

## **495.0000 SALE**

*See also Credit Sales and Repossessions; Interstate and Foreign Commerce; Leases of Tangible Personal Property—In General; Mortgagees and Trustees; Occasional Sales—Sale of a Business—Business Reorganization; Court-Ordered Sales, Foreclosures and Repossessions; Service Enterprises Generally; Tangible and Intangible Property; and Vehicles. Consignment, see also Consignees and Lienors of Tangible Personal Property for Sale.*

### **(a) IN GENERAL—DEFINITION**

**495.0010 Taxable Events.** If property is purchased outside the state for use inside the state, the buyer is liable for use tax. If the property is later resold at retail after use in this state, sales tax applies to the sale. In this case, the sales tax and the use tax apply to different events, each of which is subject to tax. That is, the fact that the first event was taxable does not bar the application of the sales tax to the second retail transaction. 11/17/80.

**495.0011 Agent for Client.** The client of the Taxpayer is a full-service corporate meeting and event planning company that negotiates and procures services for the client including, but not limited to, food, beverage, transportation, leisure activities, décor, entertainment, audio visual and multi-media services, premium gifts, etc. The client is billed for all products and services procured on the client's behalf itemized at cost along with a separately stated management fee.

The California Civil Code defines an agent as, "one who represents another, called the principal, in dealings with third persons." The difference between an agent and a supplier of property is discussed in the Restatement Second of Agency at section 14K which states, "one who contracts to acquire property from a third person and convey it to another is the agent of the other only if he is to act primarily for the benefit of the other and not for himself." Restatement Second of Agency section 424 requires that, ". . . an agent employed to buy . . . is subject to a duty to the principal, within the limits set by the principal's directions, to be loyal to the principal's interests and to use reasonable care to obtain terms which best satisfy the manifested purposes of the principal."

Therefore, in order to be recognized for purposes of the Sales and Use Tax Law as an agent that may obtain tangible personal property on behalf of a client, the taxpayer must do all of the following:

1. Taxpayer must have written evidence of its status as the client's agent (this may be included in its contract with its client);
2. Taxpayer must clearly disclose to all third-party vendors of tangible personal property the name of the client and that Taxpayer is acting as an agent of its client in making any purchases; and
3. Taxpayer must bill the same amount to the client as the third-party vendor bills to Taxpayer.

In order to confirm in an audit that Taxpayer is the agent of its client, Taxpayer must separately state on its invoices to the client all amounts billed to the client for tangible personal property and all amounts billed as a "management fee." Additionally, as an agent, Taxpayer may make no use for its own account of any tangible personal property it purchases for the client, and may not issue a resale certificate for any property that it purchases for the client. 3/20/07. (2008-1).

**495.0012 Approval for Assumption of Loan—Condition of Sale.** A taxpayer entered into a purchase agreement to sell its business. The agreement was signed by the shareholders of the taxpayer on February 13, 1989. The agreement provided that: (1) the buyers would take possession immediately; (2) the seller's lease of the business premises would be assigned to the buyers; (3) the buyers would assume a loan on the business made by a financial institution in the amount of \$62,758.75; and (4) the buyers were to provide business insurance effective February 14, 1989. No down payment was required.

The buyers did take possession of the business premises immediately and the lessor of the premises accepted the assignment of the lease to the buyers. However, the financial institution did not agree to the

assumption of the loan by the buyer. The buyers made no payments on the loan and the financial institution foreclosed on the collateral for the loan that had been put up by some of the taxpayer's shareholders. The buyers filed for bankruptcy and did not list the fixtures and equipment of the business as assets in their bankruptcy proceedings.

The contract of sale was conditioned on the approval by the financial institution of the buyers' assumption of taxpayer's note. This did not occur. Since a condition precedent to the sale did not occur, there was no sale. The fact that the buyers did not claim an ownership interest in the fixtures and equipment in their bankruptcy is consistent with the conclusion that no sale occurred. However, the buyers did take possession of the property. Thus, since title did not pass to the buyers because of the failure of the condition precedent to the sale, taxpayer must be regarded as leasing such property to the buyers. Since the consideration to be paid, the assumption of liabilities, was never paid, there were no rentals paid. There is therefore no tax liability on the leases. (Regulation 1660(c)(1).) 4/24/91.

[495.0020](#) **Barter.** A shoemaker who takes a pair of shoes worth \$100 from his merchandise inventory and exchanges the shoes for an item for his personal use is engaging in a taxable sales transaction. A transfer of title or possession by exchange or barter falls within the definition of a sale. Any transfer of tangible personal property in exchange for a thing of value is a sale. 12/29/64.

[495.0032](#) **"Bill of Usage" Agreement.** Customers of a California company require the use of drilling equipment in their offshore operations outside California. The equipment is ordered by and delivered to the customers in California under a "bill of usage" agreement. At this time, no invoice or purchase order is issued, but the customers assume the risk of loss. The customers transport the equipment to an offshore drilling platform and use it as needed. As soon as any of the equipment is used on the platform, the customers issue a purchase order for equipment used and the billing procedure begins. Upon completion of an operation, the customers return any unused equipment to the company.

In determining when title passes for sales and use tax purposes, the provisions of the Commercial Code is used primarily. Section 2401 (2) provides that unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods despite any reservation of a security interest. The only other provisions of the Commercial Code that require consideration are those relating to "sales on approval." However, the language of the sections on "sales of approval" is not consistent with this "bill of usage" agreement. Under the bill of usage agreement, the drilling equipment is not delivered for the purpose of "trial," nor does the agreement contemplate that use or "acceptance" of any of the equipment constitutes acceptance of all of them. These transactions are not "sales on approval" within the meaning of the Commercial Code and that under section 2401 the sales occur when the equipment is delivered to the customers in California. Accordingly, sales tax applies to the sales. 4/23/69.

[495.0033](#) **Billing for Magnetic Tapes Used as Storage Media in Time Sharing.** There is no sale or purchase of magnetic tapes used as storage or memory media in a company's time-sharing operation. This is true even though the customer manipulates the tapes by telephone access to the time-sharing company's computers and even though the cost of these tapes are billed to the customer. Title to these tapes is never transferred to the customer and there is no transfer or possession when the tapes remain at the location of the time-sharing company's computers and are manipulated by customers only through their remote access to the computers. The time-sharing company is the consumer of the magnetic tapes and its purchases of the tapes are subject to tax. 7/24/85.

[495.0035](#) **Blank Master Tapes Used to Produce Movie Masters.** A taxpayer purchases blank master video tapes ex-tax and uses them to produce movie masters that are licensed to foreign distributors for a period of time. As the lease of a motion picture is not a sale, the taxpayer is the consumer of the tapes and other materials used. Tax applies to the purchase price of the tapes and other materials notwithstanding that the property is subsequently shipped outside the state. 3/22/92.

[495.0040](#) **Blood.** The rule exempting sales of human blood or blood plasma for use in transfusions, also includes sales of products made from human blood without addition of other chemicals or products, except

in minute amount for preservative purposes, provided the product in question is administered through injection into the blood stream. 1/28/55.

[495.0045](#) **Blood Banks.** The transfer of blood by a blood bank for a consideration is a sale within the meaning of section 6006(a). The sale, however, is exempt under section 33. The blood bank is not a “seller” within the meaning of section 6014 since the sale of blood is not a sale of property “of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.” Accordingly, a blood bank is not required by section 6066 to hold a seller’s permit solely by reason of its sales of blood. Anticoagulants which are an integral part of the blood are in the same class as the blood itself for sales and use tax purposes. 9/29/71.

[495.0051](#) **Blood and Tissue Banks.** Revenue and Taxation Code section 33 provides that “Human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from taxation for any purpose.” Section 33’s requirement that property be held in a bank for medical purposes applies only to human body parts and does not apply to human whole blood, plasma, blood products, or blood derivatives, even when the sale is made by an entity other than a licensed blood bank.

For purposes of section 33, “human body parts” means any portion or part of the human body, including any human cell, group of cells, tissue or organ, eye, bones, skin, arteries, sperm, blood, other fluids, and any derivative portions thereof, including, for example, proteins (inclusive of enzymes). “Bank” means a facility that lawfully exists as a repository for human body parts, including any facility operated as a medical, research, or scientific institution that lawfully maintains inventories of human body parts. “Medical purposes” includes autopsy, biopsy, training, education, or other diagnostic, investigation or research activities, in support of medical science. (6/18/2010)

495.0060 **Booklet of Information.** A printer publishes informational booklets concerning California cities on behalf of a businessmen’s association in each city described in the booklets. The association authorizes the printer to receive payment for the publication of the booklets directly from members who wish to place advertisements in the booklets, obviating the necessity of the association’s soliciting its members for the placement of ads in the booklets, collecting payment from such members and paying the printer out of the proceeds. Under such circumstances the printer is regarded as selling the booklets to the businessmen’s association and the amounts paid by the member-advertisers are regarded as taxable gross receipts from the sale of the booklets paid in behalf of the association. 2/28/68.

495.0074 **Cancellation Charges.** A taxpayer, upon receipt of a purchase order, purchases materials and components necessary for the manufacture of the product. Prior to delivery of any property pursuant to the purchase order, the customer cancels the order. If neither possession nor title to the purchased materials and components passes to the customer, tax does not apply to charges made for cancellation. 11/15/93.

495.0080 **Cash in Lieu of Prize.** The winner of a car in a raffle decided he did not want the car, but the cash instead, which the dealer gave to him out of the proceeds received from the organization conducting the raffle. The car remained on display at the dealership, was not registered in the winner’s name and there was no transfer of title or possession to the car. Under these circumstances no sale took place, and thus, no tax liability would arise from the transaction. 12/8/66.

495.0110 **Children’s Books Supported by Local Business.** A taxpayer proposes to provide personalized books to young school children without cost to the school or parents. The program would be supported by local businesses.

In this situation, the taxpayer would be regarded as selling the books to the local businesses. The sale is at retail and the taxpayer will therefore owe sales tax measured by the gross receipts from the sale of the books. Tax is due on the amounts paid to the taxpayer by the local businesses. 12/7/95.

[495.0120](#) **Church Organ Installation.** Musical instruments used exclusively for religious purposes are not exempt from the sales tax. The sale and installation of a new organ in a church, providing the organ is

considered to be a fixture, makes the contractor, as the retailer, liable for the tax. The enlargement of an organ, which goes beyond merely repairing the organ, is regarded as a taxable sale measured by the gross receipts from that operation. 12/11/64.

**495.0125 Commodity Exchange—Aluminum Storage.** The function of a commodity warehouse for storage of aluminum is for the benefit of both the producer and the fabricator. The warehouse operator issues a “warrant” to the producer as evidence of title. These warrants are then sold and subsequently traded many times on the Commodity Exchange until a fabricator claims the unit of aluminum with his warrant.

Assuming the “warrants” are negotiable instruments of title as described in section 71004 of the Uniform Commercial Code and that the specific aluminum to which they relate is not identified until delivery to the fabricator, the transfers of the warrants are not subject to tax. For purposes of the Sales and Use Tax Law, a “sale” between the producer and fabricator would occur upon delivery of the aluminum to the fabricator. Unless the fabricator furnished the producer with a valid resale certificate, the producer would be liable for tax based on the gross receipts from the sale upon delivery of the aluminum. 3/5/84.

**495.0130 Conditional Sale vs. Sale on Approval.** The sale of property which was delivered to the out-of-state buyer’s agent in California who delivered it to an out-of-state university for testing, and then delivered it to the buyer in New York does not qualify for exemption as a “sale on approval” in interstate commerce merely because the “approval” occurred in New York. Pursuant to Regulation 1628(b)(3)(C), “when a sale is on approval, the sale does not occur until the purchaser accepts the property.” The Uniform Commercial Code, however, sets specific requirements for sale on approval. The recipient must have the unconditional right to return the goods, even if they meet the contract specifications. Any impediment to the exercise of this right prevents the contract from being “on approval.” Examples of such impediments would be requiring the buyer to make payment upon signing of the contract, retention of title by the seller until final payment is made, rather than upon approval, making the right to return the goods conditional upon failure to conform to the contract, and requiring the recipient to accept risk of loss. If these or other impediments prevent the contract from being “on approval,” the sale is a conditional sale as described in section 6006(e). 4/3/81; 7/10/96.

**495.0160 Consideration.** A charge made by a manufacturer to its dealers for property transferred in furtherance of a cooperative advertising program or other business promotion will not be regarded as a “sale” where the amounts paid by the dealers is less than 50 percent of the cost of the property. 4/27/65; 4/30/65.

