~~

The ~~Customer~~ purchaser is liable for the use tax for a vehicle ~~used in~~ purchased outside

California if~~:~~ ~~A vehicle is purchased outside of California, and~~ the first functional use of the vehicle is in California, or

~~OR~~

- Prior to October 2, 2004 and after June 30, 2006, ~~T~~the vehicle's *first* functional use is outside ~~of~~ California, but the vehicle is brought into the state within 90 days after its purchase (exclusive of any time for shipment or storage for shipment to California), and during the six-month period immediately following its entry into this state, one-half or more of the miles traveled by the vehicle are not miles traveled in interstate commerce, or the vehicle is not used or stored outside of California one-half or more of that time. Examples of what constitutes interstate commerce are described in Regulation 1620.

- From October 2, 2004 to June 30, 2006, the vehicle's first functional use is outside California, but the vehicle is brought into the state within 12 months after its purchase and one of the following occur:

    1. The vehicle was purchased by a California resident.
    2. The vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.
    3. The vehicle is used or stored in California more than one-half of the time during the first 12 months of ownership.

Situations under (b) arise when a dealer is requested to make delivery in a neighboring state. *The transaction is not taxable if the car is actually delivered by an employee acting as agent of the dealer, or by some other individual acting as agent of the dealer.* The fact that the person delivering is in fact the agent of the dealer must be clearly established in each case. Affidavits, reimbursement by the dealer for expenses, or payment of a fee by the dealer are usually sufficient supporting evidence. *In the absence of evidence to the contrary, such a sale cannot be held exempt from tax if California license plates are secured for the delivered car.* The fact that the purchaser accompanied the dealer's agent who drives the vehicle to an out-of-state location does not negate the exemption if the purchaser does not exercise control over the driver or the vehicle. *See section 0611.45 for information on sales to military personnel.*

Form ~~Boe~~BOE-448 ~~(see exhibit 1),~~ "Statement of Delivery Outside CA~~alifornia~~," can be used when the vehicle is driven or transported to an out~~-~~of~~-~~state point by the dealer or the dealer's authorized agent, with the purchaser taking delivery outside California (section 0611.05). ~~The use of this form is not necessary if the dealer ships the vehicle to an out-of-state destination by means of a common carrier auto transporter, because the bill of lading or other shipping documentation will support the fact that delivery was made outside of California, as discussed in (a).~~

Under (c), delivery to a consumer or his/her agent in this state is a taxable transaction. Regardless of the evidence that the ~~car~~ vehicle was driven or shipped out~~-~~of~~-~~state by the purchaser or purchaser's representative, Sales and Use Tax Law section 6009.1 exemption is not applicable since this is a sales tax transaction~~.~~ (~~see~~ section 0635.35). ~~Cars~~ Vehicles in this situation are usually driven out ~~-~~of ~~-~~state on one-trip permits or on plates of another state. The auditor must be alert to deliveries to the purchaser's agent where the dealer represents that the person is the dealer's agent through affidavit or payment of expenses. The person cannot act in a dual capacity as agent of both buyer and seller.

Under (d), Sales and Use Tax Law section 6247 creates a presumption that a sale of a vehicle when a dealer delivers a vehicle outside California to a known California resident, is a sale for use in this state. The purchaser is considered a California resident, for example, if he or she has a California driver's license, or has a California address, even though the purchaser may live in the state only seasonally or intermittently.

Form BOE–447 ~~(see exhibit 2),~~ "Statement Pursuant to Section 6247 of the California Sales and Use Tax Law," is intended to relieve the retailer of the obligation to collect the use tax from purchasers who may be permanent, seasonal, or intermittent residents of California. This statement should be taken at the time of sale, and the original document retained in the retailer's records. This document is needed when the purchaser has a California address and/or a California driver's license or the dealer otherwise is aware that the purchaser is a California resident. (Section 0611.05).

~~The use of the BOE 447 or BOE 448 is not mandatory. The dealer can still document and support an exempt sale by means of other satisfactory evidence, such as receipts for meals, lodging, fuel and transportation, and/or statements by the delivering and receiving parties. If these statements are properly and fully completed and notarized, the auditor may accept them as the evidence of an out-of-state delivery~~.

FOREIGN GOVERNMENTS, CONSULS, AND CONSULATES 0611.50

In general, ~~S~~sales and use tax ~~generally~~ applies to the sale~~s~~ and use of tangible personal property sold or leased to foreign governments. However, neither sales tax nor use tax applies ~~does not apply~~ to sales to foreign consular officers, employees, and members of their families if those persons have been granted immunity from tax according to treaties or other diplomatic agreements with the United States.

The U.S. State Department, Office of Foreign Missions (OFM) issues "Tax Exemption Cards" to foreign diplomatic personnel, whose purchases are exempt from sales tax. The cards include a photograph and a description of the authorized bearer and specify either that all transactions or only transactions that exceed a stated amount (threshold level) are exempt. Some cards limit the exemption to official purchases only and do not apply to personal purchases. (Taiwan Diplomats Tax Exemption Cards may appear different, see section 0419.50 for more information.)

The seller must prepare an invoice or other written evidence of the sale and attach a photocopy of the front and back of the card, the number of the exemption card, and the exemption threshold level specified on the card to support this type sale as exempt. The seller may also request additional identification from the buyer, such as ~~an~~ U.S. State Department driver's license or diplomatic identification card.

Prior to June 1, 2003, the sale or lease of vehicles to foreign consular officers, employees, or members of their families could be exempt from the sales and use tax by providing a Tax Exemption Card to the retailer. If a foreign consular officer, employee, or members of their families ~~Sales of vehicles to foreign consular officers who do~~ did not hold a Tax Exemption Card, they ~~may~~ could be exempted from tax if an identification letter ~~is~~was furnished by the OFM directly to the retailer or lessor ~~by OFM. The letter must be provided to the retailer~~ at the time of the transaction.~~sale, and~~ The letter must ~~include the following information:~~ state the name of the purchaser or lessee, confirmation of his or her tax-immunity, an identification number, and the date of assumption of duties by the diplomat seeking the exemption.

Effective June 1, 2003, the sale or lease of vehicles to foreign consular officers, employees, or members of their families will be exempt from the sales and use tax if at the time of the transaction, the purchaser or lessee provides the Tax Exemption Card to the retailer **and** the OFM furnishes directly to the retailer or lessor an eligibility letter for the tax exemption for each vehicle. The retailer or lessor must retain a copy of the front and back of the Tax Exemption Card and the OFM letter to support tax exemption.

OIL RECYCLING, HAZARDOUS WASTE AND OTHER OVERHEAD FEES 0612.50

The California Oil Recycling Enhancement Act, effective January 1, 1992, provides that oil manufactures must pay a fee of $0.04 per quart or $0.16 per gallon for the first sale in California of lubricating oil and transmission or differential fluids. If the products are purchased from a California supplier, the supplier will pay the fee. If the products are imported from outside California, the dealer will be responsible for paying the fee directly to the state. The dealer can reimburse itself by charging the customer an amount equal to the fee. Charges for reimbursement of the Oil Recycling Fee are subject to tax even if separately stated on the invoice.

Car dealers are generally required to pay hazardous waste fees, for the handling, management and disposal of waste products such as transmission fluid, antifreeze, motor oil, and oil filters. The dealer can reimburse itself by charging the customer an amount equal to the fee. Separately stated charges for these fees are not subject to tax if they are solely related to the nontaxable servicing (e.g., mileage service or oil changes) or repair of a customer's vehicle. Charges for hazardous waste fees are generally taxable when the fee is ~~solely~~ directly related to the sale of tangible personal property and no repair or installation labor is involved.

If the dealer separately states a general overhead charge which does not relate solely to non-taxable labor or solely to the taxable sale, the charge must be prorated in the same ratio as the itemized taxable charges for parts bears to the itemized non-taxable charges for labor.

APPLICATION OF TAX TO DEMONSTRATORS 0614.20

Dealers or lessors who allow their employees to use vehicles for purposes other than demonstration and display are liable for the tax on the fair rental value of the vehicles for the period of such other use.

Dealers who ~~give~~ issue resale certificates and then use automobiles for purposes other than demonstration or display while holding them for sale in the regular course of business are liable for use tax measured by the sales price of the automobile to them. However, when a series of vehicles are used in this manner for periods of less than six months, the use tax will be measured by the average cost of one vehicle for each 12 month period for each person to whom such cars are assigned. The average cost will be the weighted average of the cost of all vehicles so used by that particular person during the 12 month period. Tax applies to the subsequent retail sale of such vehicles. This includes vehicles used in the corporate officers' or employees' personal households that are assigned to the spouse of a corporate officer or employee when the vehicles are regularly available for use, including demonstration and display, by the corporate officer or employee.

Regulation 1669.5 establishes the presumptions listed below with respect to vehicles

which are registered in the name of the dealer or lessor and vehicles ~~which~~ that are not registered. The presumptions established by the regulation determine whether vehicles are frequently demonstrated and the measure of the fair rental value. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

- When a vehicle dealer or lessor assigns a demonstrator to vehicle sales personnel for a period not exceeding 12 months, the measure of tax is the fair retail value at 1/60th of the purchase price for each month of combined demonstration or display and use.
- When a vehicle dealer or lessor assigns a vehicle to employees or officers other than vehicle sales personnel for a period not exceeding 12 months, the measure of tax is the fair rental value at 1/40th of the purchase price for each month of combined demonstration or display and use.
- When a vehicle dealer or lessor assigns a vehicle to a person other than an employee or officer, such as a relative or business associate, the measure of tax is the purchase price of the vehicle.
- When a dealer or lessor assigns a vehicle to a person for more than 12 months for business or personal use in addition to demonstration and display, the measure of tax is the purchase price of the vehicle. The 1/40th or 1/60th formula, as appropriate, may be used if the duration of combined use is not known at the outset, with the difference between cost and the formula to be paid when use exceeds 12 months.
- When a vehicle is purchased for resale and registered in the name of the dealer, the measure of tax is the fair rental value computed at 1/40th of the purchase price for each month of combined demonstration or display and use.

The following table illustrates the tax application to demonstrator vehicles which are also used partly for purposes other than demonstration and display.

VECHICLE OPERATOR	PERIOD VEHICLE IN DEMO SERVICE	MEASURE
Sales personnel	12 months or less	1/60th of cost
Sales personnel	More than 12 months	Cost less reported demo credit
Nonsales personnel	12 months or less	1/40th of cost
Nonsales personnel	More than 12 months	Cost less reported demo credit
Nonemployees	No requirement necessary	Cost

USED CAR DEALERS

A number of situations, which are often encountered when auditing used car dealers, require consistent handling.

(a) Where a used car dealer is found to be taking different cars for business and personal purposes rather than using one car for ~~an extended~~ a period exceeding 12 months, it is reasonable to assume they are frequently demonstrated and displayed and the use of the 1/60th formula is appropriate.

(b) Where the used car dealer is using one car for ~~an extended~~ a period exceeding 12 months ~~of time~~, additional proof of frequent demonstration and display is required if the 1/60th formula is to be used in lieu of the "cost of one car per year" method.

(c) Generally, a new car purchased by a used car dealer or a new car dealer not franchised to deal in the type of car purchased, is not frequently demonstrated and displayed, but rather purchased for personal use. Accordingly, unless there is convincing evidence to the contrary, such automobiles should be tax-paid on cost. An example is a Volkswagen dealer purchasing a Cadillac under a resale certificate.

AUTO BODY REPAIR AND PAINT SHOP SUPPLIES 0614.70

Dealers and other businesses performing auto body work are generally considered the retailers of parts and materials remaining on the vehicle or item being repaired. The following are examples of parts and materials remaining on the vehicle or item being repaired that may be purchased for resale by auto body repair and paint shops:

Automobile Parts
Clear Coats
Electrical Tape
Fillers
Fisheye Eliminator
Glues/Adhesives
Hardeners
Paints
Polishes/Wax
Primers
Putties
Rust Protectors
Sealers

These types of parts and materials may be purchased for resale and tax charged on the selling price, if they are itemized on the sales invoice. The purchaser must issue a resale certificate to the seller in order to purchase items for resale. The minimum requirements of a valid resale certificate are set forth in subdivision (b)(1) of Regulation 1668.

However, in certain situations relating to painting and body work, businesses are considered the consumer, not the retailer, of parts and materials. If the value of parts and materials provided in connection with repair work on a used vehicle is *10 percent or less* of the total charge and billed lump-sum, the repairer (or dealer) is the consumer of parts and materials, and owes tax on his/her cost.

Dealers and other auto body and painting businesses are considered consumers of tools and supply items that *do not* remain on the item being repaired. The following items are consumed by auto body repair and paint shops and generally are not purchased for resale:

Abrasives
Books
Cans
Cleaning Solvent
Color Charts
Equipment
Equipment Repair Parts
Goggles

Hand Cleaners
Manuals
Masking Paper
Masking Tapes
Masks
Metal Conditioners
Paint Remover
Plastic Bottles
Polishing Compounds
Polishing Machine
Reducers
Respirators
Rubbing Compounds
Rubbing Machine
Thinners
Touch-Up Bottles

Auto body repair and paint shops should pay tax reimbursement at the time of purchasing these supply items. If the purchaser does in fact resell any of the above items prior to use, the purchaser can recover the tax reimbursement paid to the seller by taking a tax paid purchase resold deduction on line 10(b) of the purchaser's sales and use tax return. (See section 0419.25 for discussion of tax paid purchases resold.) If any of the above items are purchased exclusively for resale, the item(s) may be specifically listed on the resale certificate. ~~Exhibit 13 contains~~ Form BOE–230–A, Auto Body and Paint Industry Resale Certificate (published on the Board's website), is a specific resale certificate that may be used by auto body repair and paint shops (Reg. 1668). Please note, auto body and repair shops are encouraged, but not required to use Form BOE–230–A. General resale certificates that meet the requirements of Regulation 1668 are acceptable.

Many automobile body repair shops make a separate charge to their customers for the cost of "supplies" as an extension of their charges for repair labor. Such separate charges for "supplies," as an extension of the repair labor charge, which do not become a component part of the refinished article are not subject to tax on the selling price since title or possession of supplies is not transferred to the customer. The repair shop or dealer is the consumer and owes tax on their cost. However, if the evidence discloses that the charge for "supplies" is a surcharge on the sale of repair parts, the charge for "supplies" is subject to tax.

THE LEMON LAW 0616.00

GENERAL 0616.05

The California Lemon Law (California Civil Code section 1793.2 through 1793.26) establishes consumer protection provisions for ~~purchasers of~~ qualifying new motor vehicles and other motor vehicles sold with a manufacturer's new car warranty (e.g., dealer-owned vehicles), purported to have major manufacturing defects. ~~For qualifying motor vehicles,~~ Should a manufacturer be unable to service or repair a new motor vehicle to conform to the applicable warranties after a reasonable number of attempts, the manufacturer is required by law either to replace the motor vehicle or ~~provide~~ reimburse the ~~purchaser~~ customer (make restitution) ~~for the purchase price,~~ at the ~~purchaser's~~ customer's election~~. When the purchaser elects restitution, the manufacturer may reduce the purchase price by an amount calculated according to law which is attributable to the value of use prior to the time the purchaser first delivered the vehicle to the manufacturer or authorized repair facility for correction of the problem~~. Arbitration is not required before the Board is authorized to make a refund as long as the specified requirements in the Civil Code are satisfied.