**495.0187 Construction by Joint Venture.** Two California corporations form a joint venture for the fabrication and erection of structural steel. The joint venture will bid for and enter into a number of construction contracts over a significant period of time and will purchase all materials necessary to the performance of such contracts. The joint venture will hold its own contractor’s license. Fabrication and erection activities will be performed by employees of the individual venturers. The joint venture will treat the labor as contributions to capital. Revenues from the joint venture will be distributed based on contributions to capital.

Tax does not apply to contributions to capital of a commencing corporation or commencing partnership in exchange solely for first issue stock in the commencing corporation or an interest in the commencing partnership. In this case, the “contribution” extends over a long period of time and could not be regarded as a contribution to a commencing entity. Thus when an employee of an individual venturer performs only fabrication for the joint venture, the venturer is making a taxable sale to a consumer (the joint venture). On the other hand, when a venturer contracts with the joint venture to both fabricate and install, the venturer is the consumer of any fabrication that it installs, and tax does not apply. 1/7/94.

**495.0190 Contest Prize—Automobile.** An auto manufacturer requests that a local dealer deliver an auto to the winner of a contest. The car is to be delivered from the dealer’s inventory. The winner has no need for the auto and would like the dealer to keep it and give him cash instead. In as much as the winner will not receive either title or possession of the auto, there is no liability for sales or use tax. 3/26/93.

**495.0195 Contribution for Video Tapes.** A person distributes educational video tapes to the public and to professors, students or employees for \$35.00 plus shipping and handling. The person describes the transfer of the tapes as a “gift” and the payment of the \$35.00 as a “contribution.”

For sales tax purposes, the transactions are regarded as sales of tangible personal property. Sales tax applies to the charge made for the tapes exclusive of actual shipping charges, but only to the extent of actual postage or shipping fees. The handling charges are taxable. 6/9/95.

**495.0197 Conversion of Raw Sulfur.** A taxpayer has sulfuric acid agreements with various oil refiners which provide for the conversion of the customer’s raw sulfur or spent acid into fresh sulfuric acid at conversion prices covering only the processing charges. Shipments of fresh acid are made from the taxpayer’s plants and by outside vendors (subcontractors) under purchase orders issued by the taxpayer “for exchange of, or purchase of, sulfuric acid on a resale basis.” Shipments from the taxpayer’s plants have also exceeded the quantities of raw materials furnished by the oil refiners for conversion.

The application of tax is as follows:

Shipment from taxpayer. To the extent that the refiner has, contemporaneous with the shipment of fresh acid, a credit balance of sulfur with the taxpayer, tax applies only to the conversion or other charges made by the taxpayer to the oil refiner, and not to the value of the customer furnished sulfur.

To the extent that the sulfur component of the fresh acid exceeds the sulfur credit balance maintained at the time of shipment of the fresh acid, tax applies to all conversion and other charges made by taxpayer and to the amount allowed for the sulfur subsequently furnished to taxpayer by the oil refiner in settlement of its “deficit” account.

Shipment from subcontractor. In cases where shipment of the fresh acid is made by a subcontractor (or by the contractor from a location other than the location where customer furnished spent acid is maintained), tax applies to both the conversion charges and the trade-in value of the spent catalyst furnished by the oil refiner. It is immaterial that the contractor may receive the spent acid prior to the time the fresh acid is shipped since there is no possibility that the oil refiner will receive, as a component of the fresh acid, materials furnished by the oil refiner to the contractor as a component of the spent acid. 4/8/71.

**495.0199 Delivery of Vehicle for Out-of-State Dealer.** An out-of-state new car dealer (not engaged in business in California) sold a vehicle to a company in California for delivery to a winner of a raffle held by the company. The out-of-state dealer ordered the vehicle from the factory which delivered it to California Dealer A for redelivery to the winner of the raffle. Dealer A was instructed by the company to collect the California sales tax and license fees from the winner.

However, the winner did not want to take delivery of the vehicle. Instead, the winner asked Dealer A to transport the vehicle to Dealer B located in another town. The winner then took delivery of a different vehicle and paid the cost difference to Dealer B. Dealer B collected “sales tax” and license fees on the replacement vehicle and offered the original raffle prize vehicle for sale.

This transaction falls within the provisions of the second paragraph of section 6007. Dealer A is considered the retailer of the vehicle it delivered and it owes sales tax on that sale. Dealer A may collect sales tax reimbursement if the contract so provides. The company who purchased the vehicle may be able to obtain payment from the winner for taxes it pays as a result of its contract and rules of the raffle. In any case, the Board will look to Dealer A for payment of the sales tax on the transaction.

Dealer A does not make a sales for resale to Dealer B. The winner’s purchase of a more expensive vehicle is nothing more than a car purchased with a trade-in. Dealer B will be obligated to pay sales tax on the sale of the replacement vehicle. 9/23/96.

495.0200 **Destroyed Property.** When, prior to the passage of title, a vendor destroys a stock of forms upon instructions from the vendee that such stock is obsolete and customer is billed for such destroyed stock, there has been no sale and sales tax does not apply. 4/26/55.

495.0209 **Donated Property—Trust.** A revocable living trust donated fine art prints and books to a religious organization. The trust had received the prints and books from the grantor when the trust was created. The trustee has a seller's permit.

The religious organization plans to give the donated books and prints to persons making donations to the religious organization.

No sales or use tax arises as a result of the transfer from the trustee to the religious organization because the trustee had received the property as a gift from a person who is not a seller and had not purchased the property for resale.

If the religious organization does not suggest a minimum donation in exchange for the property it gives to donors, the transfer is not a sale nor is there a taxable use since the property was not acquired in a transaction subject to sales or use tax. 2/3/94.

[495.0214](#) **Donating Books.** A taxpayer is in the business of making and selling personalized computer books. As part of the operations, she gives personalized books to children in hospitals. Donations are received from private parties to help subsidize this operation.

Since the taxpayer has no contractual obligation to give the books and no consideration is received when the taxpayer does so, the books given to the children are not being sold. Rather, the taxpayer is the consumer of the materials incorporated into the books and tax is due on the purchase price of those materials by the taxpayer. 2/11/88.

495.0215 **Donation of Books to Schools.** A taxpayer proposes to conduct a reading program in which businesses contribute funds to provide personalized reading books (produced by taxpayer) to day-care centers and schools. The donors will receive recognition as a sponsor in a special page inserted into the books and will be thanked in an advertisement placed in a local newspaper. The taxpayer will not transfer the books directly to the businesses. Based on the facts, businesses are the donors of the books to the schools. This means that the taxpayer is making retail sales of the books to those donors and tax applies to the taxpayer's charges for the books. 10/24/96.

[495.0216](#) **Donation as a Sale.** The transfer of a Bible is considered a sale when consideration is specified for which it will be transferred to a recipient, regardless of whether the consideration is denominated as a donation or otherwise. This includes a situation where a "donation" of a specific amount is requested or suggested, or where a "minimum donation" is suggested. The gross receipts would be the amount requested or suggested. Any amount submitted in excess would be a true donation and not part of the gross receipts.

The transfer of a Bible would not be considered a sale if there is merely a request for a donation, with no amount specified or suggested and no requirement that a donation be made as a condition of keeping the item.

However, if the amount specified or suggested as a donation is less than 50 percent of the cost of the Bible to the person distributing them, the transaction is not a sale and the distributor is the consumer rather than the seller of the Bibles. 4/12/78.

495.0220 **Embezzled Merchandise.** When a retailer's employee embezzles merchandise and the retailer has the option to recover the merchandise or accept cash payment from the embezzler and the retailer elects to accept the cash, the transfer is a taxable sale. If it is impossible for the retailer to recover the merchandise, the payment by the embezzler constitutes damages for conversion and not taxable gross receipts. 9/14/67.

495.0230 **Eminent Domain Proceedings.** A transfer pursuant to a judgment in an eminent domain proceeding is not a taxable sale, whether or not the judgment is stipulated. However, a transfer for a consideration under an agreement reached in lieu of eminent domain proceedings in court would constitute a sale. 11/10/77.

[495.0236](#) **Enrichment of Nuclear Fuel.** The following covers the application of tax to the processing of nuclear fuel used in a nuclear generating station. In the analysis, it is presumed that the fuel cycle is already in a continuous process.

First Step:

The “reprocessing” charges are taxable as “fabrication” or “processing” labor to the extent that plutonium and unused uranium are recovered for later use. However, the charges are exempt to the extent that neptunium, plutonium, and other by-products are sold. This will require an allocation of the reprocessing charge between taxable and nontaxable components.

Second Step:

The “reconversion” charge made for converting the unused uranium into uranium hexafluoride (UF<sub>6</sub>) is taxable as “fabrication” labor.

Third Step:

The labor involved in the enrichment step is regarded as “fabrication” labor. The measure of tax is the labor charge made by the processor only and does not include the “trade-in value” of the uranium hexafluoride furnished by the utility company (nuclear station owner) to the processor, provided (1) the utility company retains title to the uranium hexafluoride and (2) the processor receives the uranium hexafluoride for enrichment prior to the time it ships equivalent amounts of enriched uranium hexafluoride for the utility company’s account. If the two conditions are met, it is considered to involve a commingling of fungible goods and the utility company receives from the processor the “same” property furnished even though it may in fact not be the same physical property. If either of the two conditions are not met, the transaction is viewed as an exchange or trade-in transaction, and the measure of tax is correspondingly increased.

If the enrichment is done by the Atomic Energy Commission, tax will not apply as it will qualify as a purchase from the United States Government.

Fourth Step:

Tax applies to the “manufacture” step.

Tax applies on steps subsequent to the enrichment step even though the enrichment may have been performed by the Atomic Energy Commission. 3/1/73.

[495.0240](#) **Erroneous Entries Transferring Equipment.** When entries in a company’s books erroneously transferred the company’s equipment to another entity, resulting in a sale by mistake, sales tax was due on the transfer despite the mistake because the transferee claimed depreciation of the equipment in the transferee’s State and Federal income tax returns. The claim of depreciation constituted an exercise of ownership over the equipment. The transfer could not be considered a nullity and the sales tax could not be cancelled unless the transferee’s State and Federal income tax returns were amended to exclude any claim of ownership over the equipment through depreciation deductions and to restore the equipment to where the equipment would have been before the erroneous transfer. 3/17/70.

[495.0254](#) **Financing Arrangement.** A taxpayer is in the financing and leasing business. One of its customers owns several items of tangible personal property which it utilizes in its business. The customer

proposes to issue a “Bill of Sale” to the taxpayer transferring all rights, title, and interest to the property to the taxpayer in exchange for a sum of money. Simultaneous with issuance of the “Bill of Sale,” the customer and taxpayer will enter into a “Conditional Sales Agreement” whereby the customer agrees to purchase the property from the taxpayer through installment payments with the taxpayer retaining a security interest in the property until all installment payments have been made.

If the customer retains benefit of property ownerships such as state or federal income tax credits and depreciation deductions, the interest rate charged by the taxpayer is nonusurious, and the taxpayer treats the transaction as a loan on its books and files appropriate UCC financing statements, the described transaction is a loan of money and is not a sale of tangible personal property subject to tax. 11/14/85.

**495.0260 Financing as Condition Precedent.** If purchase of a sales contract by a finance company is agreed to by the parties as a condition to the transaction and the finance company does not approve the buyer’s credit, there is no sale for sales tax purposes. 10/2/58.

**495.0280 Fish Used as Bait.** The furnishing of bait pursuant to time charter agreements does not constitute a taxable sale of bait. 12/28/62.

**495.0283 Forfeited Property.** Forfeiture of property and the vesting of title to that property in a law enforcement agency which uses the property is nontaxable because there is no sale and no consideration paid for the transfer. 4/14/93.

**495.0285 Fueling Network Sales.** Taxpayer A enters into contracts with truckers to sell fuel to them. It issues network authorization cards. Taxpayer A also enters into agreements with Taxpayer B whereby B will dispense fuel to the truckers who hold authorization cards from A. The price arrangement between A and the truckers is unknown to B. A pays B the wholesale market price plus a markup for fuel which B delivers to holders of authorization cards from A. The truckers pay A for the fuel which they receive.

If A has a physical location in California, B is regarded as making a sale for resale to A and must precollect sales tax from A. A is regarded as the retailer and must report and pay sales tax on its sales of fuel. Both parties may claim credit for any prepayment of sales tax previously paid to its suppliers. If A does not have a physical location in California, B is regarded as the retailer. B is liable for tax on the full amount charged to the truckers by A. 12/8/94; 5/29/96.

**495.0288 Funding of Purchase—Additional Fees.** A firm submits a bid to fund the purchase of equipment by a local government unit. It is the successful bidder and it purchases the equipment tax-paid and sells it to the local government under a contract calling for 60 monthly payments. The agreement provides that title will remain with the firm until the final payment has been made. This provision plus the last sentence of section 6006.3 requires that the transaction be treated as a sale at its inception.

The firm, in turn, issues certificates of participation for sale to investors. The local government unit’s payment schedule results in a total that is greater than the price of the equipment, with the difference representing certain expenses related to the financial arrangements, e.g., bond fees, printing costs, etc.

The additional costs added to the agreed purchase price were incurred after the retail sale of the equipment, and are related to the sale of the participation certificates, which are intangible representations of value in the nature of stocks, bonds, etc.

The firm owes sales tax on the retail sales price of the equipment, but is entitled to a tax-paid purchase resold credit; no further tax is due on the financing costs. 8/22/94.

**495.0290 Government Service Transactions.** When property is furnished to members of the public by a governmental agency as required by law, there is not “bargained for” consideration and, therefore, there is no sale as defined by section 6006. Therefore, charges for printed material by the Judicial Council through the Department of General Services to the Superior Courts or by the individual Superior Courts to the private conservatorships are likewise nontaxable. Both transactions involving the Superior Court and the

private conservatorships are regarded as government service transactions and not as sales, notwithstanding the fact that the transfer fees in the nature of cost reimbursement are paid in both instances. Sales tax applies to the sale made by the printer to the Judicial Council. 7/8/92.

[495.0292](#) **Grower of Trees Has Option to Repurchase.** A tree grower has an agreement to grow, within one year, 100 trees for a consideration of \$5000 from the purchasers. The trees are grown in containers. At the purchaser's option, the grower also agrees to repurchase, after nine months, any of the trees at a price of \$75 per tree. The contract also specifies that the purchaser retains title to the trees during the contract period and may take possession of these trees by giving seven days notice and physically removing them from the nursery. The purchasers are not in the business of selling, growing or using trees. They do not have seller's permits and none have requested possession of the trees.

The growing contracts are contracts to sell goods and a sale takes place when the trees are identified to the contract. The contracts pass clear title to the trees to the purchaser for consideration. A sale has occurred under section 6006(a) and, unless the transaction is otherwise exempt under the law, it is subject to tax.

In some instances, although consideration was received, the trees were not grown. If the property (trees) sold does not exist, then a sale of tangible personal property has not occurred and corresponding moneys received by the grower are not subject to tax. 5/29/84; 7/10/96.

[495.0300](#) **Insurance.** An automobile dealer's delivery of a bill of sale to an insurance company upon receiving payment of a claim for an automobile stolen from his stock does not constitute a sale. 11/7/58.

[495.0340](#) **Leaseback of Equipment in Place.** A manufacturer of wood products entered into a transaction in 1964 pursuant to which it transferred title to plant equipment in place and the transferee leased back the equipment. Although the purpose of the transaction was to obtain funds and the equipment was never moved, the transfer was not a loan, but a taxable retail sale. 2/23/68.

495.0360 **Location Listings—Land.** The sale of literature giving the location and method of obtaining State and Federal lands is a transfer of title or possession of the lists for a consideration, and not a service, and therefore is taxable. 4/29/60.

[495.0370](#) **Minimum Donation.** Religious pamphlets and tapes supplied to the public for a suggested minimum donation are regarded as being sold for sales and use tax purposes. 10/16/72.

[495.0375](#) **Narcotics Contraband.** A transfer of contraband narcotics for a consideration valued in money is a sale of tangible personal property within the definition provided by the Sales and Use Tax Law. The fact that the sales are in violation of penal code provisions and federal laws makes no difference as to the seller's liability under the Sales and Use Tax Law. 7/18/77.

495.0375.700 **Pollution Control Devices—Sale to California Governmental Agency.** A manufacturer's sale of water pollution control systems to California governmental agencies are not exempt from sales tax. Under section 6010.10 the exclusion does not apply unless the seller qualifies as a participating party pursuant to Health and Safety Code section 44506, and the agency to whom the system is transferred is the California Pollution Control Financing Authority. 10/3/95.

[495.0376](#) **A Promise Is Consideration for Lease of Equipment.** The customer, pursuant to an agreement, promises to purchase a minimum of 50 test packs per day for 180 days at a stated price per test pack. In return, the customer is entitled, among other things, to possession and use of an automatic clerical analyzer and computer. Under such circumstances, a lease of the equipment is clearly in evidence since consideration in the form of the customer's promise to purchase a certain quantity of the test pack is given in return for possession and use of the equipment. A "loan for use" is not in evidence, since the lessor realizes "reward" in the form of the promise to purchase and actual purchases by the customer of the test packs. 11/1/85.

495.0376.500 **Property Dividend.** Corporation A purchases 100% of the stock of Corporation B. After the acquisition, B declares a property dividend of unencumbered fixed assets. The transfer of the assets by a dividend without encumbrance is not a “sale” and tax does not apply. 3/22/88.

[495.0377](#) **Property Transferred Pursuant to Court Order.** When a retailer removes property from its ex-tax inventory and transfers it pursuant to a court order which required the transfer as part of an award of damages, the retailer is the consumer of that property. Thus, the retailer must report use tax measured by the purchase price of the property. 3/26/90.

495.0380 **Punch Coded Tapes.** The sale by the manufacturer of a punch coded tape which contains coded information pertaining to bibliographical, Library of Congress numbers, and other information to be used for indexing new books is subject to tax. 12/15/67.

[495.0385](#) **Purchasing Agent.** A taxpayer proposes to enter into an agreement to act as the purchasing agent for a hospital district (hospital). The contract provides that the taxpayer would purchase supplies on behalf of the hospital, warehouse all the supplies at its facilities until needed by the hospital, mark and identify those supplies as “for” the hospital, maintain insurance naming the hospital as an additional insured, pay the supply vendors, and be responsible for late charges, interest, and price changes arising from the taxpayer’s late payments.

The hospital is to pay the taxpayer the cost of supplies from the vendors and will be invoiced upon delivery to the hospital’s facilities. Payment will be due 26 days after the date of delivery to the hospital facilities. Also, the taxpayer guarantees no more than a maximum price will be billed to the hospital for the supplies. The taxpayer will be paid a set fee for performance of the requirements of the contract.

Based on the provisions of the contract, the taxpayer is not acting as hospital’s agent but, rather, is purchasing supplies for resale to hospital. In order for the taxpayer to act as an agent, the billing to the hospital must be the same as paid by the taxpayer to the supplier. Under the contract, not more than a stated maximum amount will be billed to the hospital. Thus, if the amount paid to the supplier exceeds the maximum, the taxpayer absorbs the difference. Additionally, the taxpayer is responsible for late charges, interest charges arising from late payments, and the hospital does not pay the taxpayer until 26 days after supplies are delivered to the hospital. Accordingly, it is in effect financing the hospital’s purchases. Also, the taxpayer is making purchases through a group purchasing arrangement. There is no evidence the taxpayer discloses to the vendor that the taxpayer purchases specific property as an agent of that hospital. Finally, the contract specifies that warehoused goods are marked held “for” the hospital. Under an agency arrangement, the goods would be the property of the hospital, not merely held for it. All of the above factors result in a conclusion that the contract is a contract to buy and sell and not an agency contract. 5/10/88.

[495.0397](#) **Reimbursement of Government Fees.** The State Agency for Surplus Property, a part of Department of General Services, acquired two vehicles under the federal surplus property disposition plan and donated them to the Pleasant Valley School District in exchange for \$700 and \$450 handling and service charges. These payments do not represent gross receipts and do not cause a sale to have occurred because federal law requires that costs for packing, loading, etc., of donated surplus property shall be borne by the designated donee by reimbursement to the federal government. In addition, the state’s plan of operation to comply with the federal law requires that the donee reimburse the state for the costs paid to the federal government. The amounts paid by the school district are fees for government services and not gross receipts from the sale of tangible personal property. 8/22/94.

495.0400 **Reimbursement of Hauling Expense.** The delivery of wood shavings by a mill to dairies, stables, and other customers for which a charge is made, constitutes a taxable sale, even though the charge is regarded as reimbursement of hauling expenses. 6/8/56.

495.0415 **Replacing Truck Parts—No Cost to Customer.** A truck repair shop made a mistake by not putting oil in the transmission before the truck left the shop. This destroyed the transmission. The shop bought a transmission for the customer and installed it in the truck at no charge to the customer.

The truck repair shop did not sell the transmission to its customer, but rather consumed it in repairing the damage the truck repair shop caused. Therefore, the sale of the transmission to the truck repair shop is subject to sales tax. If the truck repair shop used a transmission from its resale inventory, it must report and pay use tax on its purchase price with its return for the period in which the property was withdrawn from resale inventory for consumption. (Regulation 1668 (a)(2)). 7/11/96.

[495.0420](#) **Repurchase.** Where, by agreement, a business is sold with an option to repurchase, and such option is subsequently exercised, each transaction constitutes a sale for sales tax purposes. 10/24/56.

495.0433 **Research Agreement—Right to Stock/Future Royalties.** A and B enter into a research agreement whereby B will pay to A a specified amount of development funds, which A will expend in an attempt to develop products for the treatment and diagnosis of AIDS, and to perform clinical testing and other activities required for U.S. Food and Drug Administration approval of any products which might result from AIDS research. The products, if any, would remain the property of A, and are not transferred to B. Instead as consideration for B providing the funds, if any products are developed, B will receive periodic royalties payable from the gross proceeds received by A from sales or license of the products by A. Also, A has issued to B warrants which allow B to purchase up to a stated maximum number of shares of stock A.

Since this agreement does not call for the sale, lease, or transfer of any tangible personal property, sales and use tax will not apply to the agreement. The transfer of funds in return for the right to receive future royalties and right to receive stock warrants does not constitute a transfer for consideration of tangible personal property. 7/29/88.

[495.0440](#) **Rescission.** A contract rescinding the purchase of business assets and calling for the return of the property to the original seller is not a sale. This is true even though the sale which is rescinded is a taxable retail sale for which the seller cannot claim a returned merchandise deduction because the full purchase price was not refunded. Rescission attempts to return the parties to the status quo and it may be necessary in a given case to allow the seller to retain a portion of the purchase price because of damages done to the business by the buyer. 9/8/65.

495.0442 **Rescission.** Company A sold equipment to B under a conditional sales contract. Later a dispute arose as to the balance due on the contract. To resolve the controversy, title was transferred to a leasing company which paid A a sum in settlement of the contract balance.

The transaction did not result in a rescission of the original sale and a sale by A to the leasing company. Rather it represented a refinancing of the transaction by B with the proceeds from the refinancing being paid to A in settlement of the disputed balance. 9/16/75.

495.0445 **Sales of Animals by Humane Societies.** Based on a 1941 opinion of Attorney General Earl Warren, the Board has consistently taken the position that sales of animals by Humane Societies are subject to sales tax. 2/2/96.

(This opinion was superseded by section 6010.40, operative January 1, 2000.) (Am. 2000–2).

[495.0446](#) **Sale on Approval.** Commercial Code section 2401 provides that if goods are delivered and may be returned by the buyer even though they conform to the contract, the transaction is a sale on approval and, unless otherwise agreed, title does not pass to the buyer until acceptance. If the seller reports the sale on approval as a taxable sale in the period in which delivery is made, and the buyer rejects the goods in a later period, a claim for refund filed timely should be approved with credit interest computed from the period in which payment was made. 10/10/75.

495.0449 **Sale of Bulk Wine on Bonded Premises.** A producer and wholesaler of wine owns and operates a bonded winery where it ages and stores bulk wine pursuant to a federal permit. In accordance with federal law, as long as the wine resides on bonded premises, no consumption of the wine is permitted, nor can any bulk wine be sold out of bond for the purposes of consumption. After bottling, the wine is then

ready for resale and thereafter sold and removed from the bonded premises through the regular distribution channels.