~~Initially, refunds of sales tax by the manufacturer for defective vehicles were not refunded by the Board because refunds or replacements did not qualify as credits for returned merchandise. Effective January 1, 1988, Civil Code Sections 1793.2 and 1794 were amended and Section 1793.25 was added to the Civil Code requiring the Board to reimburse the manufacturer of new motor vehicles for an amount equal to the sales tax which the manufacturer included in making monetary restitution or vehicle replacement to the buyer. Revenue and Taxation Code Section 7102 was amended to allow refunds pursuant to Civil Code Section 1793.25. In 1992, Civil Code Section 1793.22 was added to include consumer protection provisions related to defective vehicles. These sections are commonly known as the California "Lemon Law~~.

DEFINITIONS 0616.10

For purposes of the Lemon Law, the term "manufacturer" means a new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch. "New motor vehicle" means a new ~~passenger or commercial~~ motor vehicle ~~which~~ that is bought or used primarily for personal, family or household purposes. "New motor vehicle" also means a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. ~~Effective January 1, 1993, the term~~ "~~n~~New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include ~~excludes~~ any portion designed, used, or maintained primarily for human habitation~~., Dealer-owned vehicles, demonstrators, and other motor vehicles sold with a manufacturer's new car warranty are included under the Lemon Law.~~

The following is a list of vehicles that do not qualify under the Lemon Law:

1. Motorcycle.
2. Motor vehicle not registered under the Vehicle Code because it is operated or used exclusively off the highways.
3. ~~Vehicles purchased for commercial use or vehicles purchased primarily (more than 50% of the time) for business purposes.~~

43. Vehicle purchased out-of-state.

54. Used vehicles not sold with a manufacturer's new car warranty.

Section 1793.2 of the Civil Code provides that should a manufacturer be unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle or promptly make restitution to the buyer. If the manufacturer, through its dealership, is unable to restore the vehicle to mandatory warranty conformity, the dealership can be authorized by the manufacturer to handle the transaction as a "Lemon Law" transaction. It is the field auditor's responsibility to verify that transactions in which the dealer participated qualify under the Lemon Law. If the auditor discovers evidence that the transaction was not handled by the manufacturer in accordance with the Lemon Law, an informational memo (BOE–1164 or BOE-1032) should be prepared for inclusion in the manufacturer's file and a copy should be forwarded to the Headquarters' Audit Determination and Refund Section.

Under the Lemon Law, Tthe buyer customer is free to elect has the option to select either monetary restitution in lieu of a replacement vehicle, and in no event shall the buyer be required by the manufacturer to accept a or vehicle replacement vehicle.

Arbitration is not required before the Board is authorized to make a refund as long the specified requirements in the Civil Code are satisfied.

When the buyer chooses to have a vehicle replaced, the new vehicle is considered a replacement under warranty, and additional tax reimbursement is the amount the customer pays in excess of the credit received. If the value of the replacement is less than the credit allowed, the customer must be refunded the difference plus applicable sales tax reimbursement.

When tThe eCustomer chooses Selects rMonetary Restitution,

tThe manufacturer must pay an amount equal to the actual price paid or payable by the buyercustomer, including any sales tax reimbursement, license fees, registration fees, and other fees, plus any incidental damages to which the buyer customer is entitled. The manufacturer may deduct for usage of the defective vehicle and any amount charged for non-manufacturer items installed by the dealer. These amounts must be deducted from the original vehicle selling price before calculating the sale tax refund. See Example 1 for the calculation of sales tax refund.

The buyer is liable for use of the defective vehicle prior to the time the buyer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The buyer's usage is computed by multiplying the total sales price of the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles used by the buyer up to the first nonconformity.

When The Customer Selects Vehicle Replacement

Most Lemon Law transactions involving vehicle replacement are coordinated by manufacturers through their dealerships. The vehicle replacement is considered a part of the original sale under a mandatory warranty. When manufacturers adhere to this provision, they should only file a claim for refund when the value of the replacement vehicle is less than the original vehicle and the customer has been refunded the difference, including applicable sales tax reimbursement.

Acceptable Procedures for Vehicle Replacements:

1. **The customer selects a replacement vehicle with a value greater than the credit given for the original vehicle.** The dealership is liable for the sales tax on the amount the customer pays in excess of the credit given for the original vehicle (the incremental amount). License (registration) and amounts billed for non-taxable fees included in the credit given for the original vehicle should not be deducted from the price of the new vehicle when calculating the amount subject to tax. The dealership must report only the incremental amount (the difference between the replacement vehicle and the credit allowed for the original vehicle) on its sales and use tax return as a taxable sale, rather than the full amount of the sales price of the replacement vehicle. See Example 2 for the calculation of sales tax due.

2. **The customer selects a replacement vehicle with a value less than the credit given for the original vehicle.** The manufacturer should refund the difference to the customer, including sales tax reimbursement. The manufacturer may seek a refund of sales tax included in the amount reimbursed to the buyer by filing a claim for refund with the Board. The dealership should not report this replacement transaction on its sales and use tax return. See Example 3 for the calculation of sales tax refund.

3. **The customer selects a replacement vehicle with an equivalent price and an exchange of vehicles occurs at no additional cost**. Since the credit for the returned vehicle is the same as the negotiated sales price of the replacement vehicle and no additional amount is required to be paid, the transaction should not be reported on the dealer's sales and use tax return. The manufacturer should not file a claim for refund for the sales tax on the original vehicle.

Alternative Method

Effective January 1, 2004, this method of calculating the sales tax for replacement vehicles is no longer acceptable.

~~Notwithstanding the above mandatory warranty provisions, a~~A number of vehicle dealers currently treat replacement transactions as separate and distinct from the original transaction. Thus, the full selling price of the replacement vehicle is treated as taxable. Under these circumstances, manufacturers typically provide a credit to the buyer toward the purchase of the replacement vehicle from a dealership. The credit is most often noted directly on the sales contract of the replacement vehicle. Manufacturers are not allowed to file claims for refund of sales tax included in the credit allowed for the original vehicle on the replacement transaction, if the credit allowance results in the manufacturer receiving a sales tax refund in excess of the amount actually refunded to the consumer as required by law. Under this approach, a replacement vehicle furnished by the dealership will be considered by the Board to be a separate sale to the buyer and sales tax will be applicable to the full selling price of that vehicle. The

dealership must report and remit the full sales tax applicable to the Board at the time that the replacement vehicle is furnished.

Vehicle dealers involved in the above situations should retain documentation on file supporting these transactions (section 0616.20). ~~The same documentation that is required to support a claim for refund filed by the manufacturer should be retained in the dealer's records in support of these transactions. This would include documentation received from the manufacturer instructing the dealer to replace the vehicle in accordance with Section 1793.2 of the California Civil Code and calculation of the amount of credit allowed.~~

~~If the dealership makes restitution to the buyer or replaces a vehicle without the participation of the manufacturer, the transaction is not subject to California's Lemon Law and is controlled by applicable provisions of California's Sales and Use Tax Law (e.g., Regulation 1655).~~

Example 1. ~~**Sales Tax on Vehicle Replacement Upgrades.**~~ **Monetary Restitution – Method of calculating sales tax refund when the customer elects restitution in lieu of vehicle replacement.**

The tax rate in effect at the time of purchase was 8.25%. The vehicle was driven 5907 miles prior to the first nonconformity. Please note, this example does not take into account other types of manufacturer to customer reimbursements (e.g., finance charges, attorney fees, rental car, etc.).