At the beginning of the aging process shortly after the harvest, and while the wine is still in storage tanks, the producer/wholesaler transfers property interest in a quantity of bulk wines to outside buyers, generally individuals, but sometimes to groups of individuals. In some cases, the interest transferred is an undivided gallonage portion of the contents of a specific storage tank with the other portion of the gallonage remaining with the producer/wholesaler. Transfers are of 1000 gallons or more. In accordance with the agreement transferring the interest, the producer/wholesaler remains in possession and is employed as custodian to properly manage the aging and processing of the bulk wine. After the transfer, the buyers are to reimburse the producer/wholesaler for the substantial cost incurred in aging and processing the wine in which they have an interest. Loss from shrinkage is borne by the producer/wholesaler during the first year of tank storage and by the transferees thereafter. The buyers of the bulk wine have the right to resell the wine at any time but this is subject to the producer/wholesaler's option to match the purchase price and thereby become the purchaser. In this situation, the producer/wholesaler is always the purchaser.

The above transfers constitute taxable retail sales. These conclusions are based on the following:

These transfers are not merely nontaxable transfers of something less than a transfer of title for sales tax purposes, i.e., in the nature of a transfer of a security interest. A substantial beneficial interest is transferred. While the transferees do not receive possession, they pay the going market price specifically to purchase the raw bulk wine gallonage. They have clear title, are assured that there are no liens of any kind, bear most of the risk of loss, and have authority to sell the bulk wine. The written contracts state that they are the beneficial owners of the wine upon making payment in full. The above contains the elements of a sale as set forth under section 6006(a).

The purchasers do not acquire the wine for the purpose of resale in the regular course of a business sales activity. The bulk wine is to be accounted for as an inventory item and the purchasers do not have the federal permits required for the alcoholic beverage sales activity. Moreover, while the purchases by the transferees helped the producer/wholesaler carry out the manufacturing process, the purchasers were analogous to an investment in such speculative items as coins, bullion, and works of art. (Regulation 1599(c).) 5/23/82.

**495.0450 Sale of Stores.** Simultaneous with the purchase of all the shares of stock of Company C, Company A entered into an agreement to sell ten of the individual stores of Company C to Company B. Company B is a subsidiary created for the purpose of establishing a group of franchised stores. The ten stores are individually transferred to a franchisee as rapidly as a franchisee can be obtained. Company B operates the stores until the franchisees takes over the operation. Company B contends that it purchases the property for resale and in fact resells the property to its franchisees. The stores are kept in operation prior to the sale to the franchise only so that the stores can be sold as operating businesses. Tax is paid on the sale of the furniture and store fixtures to the franchisees.

Since Company B operates the stores prior to reselling them, the sale to Company B is a retail sale. It is immaterial that Company B's operation of the stores is solely for the short interim period before resale and only for the purpose of being able to sell operating business. It is also immaterial that Company B pays tax on the subsequent sale of the stores. Tax applies to each retail sale of tangible personal property. 3/2/84.

**495.0452 Sale if Customer Agrees to Pay.** A retailer sends one volume of a four volume recording to potential customers on a "free will" offering basis. Accompanying the recording is a letter which states in part "we are very much aware of today's marketing ways to get the dollar, so we are leaving the free will offering up to you. There is a cost to produce and mail these recordings to the few that are receptive, so if you can afford the cost printed on the back of the jackets we would appreciate the assistance in helping us produce more material to companion with in our moments of quiet. If you cannot afford to offer anything at this time, but feel the need of these recordings to companion with, don't hesitate to write and ask for them."

The foregoing statement is regarded as an offer. When the customer accepts the offer by agreeing to pay the amount requested or by the act of sending money, an enforceable contract of sale is created. The transaction is contractual in nature because a valuable consideration (the price) is bargained for and received in exchange for the process to deliver the merchandise. In these cases, where the recipient agrees to pay a stated amount for the recordings, sales tax is due measured by that amount.

The fact that some persons receive the recordings without agreeing to pay the price does not warrant a finding that no sale occurs in instances where a customer agrees to pay a certain amount for the merchandise. In this situation, the recipients receive the merchandise pursuant to the alternative promise to make them a gift of the merchandise if they are unable to pay the price. Such transactions are legal and distinguishable because no valuable consideration is given in exchange for the promise that allows the recipients to retain the merchandise. Since there is no legal duty to perform, there is no contract and no sale to which the tax can be applied. 7/7/71.

**495.0453 School Cash Register Receipts Program.** Company A operates a program where schools collect cash register tapes from supermarkets and redeem them for merchandise. When a school has collected sufficient tapes to redeem the item it wants, it submits a redemption certificate to Company A. Company A then issues a purchase order to a non-California supplier who drop ships the item directly to the school. The supplier invoices Company A who in turn invoices the supermarket an amount greater than its cost. There is no fee to the school for participation in the program and the school does not advertise for the supermarket.

Under the scenario, neither the supermarkets nor anyone else receives any consideration from the schools. Thus, the transfer to the school is not a sale. Rather, the supermarkets are regarded as the consumer of the property at the time the title is transferred to the donee (schools). Title to the property is transferred to the donee (school) outside California. Therefore, neither the use tax nor the sales tax applies since the purchaser (supermarket) does not use the property in California (gift takes place outside California).

On the other hand, if the item is shipped from an in-state location of the supplier directly to the school in California, the transaction is regarded as a taxable sale in California. If Company A is a retailer engaged in business in California, sales tax would apply to the sale. If Company A is not a retailer engaged in business in California, the supplier would be regarded as the retailer pursuant in section 6007 of the Revenue and Taxation Code and would owe sales tax on the sale. 10/9/92.

**495.0455 Scrap Materials Sold to Teachers and Children's Groups.** A taxpayer collects donations of local industrial discards, most of which have little retail value. The taxpayer makes the materials available to teachers and children's groups for use as art supplies or learning materials. The taxpayer charges a general shipping and handling fee to help cover the costs of transportation from the donor to the taxpayer's warehouse and for handling within the warehouse. The charge is based on the volume of materials. For example, a grocery bagful of discarded materials may bear a charge of \$5.

The transfers are retail sales subject to tax. The shipping and handling fee is also subject to tax because it is a cost of doing business and is a part of the sales price. 10/14/94.

**495.0460 Seller Becoming a Limited Partner in Purchaser's Operation.** Where the seller of a business as security for the payment of the purchase price enters into an agreement with the purchaser whereby the seller becomes a limited partner in the new operation, the transaction may be a taxable sale under either subsection (a) or subsection (e) of section 6006.

There has been a transfer of title or possession of tangible personal property for a consideration, and the seller retains title to some portion of the assets as security for payment of the purchase price. 10/15/53.

**495.0465 Special Order Contracts.** A contract is written for a special order and the customer places a non-refundable 20% down payment. The amount of the sales tax reimbursement is set forth on the special order form. The "Warranties and General Information" section of the form contains the statement: "Special Orders. Please give careful consideration when making your selection. There will be no

cancellation accepted on Special Orders, because this merchandise is ordered according to your exact instructions, and may not be right for other customers.’’

The special order contract sets forth the amount of tax. The buyer’s right to cancel is subject to the duty to forfeit the deposit; this is not an unconditional right to terminate. Finally, the parties have not reserved the right to alter the tax obligation in the event of a change in tax rates. The special agreement constitutes a contract for fixed price. Special orders executed prior to July 15, 1991, are exempt from the tax increase. 7/30/91.

**495.0465.750 Telecommunication Devices for the Deaf.** The charges by a public utility for telecommunication devices for the deaf (“TDD”) to the Deaf Equipment Acquisition Fund Trust (“Trust”) are not subject to sales tax. The Public Utilities Code section 2881 provides that the commission shall establish a rate recovery mechanism to allow the telephone corporation to recover costs as they are incurred under this section. There is no implication that telephone corporations are to sell the equipment to any other person. What is contemplated is that telephone corporations should recoup the costs of furnishing the equipment, on a tariff basis acceptable to the Commission, and that the Trust is to reimburse the telephone company for the sales tax cost to the telephone company in acquiring the TDD equipment. The telephone company is the consumer of the TDD equipment and retains title, although capital charges are charged to the Trust. 4/5/88.

**495.0466 Toys Furnished to Children when Touring Manufacturing Plant.** A maker of stuffed animals allows school children to tour the plant and watch the manufacturing process. Older children are given a stuffed bear and very small children are given a small mouse. The tour price is \$8.00 for the older children and \$2.00 for the little ones. None of the stuffed animals are otherwise available on a retail sale basis at the plant. The furnishing of the bears and mice to the children are taxable retail sales. 7/1/91.

**495.0468 Transfer of an Aircraft without Consideration.** An aircraft was transferred by an individual to a corporation which will not pay any consideration to the individual or any other person in exchange for the contribution of the aircraft to its capital. It will not issue stock or other securities or assume any indebtedness or other liability in connection with the transfer. The transfer is not a sale or purchase under sections 6006(a) and 6010(a) respectively since no consideration was involved in the transfer. The completion of the Bill of Sale for FAA purposes, which recites formalities of consideration, will not change this conclusion provided there actually is no consideration paid by the corporation or received by the individual in exchange for the transfer of the aircraft. Since the transfer is not a sale or purchase, there is no sales or use tax with respect to the transfer. The corporation’s subsequent lease of the aircraft, which is a lease of mobile transportation equipment, is also not subject to use tax. 3/3/89.

**495.0469 Transfer of Artwork by Artist Via Computer.** An artist prepares artwork and places it on the artist’s removable computer storage media (e.g., floppy disk). The artist takes the disk to the customer’s location, inserts the disk into the customer’s computer, and transfers the artwork from the artist’s disk to the customer’s computer. The artist removes the disk and retains it, and does not otherwise provide any tangible personal property to the customer. The transfer is not a sale of tangible personal property provided the artist retains title to and possession of the disk at all times. For example, if, after inserting the disk and prior to its removal, the artist leaves the computer and the customer uses it, the artist would be regarded as making a taxable lease of the disk. 7/22/96.

**495.0469.175 Transfer of Artwork—External Storage Diskettes.** When an artist creates artwork on a client’s computer and saves the artwork into the computer’s memory, the artist’s charge is nontaxable. In this situation, the artist does not transfer tangible personal property to the client. The same result is not reached when the artist transfers the artwork to external storage diskettes or disks and transfers them to the client, whether the client or the artist furnishes the removable disk or diskettes. When the artist furnishes the disk or diskettes, the artist is making a sale of tangible personal property under subdivision (a) of section 6006. If the client furnishes either new or used disks or diskettes, the artist’s charge for the work performed to create the artwork is a sale as defined in subdivision (b) of section 6006. The artist’s charge for the sale, whether under subdivision (a) or (b) of section 6006, is subject to tax. 12/2/96.

495.0470 **Transfer of Artwork by Modem.** When artwork is transferred by modem, tax does not apply regardless of the reason for using this method of transmission. The artist must retain some form of evidence to support the claim of transmittal by modem. It is immaterial that under federal law the buyer may be regarded as the owner of the artwork prior to transmission. 5/31/94.

[495.0475](#) **Transfer of Beneficial Interest in Trust.** The transfer solely of a beneficial interest in an irrevocable trust of the type described in California Probate Code 82 subsection (a) is not a transfer subject to California sales or use tax. 12/7/89; 12/11/89.

[495.0476](#) **Transfer of Boat Due to Bankruptcy Abandonment/Divorce.** A boat is registered in the names of four partners, two married couples. Couple A declares bankruptcy. The court relieves them of their share of the debt remaining on the boat, and they abandon their interest in the boat. Couple B becomes the owner of the boat and the parties responsible for the entire remaining debt. Inasmuch as Couple A's relief from debt occurred by operation of law, there was no consideration for the transfer of the boat to Couple B and, therefore, no purchase occurred. Subsequently, Couple B divorced with the court awarding the equity and liability relating to the boat to the husband. Here again, the transfer is by operation of law rather than by passage of consideration in any form and no purchase resulted. 8/28/91.

495.0478 **Transfers of Computer Programs.** Taxpayer A purchases the assets of Taxpayer B. Taxpayer B owns software and technology which is incorporated into its computer programs. The transfer of the software is made by connecting the computer of Taxpayer A to the computer of Taxpayer B at B's place of business in California and transmitting the programs through the connection. Each party retains control of its own computer during this process. After verifying that the programs are successfully transferred, the programs are purged from the seller's computer and the computer which is leased by B is sold to A by the lessor. There is no sale of tangible personal property in the transaction involving the transfer of software from B to A by electronic means. Therefore, no tax is due on that transaction. 6/15/94.

495.0480 **Transfer to Correct Error.** Where a truck was purchased for use by the "X" corporation and was exclusively used by it, but through error, the purchase agreement and all payments thereunder were made by "Y" corporation, the subsequent transfer to the "X" corporation by "Y" corporation to correct such error, is not subject to sales tax. 6/3/55.

495.0483 **Transfer Fixtures and Equipment to a Trust.** An individual transfers the book value of certain assets to a trust. The trust term is for ten years at the end of which the assets will revert to the individual as trustor.

A trustee is a "person" under section 6005 and the transfer of legal title to the trustee of the trust property is a transfer of title within section 6006. However, that section also requires that the transfer be "for a consideration." The consideration must be measurable to be sufficient to meet the requirements of section 6006. The creation of a trust requires no consideration.

Since the only assets are transferred to the trustee with no measurable consideration, such as cash, notes, or assumption of liabilities flowing to the trustee, no sale occurs. 12/1/71.

(Note: Section 6285 re transfers of vehicles, vessels, and aircraft to revocable trusts.)

[495.0485](#) **Transfer of a Lease of Mobile Transportation Equipment Held in a Trust.** Company B is a lessor of mobile transportation equipment (MTE) leasing to Company D and reporting use tax measured by fair rental value. The lease is held in a trust, with Company B as trustee and Company C as the beneficiary of the trust. Company A acquires the lease from Company B and, in accordance with trust documents, Company A is substituted as the new trustee and lessor. Also, the beneficial ownership in the trust is transferred from Company C to Company E.

Based on the above, the MTE remains the property of the trust after a new trustee and beneficiary are substituted for the old and, therefore, there is no sale of the MTE. Since the election to pay tax on fair rental value is irrevocable if there is no sale, the trust must continue to pay tax on the fair rental value.

Even if there is a sale of the MTE to a new lessor, the new lessor may also elect to pay use tax on the fair rental value by issuing a resale certificate and paying tax on fair rental value. The election must be made on a timely filed return for the period in which the sale occurred if the property is subject to a lease at the time the sale occurred. 5/5/93.

[495.0490](#) **Transfer to Revocable Grantor Trust.** An individual intends to transfer the ownership of an aircraft to a revocable grantor trust of which that individual is both the grantor and trustee.

If a donation of the aircraft to the trust is for no consideration, the transaction would not be subject to use tax. However, if the trust provides a consideration in exchange for the aircraft (e.g. assumption of liability for an outstanding loan) the use tax would apply measured by the consideration paid by the trust. 3/25/92.

[495.0493](#) **Transfer of Title or Possession.** A construction equipment dealer is involved in sales and leasing of new and used equipment. In January 1988, the dealer entered into a lease agreement with a construction firm (customer) for a lease of a wheel loader. Although the customer never took possession during the term of the lease, it paid a total of \$176,000, at the rate of \$11,000 per month. The agreement provided a purchase option; but it was never exercised. The wheel loader was resold by the dealer to another purchaser and the \$176,000 was later applied towards the purchase/lease of a second price of equipment.

The dealer and customer entered into another lease agreement for another wheel loader on February 21, 1990. On July 11, 1990, the customer exercised the purchase option; and the dealer applied the \$55,000 paid in lease receipts and the \$176,000 paid in transaction #1 above against the purchase price. It was intended that the equipment be delivered to Oregon; however, delivery was never made during the term of the lease or when option was exercised. The equipment remained at the dealer's place of business and is currently available for sale.

The dealer and the customer also entered into another transaction involving a lease of a scraper which was entered into on June 1, 1990. The agreement provided for monthly payments of \$14,000 and contained a purchase option. On January 21, 1991, the option was exercised, and the dealer applied the \$112,000 paid in lease receipts, towards the purchase price. As above, it was intended that the scraper would be delivered to Oregon; however, delivery was never made during the term of the lease or when the option was exercised. The equipment remained at dealer's place of business until April 7, 1994, at which time it was sold to another purchaser. The dealer issued a check made payable to the customer in the amount of \$250,893 involving three transactions with the customer.

The chief characteristic of renting or leasing is giving up possession to the hirer, so that the hirer and not the owner uses and controls the rental property (*Entremont v. Whitsell* (1939) 13 Cal.2d 290, 295; California Civil Code sections 1925 and 1955). This is consistent with Revenue Code section 6006.1. Although Regulation 1628(b)(3)(B) does provide that a sale by lease does not occur even where there is a right to possession, this portion of the regulation is limited in its purpose. This rule only applies in a situation where there has in fact been a delivery. Therefore, there has been a lease of the equipment and no tax is due on the lease receipts. Likewise, the second and third transactions did not amount to sales. Revenue and Taxation Code section 6006(a) defines a "sale" to mean and include any transfer of title or possession of property for a consideration. Here, possession was never transferred to the customer. Uniform Commercial Code section 2401 provides that title passes to buyer "in any manner and on any condition explicitly agreed upon by the parties." However, where there is no passage of title provision in the contract, such as here, once goods are identified, the passage of title depends on the type of performance required of the seller; i.e., whether shipment or delivery of the goods is required, or delivery is to be made without moving the goods. Where the goods must be moved, title passes to the buyer at time and place at which seller completes physical delivery of the goods.

Accordingly, since there was no transfer of title or possession, there was no sale. 8/25/94.

[495.0497](#) **Transfer of Vehicles to Stockholder.** “A” a wholly owned subsidiary of “B,” transferred certain vehicles to B as a dividend. B then transferred one vehicle to D and the remaining vehicles to C, both wholly owned subsidiaries of B, as a contribution to capital. No consideration was paid to, or received by, any of the corporations as a result of the transfers.

Based on the assumption that no indebtedness was assumed on behalf of A for its transfer as a dividend to B, and that A will receive no other consideration for the transfer, the transfer from A to B is not a sale and is not subject to sales or use tax. Also based on the assumption that no indebtedness was assumed by anyone on the transfers from B to C and D, and since a sale and purchase is a transfer of tangible personal property for a consideration and these transfers were not for a consideration, there was no sale or purchase. Since there was no sale or purchase, there will be no sales or use tax on the transfers from B to C and D. 3/7/88.

**(b) CONDITIONAL DELIVERY**

[495.0520](#) **“Sale or Return.”** Sale of personal property on a “sale or return” basis, wherein title passes upon delivery to the buyer subject to a condition subsequent whereby the buyer may revert title to the unused portion of the property by returning the same to the seller, constitutes a taxable sale.

If upon the return of such unused property, the seller fails to refund or credit the full sales price, including all freight charges for delivery of the goods, if title passes upon delivery, no deduction may be taken for “returned merchandise.” 1/9/54.

**(c) TIME AND PLACE OF SALE**

*Conditional sale contracts, see Credit Sales and Repossessions. Escrow transactions, see Occasional Sales—Sale of a Business—Business Reorganization. “Lay-away” sales, see also Credit Sales and Repossessions.*

495.0540 **“Bill on Usage Agreement.”** A sale under a “bill on usage” agreement, pursuant to which drilling bits are delivered in California to an oil company for use in off-shore drilling outside of California, is a California sale subject to tax, even though the bits are not billed to the oil company unless and until they are used. 4/18/69.

[495.0560](#) **Cancellation of Order.** Where equipment is ordered from out-of-state by a California purchaser f.o.b. shipping point and the purchaser then cancels purchase orders, but equipment is nevertheless shipped and subsequently accepted by purchaser, sales tax applies as title passed upon acceptance of shipment in California. 4/30/54.

495.0580 **Documents Transferring Title.** Sales tax does not apply to transfer of automotive equipment physically located outside this state at the time of transfer and licensed in other states, notwithstanding that the documents transferring title may be delivered to the transferees within the boundaries of this state. 3/18/55.

[495.0610](#) **Photo Plots and Drill Tapes.** A corporation designs, manufactures, and sells “Burn-In Boards” (BIBs) which are used to test the components of electronic equipment. The BIBs are designed in accordance with the customer’s specifications. When the design is complete, a “photo plot” of the design is made on paper or mylar. Upon the customer’s approval, the corporation’s computer reads the photo plot and fabricates a drill tape for use as a template in manufacturing the BIBs. The corporation does not transfer possession of either the photo plots or the drill tape to its customers. The corporation’s invoices included separately stated charges labeled “artwork blue-lines” which are intended as charges for the design and fabrication of the photo plot and drill tape. Tax reimbursement was charged and reported on the charges for BIBs and artwork blue-lines on sales to California customers. However, when the BIBs were sold to and delivered to customers outside California, tax reimbursement was not charged nor reported on any part of the sale.

The documents of sale indicate that the corporation was selling the photo plots and drill tapes to customers because, pursuant to the contracts of sale, title to these items passed to the customers prior to being used in manufacturing the BIBs in California. As such, tax is due on the sales of photo plots and drill tapes to both the California customers and also to those customers outside California. However, the selling price of the BIBs shipped in interstate commerce pursuant to the contract of sale are not subject to tax. 11/7/91.

[495.0620](#) **Place of Sale.** An out-of-state dealer, who is not engaged in business in California, takes an order for an automobile and the order is shipped from a third party warehouse in Irvine, California, to a retail customer in Los Angeles, California.

Since the property is located in Irvine at the time the sale takes place, the sale takes place in Irvine and sales tax applies to the sale. Pursuant to section 6007, the person who delivers property directly to a California consumer pursuant to a retail sale made by a retailer not engaged in business in California is deemed to be the retailer and must report tax on the retail sales price.

When the vehicle is registered and licensed to the customer in Los Angeles County, the sale is exempt from district transactions taxes imposed in Orange County and is subject to district use tax in Los Angeles County. Thus, the 1% Los Angeles district use tax applies, and the retailer is required to collect the tax. 9/27/94.

[495.0625](#) **Place of Sale—Sales vs. Use Tax.** In determining the place of sale, you must first determine if there is a title clause. Unless such a title clause passes title sooner, title passes and the sale occurs when the seller completes its duties with respect to physical delivery of the property (Cal UCC 2401.) When delivery is by the seller's own facilities, the seller completes its duties with respect to physical delivery upon tender of the property to the purchaser. When delivery is by common carrier and the contract states "F.O.B. destination," the seller does not complete its duties with respect to physical delivery until the property is delivered at destination. Under such a contract, the sale occurs at destination unless the contract specifically states that title passes sooner. If the contract does not have an F.O.B. destination provision and delivery is by common carrier, the sale occurs upon the seller's tender of the property to the common carrier, unless the contract specifically passes title sooner.

If the sale takes place out of state, the only tax that can apply is use tax and the participation of an in-state sales office is irrelevant. On goods shipped to California by common carrier F.O.B. Destination (with no specific title passage clause), the sale takes place in California. Thus, the question of the participation by an in-state sales office needs to be resolved to determine if sales or use tax applies. 9/18/95.

[495.0640](#) **Replacement of "Borrowed" Material.** Where, in order to complete a prompt out-of-state delivery of material, vendee "borrowed" a portion of the material from a California firm and directed vendor to subsequently deliver a like portion of materials to the California firm in California to replace such "borrowed" materials, a taxable retail sale results with respect to such delivered replacement. 2/24/56.

[495.0660](#) **Replacement of Property for Foreign Insurer.** The replacement of a plate glass window in California on behalf of a foreign insurance company is a sale subject to sales tax. The delivery and installation of the glass having been made in California, sale is completed here, and the fact that the insurance company is located in another state is immaterial. 3/7/55.

[495.0668](#) **Time of Passage of Title.** When a contract of sale is silent regarding the time of passage of title, general law provisions are governing. California Commercial Code section 2401(2) provides that title passes at the time that seller completes performance regarding physical delivery of the property. The buyer's right to acceptance may act as a condition precedent to its obligation to pay the price, but it does not preclude passage of title when the delivery conditions have been met. If the buyer does reject the goods after delivery, title reverts in the seller. 4/9/92.

[495.0670](#) **Time of Sale.** Taxpayer sells horses under a contract which provides that the seller retains title to the property until full payment is received. However, upon execution of a promissory note for any unpaid balance, the buyer has the right and power to direct the delivery or any other use of the horse.

The “sale” takes place at the time the promissory note is executed. It is at this time that the buyer acquires the right and power to direct the transfer of the horse. If the horse is left with the taxpayer for training and conditioning, the sale is subject to tax.

If at the time of the signing of the note the buyer instructed the taxpayer to ship the horse out of state and the taxpayer did so, the sale is exempt under section 6396. 3/29/90.