Description	**Per Sales Contract (Original Vehicle)**
Cash Price of Vehicle	$22,100.00
Accessories	
Manufacturers Installed Options	500.00
Dealer Installed Options	150.00
Document Fee	45.00
Less: Usage*	(1,112.49)
Dealer Installed Options**	(150.00)
Subtotal	$21,532.51
Sales Tax Refund	
($21,532.51 X 8.25%)	**$ 1,776.43**
License Fee	183.00
Total	**$23,491.94**

In this example, the manufacturer is required to reimburse the customer a minimum of **$23,491.94** as restitution. When the customer is fully reimbursed and all other applicable requirements of the Civil Code are met, the manufacturer may file a claim for refund with the Board of Equalization for the sales tax in the amount of **$1,776.43**.

***Usage Calculation** – The customer is liable for use of the defective vehicle prior to the time the customer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount attributable to such use by the customer will be calculated by multiplying the total sales price of the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles the vehicle was used by the customer, up to the first nonconformity.

$$\text{Cash Price of Original Vehicle} \times \frac{\text{Miles Driven Prior to the First Nonconformity}}{120{,}000}$$

$$(\$22{,}100 + \$500) \times \frac{5{,}907}{120{,}000} = \$1{,}112.49$$

** **Dealer installed non-manufacturer options are not required to be reimbursed under the Civil Code**

~~Replacement Vehicle Price (MSRP) = $15,981.00.~~

~~Replaced Vehicle Price including manufacturer installed options only (MSRP) = $13,187.~~

~~Replaced Vehicle price excluding sales tax reimbursement, doc fee, license fee, dealer installed options and optional service contract fee (from sales contract) = $12,773.00~~

~~Miles driven prior to first nonconformity = 5,907 miles.~~

~~The first step is to compute the usage allowance~~

~~The usage factor = 5,907 miles/120,000 = .05~~

~~The next step is to compute the usage allowance by applying the usage factor to the cash price of the vehicle exclusive of sales tax reimbursement, doc fee, licensing fee, dealer installed options and optional service contract fee. The usage allowance is .05 x $12,773 = $638.65.~~

~~The sales tax is computed as follows:~~

~~Replacement Vehicle Price =~~	~~$15,981.00~~
~~Replaced Vehicle Price =~~	~~$13,187.00~~
~~Usage allowance =~~	~~$ 638.65~~
~~Credit for Replaced Vehicle =~~	~~$12,548.35~~
~~Amount in Excess of Credit =~~	~~$ 3,432.65~~
~~Sales Tax Due @ 8.25% =~~	~~$ 283.19~~

~~Note: The credit for the replaced vehicle is based on MSRP, and the replacement vehicle should also be based on MSRP.~~

Example 2 ~~Sales Tax on Vehicle Replacement Downgrade~~ Vehicle Replacement – Method of calculating sales tax due when the replacement vehicle has a value greater than the credit given for the original vehicle.

~~Replacement Vehicle Price (MSRP) = $16,671.00~~

~~Replaced Vehicle Price including manufacturer installed options only (MSRP) = $20,707.00~~

~~Replaced Vehicle Price excluding sales tax, doc fee, license fee, dealer installed options and optional service contract fee (from sales contract) = $19,208.00~~

~~Miles driven prior to first nonconformity = 1,105 miles.~~

~~Usage Factor = 1,105/120,000 = .01~~

~~Usage allowance = .01 x $19,208.00 = $192.08~~

~~Sales tax refund is computed as follows:~~

~~Replacement Vehicle Price =~~	~~$16,671.00~~
~~Replaced Vehicle Price =~~	~~$20,707.00~~
~~Usage allowance =~~	~~$ 192.08~~
~~Credit for Replaced Vehicle =~~	~~$20,514.92~~
~~Refund to customer =~~	~~$ 3,843.92~~
~~Sales Tax refund @ 8.25% =~~	~~$ 317.12~~

The tax rate of 8.25% was in effect at the time of both transactions, the replacement and the original purchase. The original vehicle was driven 5,907 miles prior to the first nonconformity.

This example does not take into account other types of manufacturer to customer reimbursements (e.g., finance charges, attorney fees, rental car, etc.)

Description	**Replacement Vehicle (Negotiated Price)**	**Per Sales Contract (Original Vehicle)**	**Difference**
Cash Price of Vehicle	$28,500.00	$22,100.00	$6,400.00
Accessories			
Manufacturers Installed Options	855.00	500.00	355.00
Dealer Installed Options	200.00	150.00	50.00
Document Fee	45.00	45.00	0.00
Less: Usage*		(1,112.49)	1,112.49
Dealer Installed Options**		(150.00)	150.00
Subtotal	$29,600.00	$21,532.51	**$8,067.49**
Sales Tax Due ($8,067.49 X 8.25%)	665.57		**665.57**
License Fee	237.00	183.00	54.00
Total	**$30,502.57**	**$21,715.51**	**$8,787.06**

In this example, the customer is entitled to a total credit of **$21,715.51** from the original sales contract. Since the value of the replacement vehicle was greater than the original vehicle, the customer would owe additional sales tax of **$665.57** on the additional taxable measure of $8,067.49. The additional taxable measure of $8,067.49 should be reported to the Board of Equalization along with the additional sales tax due of $665.57 for the replacement vehicle for the period in which the replacement transaction takes place. Therefore, the manufacturer should not file a claim for refund on this transaction. The customer is responsible for paying the additional amount of **$8,787.06** to cover the additional cost of the replacement vehicle. The total allowable credit from the original vehicle applied towards the replacement vehicle is **$21,715.51.**

***Usage Calculation** – The customer is liable for use of the defective vehicle prior to the time the customer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount attributable to such use by the customer will be calculated by multiplying the total sales price of the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles the vehicle was used by the customer, up to the first nonconformity.

$$\text{Cash Price of Original Vehicle} \times \frac{\text{Miles Driven Prior to the First Nonconformity}}{120{,}000}$$

$$(\$22{,}100 + \$500) \times \frac{5{,}907}{120{,}000} = \$1{,}112.49$$

** **Dealer installed non-manufacturer options are not required to be reimbursed under the Civil Code**

Example 3. Vehicle Replacement -- Method of calculating the sales tax refund when the replacement vehicle has a value less than the credit given for the original vehicle.

The tax rate of 8.25% was in effect at the time of both transactions, the replacement and the original purchase. The original vehicle was driven 5,907 miles prior to the first nonconformity. This example does not take into account other types of manufacturer to customer reimbursements (e.g., finance charges, attorney fees, rental car, etc.)

Description	Per Sales Contract (Negotiated Price)	Per Sales Contract (Original Vehicle)	Difference
Cash Price of Vehicle	$15,700.00	$22,100.00	($6,400.00)
Accessories			
Manufacturers Installed Options	145.00	500.00	(355.00)
Dealer Installed Options	100.00	150.00	(50.00)
Document Fee	45.00	45.00	0.00
Less: Usage*		(1,112.49)	1,112.49
Dealer Installed Options**		(150.00)	150.00
Subtotal	$15,990.00	$21,532.51	($5,542.51)
Sales Tax Refund ($5,542.51 X 8.25%)		457.26	**($457.26)**
License Fee	130.00	183.00	(53.00)
Total	**$16,120.00**	**$22,172.77**	**($6,052.77)**

In this example, the customer is entitled to a **$6,052.77** refund directly from the manufacturer as well as the replacement vehicle costing **$16,120.00** for a total credit amounting to **$22,172.77.** When the customer is fully reimbursed and all other requirements of the civil code are met, the manufacturer may file a claim for refund with the Board of Equalization for the sales tax in the amount of **$457.26**.

***Usage Calculation** – The customer is liable for use of the defective vehicle prior to the time the customer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount attributable to such use by the customer will be calculated by multiplying the total sales price of the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles the vehicle was used by the customer, up to the first nonconformity.

$$\text{Cash Price of Original Vehicle} \times \frac{\text{Miles Driven Prior to the First Nonconformity}}{120{,}000}$$

$$(\$22{,}100 + \$500) \times \frac{5{,}907}{120{,}000} = \$1{,}112.49$$

** **Dealer installed non-manufacturer options are not required to be reimbursed under the Civil Code**

"

CLAIM FOR REFUND DOCUMENTATION REQUIREMENTS 0616.20

~~Civil Code Sections 1793.23 and 1793.24 were added to expand consumer protection related to subsequent sales of vehicles reacquired by manufacturers, dealers, or lienholders. Section 1793.23 provides that prior to any sale, lease, or transfer of a vehicle reacquired under the Lemon Law, the manufacturer shall:~~

~~1. cause the vehicle to be retitled in the name of the manufacturer,~~

~~2. request DMV to inscribe the ownership certificate with the notation "Lemon Law Buyback," and~~

~~3. affix a decal to the vehicle identifying it as a "Lemon Law Buyback."~~

~~These sections also provide that prior to sales made of a Lemon Law Buyback vehicle, the transferee must be given a disclosure statement signed by the transferee which states, "This Vehicle Was Repurchased By Its Manufacturer Due To A Defect In The Vehicle Pursuant To Consumer Warranty Laws. The Title To This Vehicle Has Been Permanently Branded With The Notation 'Lemon Law Buyback'."~~

All claims for refund of sales tax by the manufacturer ~~paid on or after January 1, 1988 should~~ are ~~be~~ forwarded to the Audit Determination and Refund Section (MIC: 39) and include a statement that the refund to the customer was made in accordance with Civil Code Sections 1793.2 through 1793.26. The claim must include an explanation of how the refund was calculated, including settlement agreements and odometer statements, along with proof that the retailer of the motor vehicle reported and paid sales tax on that vehicle. A statement from the selling dealer that sales tax was reported on the original sale of the vehicle will be accepted as adequate proof that tax was reported and paid. ~~In addition, t~~The following documents should also be provided in support of the refund claim:

1. A copy of the original sales agreement for the reacquired vehicle,
2. A copy of the replacement vehicle sales agreement (if applicable),
3. Copy of documents to support the claimed amount was refunded to the buyer and/or any financing entity holding title (e.g., check(s) issued),
4. The ~~sales tax~~seller's permit number of the original retailer,
5. Beginning January 1, 1996, a copy of the branded title of the reacquired vehicle,
6. Proof that the decal the manufacturer is required to affix to that motor vehicle has been affixed,
7. Copies of refund computation worksheets, and
8. A copy of the repair history to support ~~mileage amount when the vehicle was~~the number of miles driven prior to the first ~~reported for the~~ nonconformity.

An auditor may also request copies of arbitration documents if they are needed to establish the amount returned to the customer. ~~Manufacturers are not entitled to a refund of sales tax from the Board where restitution was made prior to January 1, 1988~~.

DEALER PARTICIPATION IN REPLACEMENT 0616.25

Typically, an automobile manufacturer sells its new motor vehicles to a dealership which, in turn, resells the vehicle to retail buyers. The automobile manufacturer may designate a dealership to act as its agent to repair or replace vehicles under the manufacturer's warranties applicable to the vehicles sold. A dealership may, in turn, designate another dealership to repair or replace vehicles under the manufacturer's warranty. Dealers may become involved in one or both of the approaches listed below.

Mandatory Warranty Provisions

When a buyer chooses vehicle replacement, the new vehicle is considered to be a replacement under a mandatory warranty, and the tax liability of the participating dealer is measured by the sales price in excess of the credit received. If the sales price of the replacement vehicle is less than the original vehicle, the customer must be refunded the difference including applicable sales tax reimbursement. If the sales price of the replacement vehicle and the original vehicle are the same, there is no tax adjustment. Finally, if the sales price of the replacement vehicle is greater than the original vehicle, the dealership would owe tax on the difference in sales price between the original vehicle and the replacement vehicle. License, registration and other non-taxable fees included in the credit given for the original vehicle are not to be deducted from the price of the new vehicle when calculating the amount subject to tax.

Thus, when dealerships adhere to these provisions, the manufacturers would only be allowed to file claims for refund when the sales price of a replacement vehicle is less than the original vehicle and the customer has been refunded the difference, including applicable sales tax reimbursement.

Alternative Method

Notwithstanding the above mandatory warranty provisions, a number of vehicle dealers currently treat replacement transactions as separate and distinct from the original transaction. Thus, the full selling price of the replacement vehicle is treated as taxable. Under these circumstances, manufacturers typically provide a credit to the buyer toward the purchase of the replacement vehicle from a dealership. The credit is most often noted directly on the sales contract of the replacement vehicle. Manufacturers are not allowed to file claims for refund of sales tax included in the credit allowed for the original vehicle on the replacement transaction, if the credit allowance results in the manufacturer receiving a sales tax refund in excess of the amount actually refunded to the consumer as required by law. Under this approach, a replacement vehicle furnished by the dealership will be considered by the Board to be a separate sale to the buyer and sales tax will be applicable to the full selling price of that vehicle. The dealership must report and remit the full sales tax applicable to the Board at the time that the replacement vehicle is furnished.

Vehicle dealers involved in the above situations should retain documentation on file supporting these transactions. The same documentation that is required to support a claim for refund filed by the manufacturer should be retained in the dealer's records in support of these transactions. This would include documentation received from the manufacturer instructing the dealer to replace the vehicle in accordance with Section 1793.2 of the California Civil Code and calculation of the amount of credit allowed.

If the dealership makes restitution to the buyer or replaces a vehicle without the participation of the manufacturer, the transaction is not subject to California's Lemon Law and is controlled by applicable provisions of California's Sales and Use Tax Law

(e.g., Regulation 1655).

DISTRICT RESPONSIBILITY — 0616.30

In cases where refunds have been issued to vehicle manufacturers, to ensure that a duplicate credit (deduction) is not taken by dealerships, districts are advised to view the appropriate Appeals Subsystem screen(s) for the vehicle dealership under audit, and/or the related account(s), prior to completing field investigations.

For all claims received in Headquarters, the Appeals Subsystem will include the vehicle identification number (VIN), customer name, period in which vehicle was originally purchased, and amount of tax refunded to the manufacturer or a zero if the claim was denied. This detail can be found under the Appeals Case Maintenance screens (APL PR and APL MH). Upon entering the APL MH screen, function key F20 can be used to view the VIN. Function key F11 (if available) provides access to the customer name. Please note that there are some cases where data converted from the old system does not include all of the above detail regarding Lemon Law refunds issued.

AUDITOR'S RESPONSIBILITY — 0616.35

In audits of dealerships, it will be the field auditor's responsibility to verify that transactions in which the dealer participated qualify under the Lemon Law. During an audit investigation, auditors may become involved in any of the situations listed below.

Vehicle Replacements

1. Manufacturer warranty provisions — Manufacturers who replace a non-conforming motor vehicle with a new motor vehicle substantially identical to the motor vehicle replaced is replacing the motor vehicle under the terms of the mandatory warranty. During the course of an audit, auditors should verify that tax was properly reported on the original sale. No further tax will be due on the transaction unless the sales price of the replacement vehicle exceeds the sales price of the original vehicle. In such case, auditors should verify that tax is properly reported on the net difference in value.