[495.0671](#) **Time of Sale—Depreciation.** A sale takes place when there is a transfer of title or possession for consideration. It occurs no later than when the seller completes its responsibilities with respect to physical delivery. Depreciation by the purchaser is not determinative as to when a sale of tangible personal property takes place. The Board has generally looked at a taxpayer’s depreciation of assets to show that those assets are not held for resale or as evidence of an exercise of ownership. However, depreciation alone is not always sufficient to show when a sale necessarily took place. 3/16/98. (M99–2).

[495.0672](#) **Time of Sales Tax Liability.** Payment of sales tax is on an accrual basis and not on a cash basis. Sales tax must be reported and paid with the return for the period in which the sale occurs. The timing of the payment for the sales is not relevant to the timing of a taxpayer’s liability for sales tax, nor is the timing of the taxpayer’s invoice (except when the timing of the invoice or payment affects the timing of title passage).

For example, if the taxpayer invoices and receives payment for property during one period and makes the actual sale during the next reporting period, the taxpayer must report and pay the tax with the return for the second reporting period, when the sale occurred, not the first reporting period during which the taxpayer invoiced and received payment. Similarly, if the taxpayer makes a sale in one reporting period and invoices and receives payment in the next reporting period, the taxpayer must report and pay the tax with the return for the first reporting period, when the sale occurred, not the second reporting period when the taxpayer invoiced and received payment. If the taxpayer receives progress payments for its sale over four reporting periods and transfers possession of the subject property to the purchaser in the third reporting period, the taxpayer would owe all the sales tax due with the return for a single period. The reporting period would be the one in which the sale occurred. Since the taxpayer would have transferred possession during the third reporting period, the sale would occur no later than that reporting period. (Cal. U.C.C. § 2401.) However, if title passed prior to that reporting period, the taxpayer would owe tax prior to the third reporting period. If, for example, the contract of sale provided that title would pass to the purchaser as soon as 30 percent of the purchase price was paid, the tax would be due with the return for the period in which 30 percent of the purchase price was paid. 10/21/96.

[495.0675](#) **Title Passage Evidence.** Where a contract is performed without a written contract but based on a written estimate, a statement on the estimate that title passes at the time and place of shipment is acceptable when the customer accepts the estimate. 11/3/93.

[495.0677](#) **Title Transferred Prior to Delivery.** A retailer has a contract for the development of computer hardware and software. Physical delivery of the computer hardware and software occurred in February 1991 but the customer was invoiced, title transferred, and payment was received all during the third quarter of 1990. The customer had until March of 1992 to make final acceptance.

Pursuant to section 6006, “sale” means and includes any transfer of title or possession, conditional or otherwise, of tangible personal property for a consideration. In the above situation, although physical delivery did not occur until February of 1991, title transferred and payment was received during the third quarter of 1990. Since the physical delivery of the computer hardware and software is not required for a sale to occur, tax was due on the return for the third quarter of 1990. 11/5/93.

[495.0680](#) **Uniform Commercial Code—Effect of.** The reason for section 6010.5, added by Assembly Bill No. 1, effective September 17, 1965, is to forestall any possible contention that under the provisions of the new Uniform Commercial Code, the place of sale might be deemed to be other than the place where the property is physically located at the time of sale. There are some provisions in that code which might be interpreted as providing for a different place of sale. It is not expected that this change will cause any different application of the tax, but will rather preserve the existing application of the tax notwithstanding the changes that were made in the Uniform Commercial Code. 9/10/65.

[495.0700](#) **Uniform Commercial Code—Effect of.** After January 1, 1965, the effective date of the Uniform Commercial Code, title to tangible personal property passes to the buyer upon physical delivery by the seller, even if payment is made by a check that is subsequently dishonored, unless there is an explicit agreement to the contrary. Transactions occurring prior to January 1, 1965, are governed by prior law. 9/25/67.

#### (d) TRANSFERS BETWEEN RELATED LEGAL ENTITIES

[495.0707](#) **Agency by Ratification.** A firm purchased equipment over a period of time in its own name and entered into contracts to lease the equipment from a third party. The firm maintains that it purchased the equipment as the agent of the lessor and thus, there was no use of the equipment by it followed by a sale and leaseback from the lessor. Rather, it maintains that the initial acquisition of the equipment was a purchase by the lessor with the firm acting as the agent.

Prior to entering into the first lease contract, the firm had no known relationship with the lessor. Since there was no known relationship, the firm could not have acted as an agent on any purchases prior to the first lease. It purchased property in its own name and without an existing relationship there could not have been a ratification by the lessor that the firm was acting as an agent.

With respect to purchases after the first lease contract, it was clear that the firm intended to act as the lessor's agent. Evidence of an agency was established by the fact that (1) the firm recorded the purchases in a special suspense account rather than its regular balance sheet, (2) it did not depreciate the equipment or claim any other benefits of ownership, and (3) it paid rent to the lessor from the date of installation of the equipment even if such installation preceded execution of the lease agreement for that particular piece of equipment. Thus, the subsequent ratification of the agency by the lessor is recognized. 5/25/93.

495.0709 **Agent Defined.** The courts have held that an agent is a person who has the power to alter the legal relationships between the principal and third persons, who is entrusted as a fiduciary to act for the benefit of the principal, and who is subject to the principal's right to control. 3/11/93.

[495.0713](#) **Assumption of Liabilities—Joint Liability.** Assets were transferred to a wholly owned subsidiary in exchange for first issue stock and the assumption of liabilities. The transferor corporation remained jointly liable for the liabilities. The assumption of liabilities by the transferee corporation is consideration notwithstanding the transferor's joint liabilities. The transferee conferred a benefit on the transferor and, thus, provided the consideration requirements for a sale. 1/21/93.

[495.0720](#) **Closely Connected Corporations.** The transfer of printed letterheads, interoffice memorandum forms and Xerox copies to an automobile association, from the insurance carrier of the association, is a taxable sale, even though the two corporations are extremely closely connected, with the carrier reimbursing the association for 65 percent of its expenses. Since the carrier and the association are two separate corporate entities, making the transfer of the property to the association was a taxable retail sale under section 6006. 2/24/67.

[495.0722](#) **Co-Owned Gas Plants and Producing Properties.** Contributions of property to the joint operation (JO) for a capital interest are not subject to tax. However, sales of property by a participant to the JO for conventional consideration are subject to tax except for the fractional interest of the selling participant. The distribution of assets at the dissolution of the JO are generally not subject to tax, but the

withdrawal of assets by a member of the JO before 80 percent completion of the operation are sales and subject to tax except for the fractional interest which had been retained by the member.

New materials provided by the operating member from its own inventory are considered to be taxable sales to the JO, except for the fractional interest of the operator. If the materials were held in a tax paid status, the operator may take a tax-paid purchase resold deduction (except for the fractional interest retained).

Transfers of used items from the operators inventory are subject to the same treatment as new materials, EXCEPT a tax-paid purchase resold credit is not allowable. The sale of JO property to nonmembers is a sale of each member's interest and each is liable for the tax if the sale is taxable and if the operator fails to report the tax. If materials are transferred from the JO to the operator or other member of the JO, tax is due on the proportion of the change in ownership. Transfers by members to the JO are sales by the transferor to the extent of the change in ownership and sales tax reimbursement may be charged to the JO. Petroleum products transferred to the JO by the operator or any member of the JO are subject to the same taxability as the operating materials discussed above. 8/23/84; 5/29/96.

[495.0725](#) **Dividends in Kind.** Transfer of property from a corporation to a sole shareholder which is shown on the books of both entities as a dividend is not a sale unless the corporation declaring the dividend receives consideration for the property transferred. 7/22/76.

[495.0730](#) **Revocable Trust.** A truck, a boat, and an airplane are transferred by the sole owner into a revocable living trust. The owner of the assets is sole trustor, trustee and beneficiary and remains solely liable for all encumbrances attached to the assets. In this case, the transfer is not a sale, subject to sales tax, as there is no consideration given for the assets. 7/31/89.

[495.0733](#) **Sale.** The transfer of a vehicle with a balance owing into a trust is not a sale if the transferor continues to make the payments from current income which is not part of the trust's assets and the trust has not agreed to assume the liability. In these circumstances, the transfer has been made for no consideration and no use tax is due on the transfer of the vehicle.

If a vehicle which is owned free and clear is transferred into a trust simultaneously with property such as a house and jewelry which the trust has not agreed to assume, there is a balance owing on the house and jewelry, and the transferor continues to make the payments from income which is not part of the trust's assets, a sale does not result as no consideration is involved. However, if the trust were to start making the payments on the house and/or jewelry, a sale would occur and a portion of the consideration would have to be allocated to the transfer of the vehicle. Tax would apply to this prorated amount. 11/21/90.

(Note: Subsequent statutory change re transfers to revocable trusts. See section 6285(b).)

[495.0735](#) **Sale of Equipment—Oil Well Operating Agreement.** Under the provisions of an oil well operating agreement, each member holds a pro-rata share of title to the equipment acquired. The co-owners operating agreement does not create a "person" within the meaning of section 6005. Since each member is a co-owner, a transfer of property (to the jobsite) by one member which becomes co-owned by the other members gives rise to a "sale". Tax applies to the percentage of the sale price which relates to the property interest of the other co-owners. For example, if the transferor holds a 25% interest in the "operating agreement equipment" 75% of the transfer price is subject to tax.

The fact that the transferor is the operator of the site and holds a security interest in the property transferred does not affect this conclusion. 12/6/90.

[495.0736](#) **Stock Exchanged for Corporation Assets.** Corporation X had several branch offices selling and servicing automobiles. Pursuant to the policy of the manufacturer of the automobiles to decentralize its dealers, it was decided to create separate entities at each branch, otherwise all branches would lose their franchise. Accordingly, a contract was entered into whereby two of the three shareholders each turned his one-third interest as shareholder over to the corporation in exchange for one-third of the assets of the corporation.

The transfer of the property to the former shareholders for their shares is a taxable transaction. In this case corporation X was not dissolved since there was no distribution of the entire assets to its shareholders. Only two of the three shareholders exchanged their stock for assets of the corporation. 1/25/52.

[495.0736.720](#) **Transfer of Assets to Creditors/Shareholder.** Individuals A and B formed X Corporation in 1947, each contributing \$500 to the corporation and each receiving a \$500 share holding interest. The corporation was created to engage in the business of buying and selling objects of art. Individual A, during the four years of operation, loaned \$224,681 to X Corporation. In the fourth quarter of 1951, when dissolution of the corporation was effected, individual A received all the paintings on hand from X Corporation valued at \$187,293 by the X Corporation. In his books, individual A debited the assets "Paintings" in this amount, debited "bad debts" for \$37,388, and credited "accounts receivable" for \$224,681.

Individual A claimed the \$37,388 as a short-term capital loss deduction on his 1951 calendar year Federal Income Tax return as a nonbusiness bad debt under section 23(K)(4) of the Federal Internal Revenue Code.

Assuming individual A did not acquire the artwork for resale, the tax applies to the transfer of the artwork. The gross receipts are \$187,293 (\$224,681 less \$37,388.) Clearly the moneys transferred to the X Corporation were handled by the parties as a loan. When the paintings were transferred to individual A, the transaction was handled as a transfer of title to satisfy a loan on individual A's books. Individual A took a deduction for a loan on his 1951 Federal Income Tax return.

In other words, X Corporation has transferred title to the paintings to satisfy a creditor of the corporation. This claim had to be satisfied before assets could be distributed to the two shareholders. 9/16/53.

[495.0736.800](#) **Transfer Between Related Corporations.** Company A is planning to purchase advertising material solely from Company B, a related corporation. Both of the companies are located in California. The ownership of the two corporations is identical, but they are separate entities with different officers, bank accounts, and records. Company A will purchase advertising material (not qualifying as printed sales messages under section 6379.5) solely from Company B. Company B will have the material printed and drop shipped by the printer to a California mailing house. Another vendor will provide mailing envelopes which will be sold to Company B and drop shipped by the vendor to the same mailing house. Company B will sell the finished printed material and envelopes to Company A at a price that includes all cost, overhead, and a small mark up. As provided in the mailing instructions received by Company B from Company A, and pursuant to the contract of sale between the related companies, Company B will direct the mailing house to mail the property to recipients located in California as well as in other states.

A transfer between related parties is treated the same as a transfer between unrelated parties when the sales price includes all of the transferor's cost, including the cost of the property and any overhead expenses reasonably allocable to the cost and sale of that property. Based on facts submitted, the transfer from B to A will be treated as a sale for sales and use tax purposes.