   In instances where the sales price of the replacement vehicle is less than the sales price of the original vehicle, manufacturers may file a claim for refund for sales tax measured by the net difference in the sales price of the two vehicles provided this difference and the tax was refunded to the buyer. The dealership should not reflect these types of transactions on his/her sales and use tax returns.

   If the Appeals Subsystem (APL MH) screen indicates that a claim for refund was filed and or granted to the manufacturer on any of the above types of transactions, auditors are asked to immediately forward all pertinent documentation related to these transactions directly to the Headquarters Refund Section for investigation. This is to ensure that no duplicate refunds are issued.

2. Alternative Replacement Method — When manufacturers, through their dealers, treat vehicle replacements as separate and distinct transactions from the sale of the original vehicle, auditors should verify that tax was reported on the full selling price of both the original vehicle and the replacement transaction. Under these circumstances, manufacturers may file claims for refund with the

~~Board for sales tax included in the credit provided to the buyer on the replacement vehicle. No subsequent deduction is allowable on the dealer's sales and use tax returns for this transaction.~~

~~**Restitution**~~

~~A vehicle dealer may not claim a deduction for transactions when vehicle manufacturers provide customers with full restitution. The manufacturer will file a claim for refund directly with the Headquarters' Refund Section. Accordingly, any such deduction claimed by dealers on their sales and use tax returns should be disallowed.~~

~~If during the course of an audit of a motor vehicle dealer the auditor discovers evidence that the transaction was not handled by the manufacturer in accordance with the Lemon Law, an informational memo (BOE 1164 or 1032) should be prepared for inclusion in the manufacturer's file and a copy should be forwarded to the Headquarters' Refund Section.~~

~~TRUCKS AND TRAILERS SOLD BY~~TRUCKS AND TRAILERS SOLD BY OUT-OF-STATE AND IN-STATE RETAILERS NEW OR REMANUFACTURED TRUCKS, TRUCK TRACTORS, TRAILERS, OR SEMITRAILERS 625.00

TRUCK MANUFACTURERS — GENERAL 0625.05

Several major truck manufacturers maintain factory branches within the state. These act as both distributors and dealers. Their records do not conform with any of those described in the preceding sections, nor do their methods of reporting sales tax liability follow any set pattern.

Sales made by the ~~branch, other~~ in-state branches, out-of-state branches, the home office, and the factory will be subject to sales tax in some cases and to use tax in other cases.

The auditor should be familiar with the entity ~~as to~~regarding the locations of factories, divisions, home office and permits. The auditor should also review the sales tax working papers in detail for inclusion of sales by other than the local branch. Discussion with branch manager, sales manager and other key personnel will give the auditor a better understanding of ~~the~~ any audit problems that need to be resolved. It is very possible that the audit will be or should be controlled by the Out-of-State District. As soon as it is determined that work is to be done out-of-state, the Out-of-State District should be notified. The auditor, in addition to ~~covering~~ reconciling the ~~audit of~~ recorded and~~/or~~ reported liability, should review correspondence files, inter-branch and the home office accounts and statements, internal billings and warranty charges to home office.

Audits of truck manufacturers should be quite detailed, since no one reporting period will prove typical of the operations of the retailer for the audit period.

The auditor should also be alert to the leasing operations of truck manufacturers. Leases should be carefully examined to determine the status of truck tractors, trailers, trucks, and dollies. (See section 0625.15.)

TRUCKS AND TRAILERS SOLD BY OUT-OF-STATE RETAILERS 0625.10

The sale of a new or remanufactured truck, truck tractor, trailer, or semi-trailer, any of which has an unladen weight of 6,000 pounds or more, new or remanufactured trailer coach, or new or remanufactured auxiliary dolly to ~~the~~ a purchaser in California is exempt from sales and use tax when the vehicle is delivered to the purchaser in California by the manufacturer or remanufacturer pursuant to a retail sale by an out-of-state dealer and certain conditions provided by section 6388 of the Revenue and Taxation Code (Regulation 1620.1(b)(2)) are present. This exemption typically shows up in audits of vehicle manufacturers or remanufacturers who deliver a vehicle [as defined in subdivision 1620.1(a)(8) "vehicle" includes certain trailers] to a purchaser who is not a resident of California for use exclusively in out-of-state or foreign commerce, when the purchaser:

1. Purchases the vehicle from a dealer located outside California,
2. Removes the vehicle from California within 30 days from the date of delivery,
3. Provides an affidavit to the manufacturer or remanufacturer, stating:
    a. The name and location of the out-of-state dealer from whom the vehicle was purchased,
    b. The name and location of the in-state manufacturer or remanufacturer that delivered the vehicle to the purchaser and the date of delivery,
    c. That the purchaser is not a resident of California,
    d. That the vehicle was purchased for use exclusively outside California,
    e. That the vehicle was removed from California within 30 days of the delivery date, and
    f. The date of removal.

4. Provides evidence of out-of-state vehicle registration [state of registration, license plate number and Vehicle Identification Number (VIN) or serial number] to the manufacturer or remanufacturer within 60 days of providing the affidavit to the deliverer.

To file the affidavit, the purchaser should use form BOE-837, Affidavit for Section 6388 or 6388.5 Exemption From the California Sales and Use Tax, (published on the Board's website). Alternative documentation is permissible as long as it contains all the information required by form BOE-837.

Audits of vehicle manufacturers and remanufacturers: Manufacturers and remanufacturers should have an affidavit and registration documentation on file to support a claimed exempt transfer of a vehicle. *Note*: It is rebuttably presumed that a vehicle registered outside California and apportioned for use within California is not purchased for use exclusively outside California.

Audits of purchasers: The Board may audit purchasers claiming exemption under Regulation 1620.1(b)(2). Under this exemption, purchasers must maintain internal records documenting that the qualifying vehicle was taken out of California within the time mandated by statute and was used exclusively outside California. Examples of documentary evidence are bills of lading showing the first functional use of the vehicle, vehicle logs/reports, fuel receipts, hotel bills, and copies of license or registration fee receipts showing the date of payment. Purchasers should also be able to prove residency outside California.

~~For the sale of the property to qualify under this exemption, the manufacturer or remanufacturer must secure from the purchaser and retain:~~

- ~~Written evidence that the purchaser has registered the vehicle out of state.~~

- ~~The purchaser's affidavit attesting that he or she is not a resident of California and that he or she purchased the vehicle from a dealer who is located outside California for use outside the state.~~
- ~~The purchaser's affidavit that the vehicle was moved or driven to a point outside this state within 30 days of the date of delivery of the vehicle to the purchaser.~~

~~Please refer to Exhibit 5 for a sample "Affidavit for Section 6388 or 6388.5 Exemption."~~

TRAILERS SOLD FOR USE OUT-OF-STATE OR IN INTERSTATE OR FOREIGN COMMERCE 0625.15

Section 6388.5 of the Revenue and Taxation Code (Regulation 1620.1(b)(3)) exempts from ~~sales and use~~ tax ~~a~~ the sale and use of a new or remanufactured trailer or semi-trailer ~~which has~~with an unladen weight of 6,000 pounds or more ~~when~~ provided the ~~vehicle~~ trailer is for use exclusively outside California or exclusively in interstate or foreign commerce or both and is delivered to a purchaser in California by an out-of-state or California manufacturer, remanufacturer or dealer pursuant to a sale by an out-of-state or California dealer. ~~and certain other qualifying conditions provided by section 6388.5 of the Revenue and Taxation Code are met.~~ This exemption typically shows up in audits of trailer manufacturers or remanufacturers, dealers, or purchasers. To qualify for exemption, the purchaser must use the trailer exclusively in interstate, out-of-state, or foreign commerce and meet the following criteria:

1. A trailer that is manufactured or remanufactured outside California must be removed from California within 30 days from the date of delivery; or a trailer that is manufactured or remanufactured within California must be removed from California within 75 days from the date of delivery.

2. If the trailer is registered outside the state, the purchaser or purchaser's agent provides the delivering manufacturer, remanufacturer, or dealer a copy of the current out-of-state license and registration for the trailer showing the VIN or serial number; or, if the trailer is registered in-state under the PTI (Permanent Trailer Identification) program, the purchaser or purchaser's agent provides the delivering manufacturer, remanufacturer, or dealer a copy of the federal document assigning or confirming the purchaser's or lessee's USDOT (United States Department of Transportation) number, FMC (Federal Maritime Commission) number, or a copy of the current SSRS (Single State Registration System) filing with the DMV. A purchaser or purchaser's agent may not use an FMC number if the purchaser has a current USDOT number. Evidence of registration outside California must be submitted to the dealer, manufacturer, or remanufacturer no later than 60 days after the timely providing of an affidavit described in subdivision 1620.1(b)(3)(A)3. Evidence of a USDOT number, FMC number, or SSRS filing must be submitted with the affidavit. [Descriptions of the PTI, USDOT, FMC, and SSRS programs are included in Regulation 1620.1(a).]

3. The purchaser or purchaser's agent must also provide a valid affidavit to the manufacturer, remanufacturer, or dealer, stating:
   a. The name and location of the dealer from whom the trailer was purchased,
   b. The name and location of the California dealer, manufacturer or remanufacturer that delivered the trailer to the purchaser and the date of delivery,
   c. That the vehicle was purchased for use exclusively outside the state, or exclusively in interstate or foreign commerce, or both,

d That the vehicle was removed from the state within the appropriate time periods provided for in subdivision 1620.1(b)(3)(A)(1), and
e. The date of removal.

As noted in the previous section, the purchaser must use form BOE-837 or its equivalent as the affidavit.

Audits of purchasers: Purchasers of trailers under this exemption must maintain adequate records documenting that the qualifying trailer was taken out of California within the mandated time and was used exclusively in out-of-state, foreign or interstate commerce. Examples of documentary evidence are bills of lading (also indicating the first functional use of the vehicle), vehicle logs/reports, fuel receipts, hotel bills, and copies of license or registration fee receipts showing the date of payment.

Note: the exemption under 1620.1(b)(3) only applies to trailers and semitrailers – it does not apply to trucks or truck tractors.

~~To substantiate the section 6388.5 exemption, the dealer, manufacturer, or remanufacturer making the sale must secure from the purchaser and retain:~~

- ~~Written evidence of an out-of-state license and registration for the vehicle.~~
- ~~The purchaser's affidavit attesting that the vehicle was purchased from a dealer at a specified location either in California or outside California for use exclusively outside this state, or for use exclusively in interstate or foreign commerce.~~
- ~~The purchaser's affidavit that the vehicle was moved or driven to a point outside this state either within: (1) 30 days from the date of delivery of the vehicle to the purchaser in California if it was manufactured or remanufactured out of state, or (2) 75 days from the date of delivery providing the vehicle was manufactured or remanufactured in California.~~

~~Please refer to Exhibit 5 for a sample "Affidavit for Section 6388 or 6388.5 Exemption"~~

TRUCKS AND TRAILERS SOLD TO LESSORS OF MOBILE TRANSPORTATION EQUIPMENT 0625.20

The sale of trucks and truck type trailers (excluding "one-way rental trucks" as defined in section 6024) to lessors is ~~the~~ a retail sale subject to tax, and the use of the MTE by the lessee is not subject to tax since the lessor is the consumer.

Dealer and non-dealer lessors of mobile transportation equipment who cannot otherwise properly issue a resale certificate may issue such a certificate for the limited purpose of reporting their use tax liability based on fair rental value.

FARM EQUIPMENT AND MACHINERY - PARTIAL EXEMPTION 0626.00

GENERAL 0626.05

Effective September 1, 2001, Section 6356.5 of the Revenue and Taxation Code partially exempts from sales and use tax the sale, storage, use, and other consumption in this state, of farm

equipment and machinery (including qualified vehicles), purchased for use by a qualified person in a qualified manner. The partial exemption is for the state portion of the sales and use tax rate. See Regulation 1533.1.

QUALIFIED VEHICLES 0626.10

Regulation 1533.1(b)(1) includes in the term "farm equipment and machinery," any new or used vehicles designated as implements of husbandry in the Vehicle Code. Vehicle Code section 36000 provides that an "implement of husbandry" is a vehicle used **exclusively** in the conduct of agricultural operations. This section also provides that an "implement of husbandry" does not include vehicles designed primarily for transportation of persons or property on the highway, unless specifically designated as such by other provisions of the Vehicle Code, as in section 36005.

Vehicle Code section 36005 provides a list of vehicles that qualify as "implements of husbandry." This list is attached to Regulation 1533.1 as Appendix A. The list includes certain vehicles designed to transport persons or property on a highway although the Vehicle Code section 36000 excludes such vehicles as implements of husbandry. However, it should be noted that this section limits the vehicles' on highway use to short distances, usually no more than two (2) miles or as otherwise indicated.

There are occasions when vehicles not specifically identified in Appendix A may qualify as farm equipment and machinery for the purposes of the partial exemption. This determination is made by the Department of Motor Vehicles' (DMV) Special Processing Unit and is based on a review of the vehicle's use and equipment requirements. If the DMV determines a vehicle qualifies as an implement of husbandry, it will issue a registration designating the vehicle as such and Special Equipment (SE) plates for the vehicle.

Depending on their use, unlisted vehicles such as All Terrain Vehicles (ATV) and agricultural aircraft (crop dusters) may qualify for the partial exemption. For example, an ATV may qualify when used exclusively by an agricultural operation to traverse an agricultural property to check fencing, round up livestock, check cattle and crops, examine watering and irrigation systems or similar activities required in an agricultural operation. When used exclusively for these purposes, the purchase of the ATV qualifies for the partial exemption provided all other requirements of Regulation 1533.1 are met. Similarly, crop dusters used exclusively for seeding, fertilizing, and crop protection will qualify for the partial exemption.

QUALIFIED PERSON 0626.15

To qualify for section 6356.5 partial exemption, a purchaser must be a "qualified person" or "a person that assists a qualified person."

"A qualified person" must be engaged in an agricultural operation described in Standard Industry Classification (SIC) Codes 0111 to 0291 or perform activities described in SIC Codes 0711 to 0783 in addition to being engaged in a line of business described in SIC Codes 0111 to 0291. SIC Codes 0111 to 0291 describe businesses that are engaged in farming and ranching. SIC Codes 0711 to 0783 describe businesses that are engaged in agricultural services to be limited to soil preparation, crop services, harvesting, veterinary, animal, farm labor and landscape services.

"A person that assists a qualified person" who performs an agricultural service described in SIC Codes 0711 to 0783 as an employee or on a contract or fee basis, also qualifies for the partial exemption, as explained in Regulation 1533.1(b)(3)

The following examples illustrate the concept of a "qualified person" and a "person that assists a qualified person."