Sales tax applies to B's sales to A of the printed material mailed to California consumers, measured by the mark-up sales price to A. B's sales to A of property shipped out of state would be an exempt sale in interstate commerce if the contract of sale requires B to ship the property outside California and the property is so shipped by facilities of the retailer or by common carrier. 1/3/95. (Am. 2001-3).

[495.0736.850](#) **Transfer of Depreciable Assets to Subsidiary—No Consideration.** A Parent Company plans to transfer some depreciable assets (furniture, fixtures, machinery and equipment) to its wholly owned subsidiary. The Parent has paid sales tax reimbursement or use tax when purchasing this property. The Parent will receive no consideration from the subsidiary for the property. A transfer of tangible personal property for which no consideration is given for the property is not a sale or purchase. Therefore, no sales or use tax would apply to the transaction if no consideration, such as assumption of Parent's liability by the subsidiary, an intercompany debt, the cancellation of indebtedness, or Parent's receipt of additional shares in the subsidiary, is provided by the subsidiary in exchange for obtaining ownership in the property. 5/9/96.

[495.0737](#) **Transfer from Receiver to Bankruptcy Estate.** A receiver was appointed to operate a business when there was a dispute between the owners. The receiver did not pay the full amount of tax due to the Board and ultimately filed for bankruptcy. The owners also filed for bankruptcy and the business assets were transferred to the bankruptcy estate. Pursuant to a plan of reorganization, one of the owners took over operation of the business. The court determined that this owner is not liable for tax liability incurred during the period the receiver operated the business. There is no sale since the bankruptcy estate obtained the same assets that it would have received directly from the debtor had there been no receiver. A claim may properly be made against the receiver's bond for the amount due from the receiver. 3/29/95.

495.0738 **Transfer by Tenants in Common.** A sale does not occur upon the transfer of a vessel by the tenants in common owners to a trust in which the tenants in common are the trustees, when there are no outstanding loans on the vessel which are assumed by the trust and the transferees receive no other consideration. 4/29/91.

[495.0740](#) **Transfer to Stockholder.** There is a transfer of property for a consideration, creating a taxable sale, when a corporation transfers equipment to a stockholder in return for his stock which stock is then retired or canceled by the corporation. 8/24/53.

[495.0745](#) **Transfer to Stockholder.** Transfer of property to a minority stockholder in payment for his shares of stock constitutes a sale rather than a distribution of assets upon dissolution. Accordingly, the transaction is subject to tax unless it is exempt as an occasional sale within the meaning of section 6006.5. For example, if the corporation was engaged in an activity not requiring the holding of a seller's permit, the sale of property, or some portion thereof, may be exempt from tax by section 6006.5(a). 1/2/52.

[495.0748](#) **Transfers Between Subsidiaries.** The inter-company transfers of tangible personal property between two wholly-owned subsidiary corporations of a parent corporation are balanced through the parent's equity account. It appears that the corporate parent's equity account is used as a third-party clearing account. The use of such a device does not mean there is no consideration. Rather, the benefit conferred on or detriment suffered by the parent corporation by a credit or debit to its equity account is consideration to the subsidiary corporations which, in effect, each have agreed either to transfer a benefit or a detriment to the parent in exchange for receiving tangible personal property or foregoing remuneration for that tangible personal property from the other wholly-owned corporate subsidiary of the parent. In other words, the benefit and detriment to the parent is consideration for the transfer of the tangible personal property and the resulting debt, and results in a sale. Payment of tax cannot be avoided by the use of an equity account of the parent. Therefore, the transfer of tangible personal property from the one wholly-owned corporate subsidiary to the other is a sale which is subject to tax under the Sales and Use Tax Law. 1/14/97.

[495.0750](#) **Transfers of Property.** Corporation A is a machine shop with a sole shareholder who also owns 96% of Corporation B. A and B file unitary state income tax returns with the California Franchise Tax Board. B manufactures "packing peanuts" used by merchandisers to protect their products in shipping containers. A manufactures sheet metal overhead storage bins to the specification of various merchandisers who purchase packing peanuts from B so that the packing peanuts can be dispersed through a tube into the packing containers below. A also fabricates and repairs tools, machinery, and equipment that B uses in its day-to-day operations.

The sole shareholder filed his 1986 personal income tax return electing "S" Corporation status for A who filed a separate informational federal income tax return for an "S" Corporation.

A's physical plant is located less than two blocks from B. The day-to-day operations of A's physical plant are supervised by a chief engineer employed by B. B maintains a blanket liability insurance policy for B and A. A maintains separate workers compensation for its employees. A's accounting services are performed by B. A maintains separate bank accounts, pays its own payroll taxes, contracts for supplies and other materials in its own name, issues its own purchase orders, and remits payment for its payroll, facility costs, rents, and other business expenses from its own bank accounts. In issuing purchase orders, A uses its

own seller's permit number, issues resale certificates in its own name, and does not identify any purchase of materials or supplies to specific general work orders (GWO) issued by B. A bills B per job based on an agreed hourly cost of labor and the actual material expense incurred to complete each GWO. A's officers and directors do not draw salaries.

A believes that it and B should be treated as a single entity under the holding in *Mapo Inc. v. State Board of Equalization*, (1975) 53 Cal.App.3d 245, 125 Cal.Rptr. 727 so that its transfer of tangible personal property to B does not result in a sale under section 6006(b).

Numerous facts in this case and many of A's operating procedures closely parallel those in *Mapo, Inc.* supra, but the underlying facts and circumstances are clearly distinguishable from those in *Mapo* as follows:

- (1) The firm does business with persons other than B.
- (2) The firm has an independent business purpose.
- (3) The firm is not wholly owned by A.
- (4) The firm is not a subsidiary of A. 7/27/90.

**495.0760 Wholly-Owned Subsidiaries.** Invoices for the transfer of equipment between wholly-owned subsidiaries of a common parent constitute transfer of title to the equipment and the tax is applicable to the invoice price. 10/25/63.

**495.0780 Withdrawals of Property by Members of a Joint Venture.** A joint venture is similar to a partnership, and the withdrawals of property by the joint venturers and the debiting of their respective advance accounts are transfers of title to tangible personal property for a consideration and, hence, sales of the property transferred. 7/21/53.

**495.0785 Agency Agreements.** A dump truck operator who obtains a written "agency agreement" with a customer may purchase sand and gravel as agent of the customer provided, as to each acquisition, he/she clearly discloses to the supplier the name of the principal for whom he/she is acting and bills the same amount paid to the supplier. The addition of an agent's fee would not constitute an increase in the amount billed for the product. If all these conditions are met the trucker would not be making a sale and would not need a seller's permit. A separately stated charge by the agent for transporting the product from the supplier to the point designated by the principal would not be considered part of the price billed, as no sale has occurred. 7/3/90.

**(e) RETAIL SALE OR SALE FOR RESALE—DELIVERY BY OWNER, FORMER OWNER, FACTOR OR AGENT**

*Property considered used or resold, see also Use of Property in State and Use Tax Generally.*

**495.0800 Changed Intention After Purchase.** A firm buys a machine for specific use in the event a certain contract is obtained and pays all sales or use taxes thereon.

Upon failure to obtain the contract and without any use being made of the machine, it is resold by the purchaser. Tax refund is in order as resale occurred prior to any use of the machine.

Sales tax applies, however, to the resale of the machine unless it was resold in interstate commerce and delivery effected in a manner qualifying it for exemption under Regulation 1620. 8/12/54.

**495.0820 Changed Intention After Purchase.** A corporation transferred some machinery and equipment to its president in cancellation of an indebtedness. The president placed the equipment in dead storage for more than a year, then resold it in a series of sales sufficient to require the holding of a seller's permit. HELD: The sale to the president was a sale for resale even though the president may not have intended originally to resell the property in the regular course of business. 10/5/64.

[495.0840](#) **Changed Intention After Purchase—Voluntary Disposal Other Than by Sale.** An oil company bought business forms, stored them in the seller's warehouse, and withdrew them from the warehouse as needed. One of its forms became obsolete and the oil company withdrew copies of that form for disposal. The oil company is not entitled to a credit for sales tax reimbursement paid at the time of sale because the law makes no provision for a deduction from tax as the result of a voluntary disposal of tangible personal property by a buyer subsequent to the incidence of the sales tax. 1/28/70.

[495.0843](#) **Deliveries by California Firearm Dealers for Out-of-State Retailers.** California residents order firearms from out-of-state retailers and the retailers ship the firearms to an authorized California firearm dealer for delivery to the customer. The California firearm dealer charges a fee to register each firearm in California.

When the California firearm dealer completes the registration paperwork and delivers a firearm to a California purchaser for an out-of-state retailer not registered with the Board as a retailer engaged in business in this state, it is presumed that the firearm dealer is the retailer of the firearm under the second paragraph of section 6007. In such a case, the firearm dealer would owe sales tax on the total amount of the retail sales price of the gun to the customer, including the Department of Justice fee if passed on to the customer, and including any service charge made by the firearm dealer.

If the firearm dealer establishes to the satisfaction of the Board that the out-of-state retailer was engaged in business in this state under section 6203, its deliveries for that retailer will not be considered taxable retail sales by the firearm dealer, even if the out-of-state retailer has not registered with the Board as a retailer engaged in business in this state. In such cases, as well as in situations in which the retailer is in fact registered as a retailer engaged in business in this state, the out-of-state retailer has a duty to collect the use tax under section 6203. The retailer should collect use tax on the invoice price of the firearm, plus the service fee, even if paid directly to the firearm dealer by the customer. Also, the Department of Justice fee passed onto the customer should be included in the measure of tax. 12/7/95. (Am. 99–2).

(Note: On and after January 1, 1999, the Department of Justice fee is not includible in the measure of tax, but all other charges remain subject to tax.)

[495.0845](#) **Delivery to Fabricator Hired by Out-of-State Buyer.** Company A, a California business, sells property to Company B, an out-of-state business which is not engaged in business in California. B directs A to deliver the goods to C, a business located in California. C assembles the property under contract with B and, at B's direction, ships it to D (B's customer) at an out-of-state location.

Since A did not deliver the property to an end user or an agent of an end user, A is not treated as the retailer of the property pursuant to section 6007. 4/20/95.

[495.0847](#) **Delivery to In-State Processor.** A taxpayer sells products to a buyer who is not located or registered in California. At the buyer's request, taxpayer ships the product from its out-of-state plant or from its California plant to a company in California, which will perform further processing of the product for the buyer. The processor subsequently ships the processed product to the buyer's customer. The buyer's customer may be the end user or it may resell the product. The buyer's customer may be located in California or it may be located out of this state.

In all variations, the taxpayer is not delivering the product to the end user, but to a third party who will perform further processing. The processor, in turn, will later deliver the property either to the end user or to a reseller. Therefore, section 6007 does not apply to this taxpayer. If the taxpayer documents the fact that it shipped the product to a California processor on behalf of the buyer, the taxpayer is not subject any tax liability. The processor, however, may have liability under the second paragraph of section 6007. 9/15/94.

[495.0848](#) **Delivery by Licensed Firearm Dealer.** A California resident purchased a firearm from an out-of-state retailer who is not engaged in business in California. The California customer contacts a licensed California firearm dealer and states that he paid money to an out-of-state dealer and wishes for the dealer to have the firearm shipped to the dealer's place of business and legally transfer the firearm to him. The dealer

contacts the out-of-state seller and arranges to have the firearm sent to him. Upon receipt of the firearm (prepaid by the customer), the dealer logs the firearm into his Federal Acquisition/Disposition books. The customer then fills out the State Department of Justice Firearms Dealer Record of Sale. The dealer collects the state fee of \$14.00 plus a \$16.00 charge to cover the dealer's expenses.

When a licensed California firearm dealer completes the registration paperwork and delivers a firearm to a California purchaser for an out-of-state retailer not registered with the Board as a retailer engaged in business in this state, it is presumed that the dealer is the retailer of the firearm. In such a case, the dealer would owe sales tax on the total amount of the sales price of the gun, including the Department of Justice fee passed on to the customer and including the dealer's service charge. (Section 6007.)

If the out-of-state retailer was engaged in business in this state under section 6203, the California dealer's deliveries for that retailer will not be considered taxable retail sales by the dealer, even if the out-of-state retailer has not registered with the Board as a retailer engaged in business in this state. In such cases, the out-of-state retailer has the duty to collect the use tax under section 6203 and that retailer should collect tax on the invoice price of the firearm plus the dealer's service charges and the Department of Justice fee that is passed on to the customer. 10/26/95. (Am. 99-2).

(Note: On and after January 1, 1999, the Department of Justice fee is not includible in the measure of tax, but all other charges remain subject to tax.)