Example 1: Farmer Bob decides he isn't going to do his own fertilizing this year. Farmer Bob contracts with The Giant T'Mater Fertilizing Company to fertilize his tomatoes this year. Since this is a big contract, The Giant T'Mater Fertilizing Company decides to buy a new qualifying fertilizer applicator rig for use exclusively in agricultural operations. The Giant T'Mater Fertilizing Company performs agricultural services described in SIC code 0711, soil preparation services, and therefore qualifies as a person that assists a qualified person. The Giant T'Mater Fertilizing Company should give a partial exemption certificate for their purchase of the qualifying equipment.

Example 2: Farmer Bob's mom is ill, so next year he will contract out the management of the farm to Bestfriend Farm Management Co. Bestfriend Farm Management Co. buys a used qualifying All Terrain Vehicle (ATV) for use **exclusively** in getting around on the farm property and to check irrigation machines. Bestfriend Farm Management Co. is a person that assists a qualified person, (SIC 0762) and therefore qualifies for the partial exemption. If the use of the ATV in agricultural operations was less than 100%, Bestfriend Farm Management Co. would not qualify for the partial exemption.

Example 3: Citizen Jeff works a vegetable patch in his extra large backyard. The produce he doesn't consume he gives to his friends and family. He occasionally sells extra produce at a roadside stand, but does not report such sales and expenses on his federal income tax return. He noticed an otherwise qualifying vehicle for sale in the local newspaper and purchased it. Citizen Jeff is not a qualified person for purposes of the partial exemption because Citizen Jeff is growing produce for his own use and is not engaged in a business for purposes of Regulation 1533.1.

PROOF OF EXEMPTION 0626.20

When a qualified person or a person that assists a qualified person purchases a qualified vehicle from a California dealer, that person should give a partial exemption certificate to the California dealer. The purchaser is not required to use the recommended partial exemption certificate (Regulation 1533.1) as long as the certificate provided by the purchaser has all of the elements for the partial exemption certificate outlined in Regulation 1533.1(c)(3).

When the seller is other than a California dealer, for example, an out-of-state vehicle dealer or an in-state non-retailer, the purchaser must do either one of the following:

OPTION 1: Pay the full amount of use tax to the Department of Motor Vehicles (DMV) and apply for a refund of the state exempted portion directly from the Board of Equalization (BOE).

OPTION 2: Pay the non-exempt portion of the tax to the BOE (Consumer Use Tax Section or a district office) and obtain a BOE–111, *Certificate of Tax Clearance*, for use in the registration with DMV.

Purchasers who report use tax or claim a refund from the BOE must provide evidence of being engaged in one of the required SIC codes. Acceptable documentation includes current federal income or state franchise tax returns that include Schedule F. If the purchaser did not file a Schedule F, staff should check the North American Industry Classification System (NAICS) code on the return to ensure it matches one of the activities qualifying for the partial exemption. If staff has questions concerning the eligibility of a NAICS code, a cross-reference between the SIC codes and the NAICS codes can be found at http://www.census.gov/pub/epcd/www/naicstab.htm.

It is possible a person that assists a qualified person will not have a NAICS code that matches one of the activities qualifying for the partial exemption. If the purchaser cannot provide a Schedule F or appropriate NAICS code, other documentation, such as employment or service contracts, may be accepted.

AUDITOR'S RESPONSIBILITY 626.25

Audits of California Dealers

The auditor must ascertain that a dealer's claimed section 6356.5 partial exemptions are supported by a valid partial exemption certificate obtained by the dealer timely and in good faith (Regulation 1533.1(c)(3) and (c)(5)) and are in connection with the sales of qualified vehicles. If the auditor suspects that the purchaser who issued the partial exemption certificate is not a qualified person or a person that assists a qualified person, or is not using the vehicle in a qualified manner as the purchaser claims in the partial exemption certificate, the auditor must contact the purchaser to verify the purchaser's and vehicle's eligibility for the partial exemption. If the auditor determines that the purchaser or the vehicle is not eligible for the partial exemption, the auditor should explain the proper application of tax and issue a billing against the purchaser. If the purchaser is located outside the district of audit, the auditor should prepare BOE 1164 for investigation by the purchaser's district of account.

Audits of Purchasers

The auditor must establish that the purchaser is a qualified person or a person that assists a qualified person and that the vehicle qualifies for the partial exemption as outlined in Regulation 1533.1. The auditor should examine the purchaser's state or federal income tax returns and other written documents such as contracts and invoices (refer to section 626.20).

APPLICATION OF TAX ON SALE AND PURCHASE OF AIRCRAFT 0635.20

Every sale or purchase of an aircraft is subject to either the sales tax or the use tax, unless it is specifically exempt. Every sale of an aircraft is a sale at retail, and by definition, the seller is a retailer. An aircraft is mobile transportation equipment for leasing purposes.

Pursuant to Regulation 1593, tax does not apply to the sale of and storage, use or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing, to:

1. a person who operates the aircraft as a common carrier of persons or property, provided:
   (a) the person operates the aircraft under authority of the laws of this state, of the United States, or any foreign government, and
   (b) the person's use of the aircraft as a common carrier is authorized or permitted by the person's governmental authority to operate the aircraft;
2. a foreign government for the use of the aircraft by the government outside of California, or,
3. a nonresident of California who will not use the aircraft in this state other than to remove the aircraft from California.

Aircraft dealers making exempt sales of aircraft must obtain an Aircraft or Aircraft Parts Exemption Certificate (Exhibit ~~10~~7).

For sales to common carriers see law section 6366(b) and for leases of common carriers see law section 6366(c) for $50,000 or 20% presumption (on or after 01/01/97). Law section 6366.1(c) regarding leases to common carriers with a $25,000 or 10% presumption is superseded by section 6366(c) as of January 1, 1997.

AUDIT PROCEDURES 0635.25

During an audit of a California aircraft dealer or dealer/broker, the auditor shall schedule leads on certain apparently valid and properly supported exempt sales of aircraft as follows:

1. All exempt sales to nonresidents other than bona fide dealers.
2. Any exempt sales to common carriers or foreign governments which seem to be valid but which might have some questionable aspects.
3. All brokerage transactions.

The Form BOE–379–A, Aircraft Exempt Sale Referral (Exhibit ~~11~~8) has been developed for this purpose. The auditor shall perform sufficient verification to ensure that no transactions are listed which are properly the liability of the taxpayer under audit; i.e., list only transactions which audit verification indicates are the responsibility of the purchaser rather than the dealer.

It should be determined that the dealer has not in effect encouraged false documentation. If it can be established that the dealer knew the facts stated in the documentation were not true, the tax plus applicable interest and penalties should be assessed against the dealer. A dual determination against the purchaser might be justified in some situations.

All such listings of transactions should provide as much information as possible but should include as a minimum: The name and address of the purchaser and seller; the type of aircraft including make, model, serial number and tail number; the state in which the aircraft is registered; the selling price; the basis on which the transaction was claimed as exempt, e.g., nonresident, common carrier, foreign government or brokerage; and the place of delivery. A separate Form BOE–379–A should be prepared for each transaction. A photocopy of the exemption certificate and invoice, if available, should be attached to the BOE–379–A.

Transactions should also be listed during audits of other accounts involving exempt sales of aircraft where the purchaser would be responsible for tax such as:

1. Sales of aircraft by other in-state sellers (nondealers) to residents and nonresidents.
2. Sales of aircraft by out-of-state sellers (dealers and nondealers) to California residents and sales to nonresidents that may have some indications that the aircraft was purchased for use in California.

The Form BOE–379–A on such apparently exempt sales transactions should be forwarded directly to CUTS. CUTS will correlate this data with their own sources of information and prepare determinations where appropriate. Time expended in preparing leads on purchasers should be charged to Time Code 3108.

Table of Exhibits