**495.0849 Drop Shipment—Out-of-State Suppliers.** A firm that is not engaged in business in California under section 6203 makes sales through the World Wide Web. It acquires the goods it sells from two out-of-state suppliers who drop ship the orders directly to the firm's California purchasers. One of these out-of-state suppliers is engaged in business in California under section 6203 while the other is not. The out-of-state supplier who is engaged in business in California is deemed the retailer under section 6007 and is required to collect use tax from the consumers measured by the price paid by the consumers to the firm. With respect to the property delivered by the out-of-state supplier who is not engaged in business in California, since neither the firm nor the supplier is engaged in business in California, the consumers must self-report their use tax liability. 6/18/97.

**495.0855 F.O.B. Clause and Drop Shipment.** California's drop shipment rules are triggered by a drop shipment made by a person engaged in business in California to a California consumer on behalf of a retailer who is not engaged in business in California. An F.O.B. provision is not relevant to the question of whether the drop shipper is re-characterized to be the retailer for purposes of section 6007. 4/3/98. (M99-2).

**495.0860 Installation of Special Equipment.** An out-of-state retailer places an order for a truck which order is filled by the manufacturer's division in California, who in turn delivers the truck to another firm in California for the purpose of installing special equipment. If the out-of-state retailer's contract was to sell a completely equipped truck and he made the agreement for installation of the special equipment in California and also arranged to transport the vehicle to his customer out-of-state, it is an exempt sale for resale. If, however, his customer made the installation contract, delivery to the installer in California would amount to delivery to a consumer and a taxable retail sale would result. 1/7/55.

**495.0880 Interstate Delivery.** On or before December 31, 1992, the second paragraph of section 6007 applies only to a situation where the goods are delivered to the consumer in this state from a point inside this state, and not where the goods are delivered from a point outside this state directly to the consumer in this state. 7/9/59; 8/21/92.

**495.0890 Interstate Delivery.** Effective January 1, 1993, under the second paragraph of section 6007, a seller engaged in business in California owes sales tax, or must collect use tax, when it makes a wholesale sale of property and makes a delivery of that property to a California consumer pursuant to a retail sale made by a person not engaged in business in California. The California wholesaler is redefined to be the retailer under section 6007 even if he/she, in turn, purchases the property from another supplier who actually delivers, on the wholesaler's behalf, the property to the California consumer. The supplier would

be liable for tax under section 6007 only if neither the retailer nor the wholesaler were engaged in business in California. 11/12/92.

**495.0893 Interstate Delivery—Drop Shipment.** Out-of-state retailer “A,” who is engaged in business in California, sold merchandise to “B,” who is located out of state and is not engaged in business in California. “B” resold that merchandise to “C” who in turn resold that merchandise to a California consumer. The merchandise was shipped by “A” from an out-of-state location directly to the consumer in California.

Under section 6007, a retail sale also includes certain drop shipments. The merchandise in question was shipped from an out-of-state location directly to the consumer in California. Title passes from the vendor and, thus, the sale occurs no later than the time at which the vendor completes its performance with respect to physical delivery of the property. This generally occurs upon the seller’s delivery of the property to a common carrier for shipment to the customer. Accordingly, in drop shipment sales taking place outside California, as in this case, the use tax rather than the sales tax applies. Although the purchaser is liable for the use tax, a retailer engaged in business in this State is required to collect the use tax from its purchaser and to pay the tax to this State.

The actual sale of the merchandise to the California consumer was by “C.” If “C” is a retailer in business in this State, the second paragraph of section 6007 does not apply and “A” would not have any tax liability resulting from this transaction. Instead, retailer “C” would be required to collect the use tax with respect to the drop shipment of the merchandise for use in this State by the consumer. The measure of tax is the retail sales price charged to the California end-user. Since “C” did not provide “A” with a resale certificate which includes a California seller’s permit number, in order for “A” to avoid being deemed the retailer with respect to the sale at issue under the second paragraph of section 6007, “A” has the burden of proving that “C” is in fact a retailer engaged in business in California. 1/17/97.

**495.0894 Interstate Delivery—Drop Shipments.** The following four scenarios cover the application of tax before and after the 1/1/93 amendment to section 6007.

- (1) An out-of-state retailer not engaged in business in California takes an order from a California consumer. It orders the property from an out-of-state manufacturer which is engaged in business in California. The manufacturer ships the property directly to the consumer in California from its out-of-state location.

Prior to 1/1/93, the sale from the out-of-state manufacturer is not a sale in California and, thus, section 6007 does not apply. The manufacturer’s sale is a sale for resale. On and after 1/1/93, the second paragraph redefines a sale which would otherwise be regarded as a sale for resale to be a retail sale when a person drop ships property to a California consumer pursuant to a retail sale made by a retailer not engaged in business in California. In this first scenario, effective 1/1/93, the out-of-state manufacturer will be regarded as the retailer and will be required to collect the use tax from the purchaser and pay it to this state. The measure of tax will be the retail price which is the marked up price paid by the California consumer.

- (2) Same as scenario #1 except that the retailer orders the property from a California sales office of manufacturer who also has manufacturing and warehouse facilities in California. However, in this instance, the manufacturer ships the property by common carrier from one of its out-of-state warehouses directly to the consumer in California.

The tax consequences are the same as discussed in scenario #1 above. Prior to 1/1/93, although the consumer would owe use tax, the California seller, the manufacturer, would not be responsible for collecting the tax since the sale occurs outside California.

- (3) Same as scenario #1 except that the retailer orders the property from a California wholesaler, who in turn places an order with an out-of-state manufacturer not engaged in business in California. The manufacturer ships the property directly to the consumer in California by common carrier, F.O.B. shipping point.

Prior to 1/1/93, none of the parties have responsibility to report tax other than the consumer. However, on and after 1/1/93, the California wholesaler will be defined as the retailer under section 6007 and will be responsible for collecting use tax measured by the marked up price paid by the California consumer.

(4) Same as scenario #3 except that the manufacturer is engaged in business in California.

The answers remain the same as in scenario #3.

With regard to resale certificates, a California seller who drop ships to a California consumer pursuant to a retail sale by another could not avoid the application of the second paragraph of section 6007 by accepting a resale certificate that omitted a California seller's permit number. Such a certificate indicates that the out-of-state retailer is not engaged in business in California. The acceptance of such a certificate would not relieve the California seller of liability for sales tax under the second paragraph of section 6007.

The corollary to the rule mentioned above is that a person who drop ships property to a California consumer and who accepts in good faith a valid and timely resale certificate that includes the purchaser's valid California seller's permit number is not liable for sales or use tax on the sale. This is consistent with relevant statutes and the regulation. (Sections 6091, 6241, and Regulation 1668.) 11/12/92. (Am. M99-1).

[495.0897](#) **Out-of-State Buyer and Seller.** A Texas company orders furniture from a manufacturer located in Michigan. The Texas company directs that shipment be made from the Michigan factory to its retail customer in California. The Michigan manufacturer has offices in California and thus is a retailer engaged in business in California. The Michigan manufacturer is liable for collection of use tax on the retail selling price of the furniture. If the customer has already paid use tax directly to the state, tax need not be paid again but the Michigan manufacturer is responsible for establishing that tax has been paid. 4/7/95.

[495.0920](#) **Out-of-State Delivery for Resale.** Where a California seller sells trucks to an out-of-state dealer for resale purposes, and seller's driver drives the truck to the buyer's place of business without the aid of any employee or representative of the buyer, the seller does not incur tax liability under the second paragraph of section 6007. This would also be true if the ultimate consumer reimburses the out-of-state dealer for fuel and other operating expenses including wages, meals and hotel accommodations of the driver, provided the driver is in no sense the consumer's agent. Likewise, no tax liability would accrue as to parts sold to such out-of-state dealer for resale and delivered in the same truck. 3/30/55.

[495.0940](#) **Purchase in Transit.** When an out-of-state dealer sells a truck to a foreign purchaser, title to vest upon delivery to destination, and in transit purchases in California an additional part for such truck, the purchase of the part is a sale for resale as the part becomes a component part of the truck and is not taxable. 10/5/53.

[495.0944](#) **Purchasing Agent.** A taxpayer proposes to enter into an agreement whereby it would act as purchasing agent for a hospital district. The taxpayer would purchase supplies on behalf of the hospital, warehouse all the supplies at its facilities until needed by the hospital, mark and identify those supplies as for the hospital, maintain insurance naming the hospital as an additional insured, pay vendors, and be responsible for late charges, interest, and price changes arising from the taxpayer's late payments.

The hospital is to pay the taxpayer the cost of supplies from the vendors and will be invoiced upon delivery to the taxpayer's facilities. Payment will be due 26 days after the date of delivery to the hospital facilities. Also, the taxpayer guarantees no more than a maximum price will be billed to the hospital for the supplies. The taxpayer will be paid a set fee for performance of the requirements of the contract.

Based on the provision of the contract, the taxpayer is not acting as the hospital's agent, but rather is purchasing supplies for resale to hospital. As an agent, the billing to the hospital must be the same as paid by the supplier. Under the contract, not more than a stated maximum amount will be billed to the hospital. Thus, if the amount paid to the supplier exceeds the maximum, the taxpayer absorbs the difference. Additionally, the taxpayer is responsible for late charges, interest, price changes arising from late

payments, and the hospital does not pay the taxpayer until 26 days after supplies are delivered to the hospital. Accordingly, it is in effect financing the hospital's purchases. Also, the taxpayer is making purchases through a group purchasing arrangement. Finally, the contract specifies that warehoused goods are marked "held for X hospital." Under an agency arrangement, the goods would be the property of the hospital not merely "held for." All of the above factors results in a conclusion that the contract is a contract to buy and sell and not an agency contract. 5/10/88.

**495.0950 Records Furnished by a Dealer to Radio Stations at the Request of His Supplier.** Retail sales are made by a wholesale record dealer when, at the request of his supplier, he distributes records to radio stations, without any charge to the stations by the dealer or his supplier, with the understanding that the supplier will furnish replacement records to the dealer. 6/7/72.

**495.0952 Resale Certificates with Respect to Drop Shipments.** A taxpayer makes sales to an out-of-state corporation which is not engaged in business in California. The out-of-state customer directs that goods be drop shipped to California entities. The taxpayer is deemed the retailer under section 6007 unless the California customer is purchasing the property for resale. The taxpayer is not relieved of liability for tax by its acceptance of a resale certificate from the out-of-state retailer that lacks a valid California seller's permit number. The taxpayer will be relieved of liability for tax, however, if it accepts a timely valid resale certificate in good faith from the California customer of the out-of-state retailer. 12/14/93.

**495.0953 Resale Certificate Issued with Respect to Drop Shipments.** Corporation A is a California seller. A related out-of-state Corporation, Corporation B, purchases tangible personal property for resale to out-of-state Corporation C. Neither B nor C is engaged in business in California. C resells the property to its parent, D, which is located in California, and directs that A deliver the property to D in California. D proposes to issue a resale certificate to A.

If A takes the resale certificate from D in good faith, A will not be liable for tax on the transaction under section 6007. 7/5/94.

**495.0960 Supplies for Crew—Purchasing as Agent Rather than for Resale.** The application of sales tax to the sale of beer, wine, and other non-food items for consumption by crews of fishing vessels while at sea, is as follows: On a typical fishing vessel the crew consists of the three owners and nine hired crewmen. The total grocery expense for food and other items consumed by the twelve men while at sea is divided by twelve. This amount is then charged against each man's share from the voyage. Each man pays the same amount without regard to the value or cost price of items actually consumed by him.

The owners of the boat should not be regarded as reselling these items to the members of the crew. The transaction appears instead to be analogous to a situation whereby A, B and C are going on a picnic and they agree that A will buy the beer and that B and C will each pay A one-third of the cost of the beer. In such case A is acting as agent for B and C in purchasing this beer for them and A is not regarded as selling the beer to B and C. Accordingly, the sale of nonfood items to the owners of the fishing vessel is a taxable retail sale and not sale for the purpose of resale. 9/5/52.

**495.0980 Wholesaler Selling for Retailer.** When a wholesaler acts on behalf of a retailer and delivers merchandise directly from his warehouse to the customer, collects the sales price, delivers the merchandise to the customer, treats the sale as a sale to the retailer and remits the profit to the retailer, the wholesaler should not report the sale as a part of his taxable gross receipts. He should remit the sales tax reimbursement to the dealer and take a resale certificate from him. 8/25/58.