

**505.0000 SALES TO THE UNITED STATES AND ITS INSTRUMENTALITIES— Regulation 1614**

*See also United States Contractors. Funeral services paid for by the United States, see Morticians. National banks, sales to, see also Banks and Insurance Companies.*

**(a) IN GENERAL—AGENCIES QUALIFYING FOR SALES TAX EXEMPTION**

505.0020 **Aero Clubs.** Air force base aero clubs organized under Air Force Regulation 215–12 are instrumentalities of the United States, and sales to such clubs are exempt. 5/27/60.

[505.0025](#) **Agent of the National Potato Board.** A photographer sold photographs to a firm which claimed to be acting as agent for the National Potato Board (an instrumentality of the United States). The firm paid the invoice with its own check and presented the photographer with a letter sent to the firm stating: “The (firm) is authorized as agent to purchase property for the National Potato Promotion Board for use in furtherance of the Board’s advertising, research and public relations activities on behalf of the United States’ potato industry.”

The fact that the firm paid the invoice with its own check suggests that the firm purchased the photographs on its own account or for resale rather than as an agent of the Potato Board. As stated in Regulation 1614(a)(4), when the nonexempt party makes full payment and later seeks reimbursement, then that party and not the United States government is considered the actual purchaser of the property. If the firm is the retailer of the photographs rather than an agent of the Potato Board and if title passed to the Potato Board prior to any use by the firm, the firm could purchase the property ex-tax for resale by issuing to the photographer a timely and valid resale certificate. 12/7/93.

505.0040 **Air Base Skeet and Trap Club.** The Travis Air Force Base Skeet and Trap Club was held to be exempt from sales tax under section 6381(a) of the Revenue and Taxation Code as an unincorporated instrumentality of the United States Government under the control of the Secretary of the Air Force and the Commander of the Travis Air Force Base. 6/11/65.

505.0045 **Air Force Academy Athletic Association.** The Air Force Academy Athletic Association (AFAAA) qualifies as an unincorporated instrumentality of the United States. The Charter of the AFAAA activities are the responsibility of the Superintendent of the Air Force Academy. Sales to the AFAAA are exempt from sales tax. 8/6/90.

[505.0060](#) **Amtrak.** Although not a United States instrumentality, Amtrak is exempt from state sales or use taxes pursuant to Federal Law, 45 U.S.C. section 546b. Therefore, sales to Amtrak are exempt from sales or use tax under section 6352. 10/9/91.

505.0070 **Car Rentals by Federal Employees.** California sales tax does not apply to automobile rentals made to employees of the United States government traveling on government business if the vehicle was rented under a General Services Administration rental contract. It is immaterial for tax purposes whether the federal government is billed directly or the employee pays the bill and is later reimbursed. 9/2/76.

[505.0071](#) **Catering Functions for Groups from the Federal Government.** A major hotel performs catering services for groups from the federal government (i.e., Air Force, Department of Defense, Red Cross). In order for the hotel’s sales to such groups to be exempt, the hotel must substantiate that the purchases are official purchases of the United States (or U.S. instrumentality) and that the groups are authorized by the United States to purchase the catering from the hotel on behalf of the United States in accordance with Regulation 1614. If the caterer is unable to acquire sufficient proof that the purchases are official purchases of United States, the sales to such groups are regarded as sales to individual employees of such organizations and are properly subject to sales tax. 7/3/96.

505.0072 **Checks Sold by a Federal Credit Union.** A military federal credit union, with a main office in this state, operates branches throughout the Far East. The branches use an APO San Francisco, as an address. Any organization/individual using this address is not physically located in California.

It is assumed that the federal credit union is the retailer of the checks. As a matter of state law, the incidence of sales tax is on the retailer. Since a federal credit union is exempt from sales tax, the retail sales of checks in California by the federal credit union are also exempt from sales tax. Since the federal credit union's sales are exempt from sales tax, use tax applies when the checks are purchased for use in California. When the use tax applies, the federal credit union is required to collect that use tax from its customers and remit the tax to the state. It is presumed that mail addressed to the APO is forwarded outside California. This means that checks mailed to a customer through the APO address are presumed to be purchased for use outside California and not subject to use tax. Records showing names and addresses as they appear on the mailed matter must be kept as evidence of the mailing. 12/18/86; 3/2/88.

505.0073 **Chapa De Indian Health Program.** Pursuant to Public Law 93-638 Chapa De Indian Health Program is an executive agency of the United States when carrying out the purpose of a contract with the Indian Health Service in connection with Public Law 93-638. As a result, sales of medical equipment to Chapa De are exempt from tax under section 6381(a). 2/5/96.

[505.0075](#) **Civil Air Patrol.** Sales to the Civil Air Patrol (CAP) are exempt from sales tax because the CAP is an instrumentality of the United States for purposes of immunity from state taxation. 8/19/87.

505.0080 **Civilian Welfare Funds.** Civilian Welfare Funds at Air Force bases, if properly conducted and operated in accordance with Air Force regulations, are unincorporated instrumentalities of the United States, and sales to such funds are exempt from tax. 12/12/62.

505.0100 **County Agricultural Conservation Association.** Such an association, formed under Federal law for the purpose of cooperating with the United States Department of Agriculture is an exempt agency or instrumentality of the United States. 8/7/52.

[505.0115](#) **Employee's Reimbursable Expenses.** Reimbursable employee expenses purchased with a U.S. contractor's credit card and properly charged to an overhead account are allowable as sales to the United States pursuant to the *Aerospace* decision. 7/15/92.

505.0118 **Fannie Mae.** The Federal National Mortgage Association (Fannie Mae) is an incorporated instrumentality of the United States. Sales tax does not apply to sales to it. 10/21/88.

505.0119 **Farm Credit Banks.** Farm credit banks are exempt from state taxation under Federal law (12 U.S.C. S2023). Accordingly, sales to farm credit banks are exempt from sales tax even though the Farm Credit Banks are not actually instrumentalities of the United States. Banks claiming exemption should issue exemption certificates stating that they are exempt under 12 U.S.C. 2023. 11/9/93.

505.0120 **Farmers—Soil Conservation Act.** Sales of materials under the Soil Conservation Act for which the farmer and the United States Government are separately obligated to pay respective portions of the purchase price are sales to the United States as to that portion paid for by the government. 8/21/50.

505.0140 **Federal Housing Administration.** The FHA is an unincorporated instrumentality of the United States. Accordingly, sales to this agency are exempt from sales tax. 9/21/66.

505.0160 **Federal Housing Administration—FHA-Owned Property and Funds.** Purchases of supplies and equipment used by a private realty company to manage foreclosed property held by the Federal Housing Administration are exempt as sales to the United States because the United States paid for the purchases and all purchases were made by purchase orders approved by the FHA. 4/14/70.

505.0175 **Federal Public Defenders of San Diego—Resales to U.S. Government.** Federal Public Defenders of San Diego, Inc. is a nonprofit corporation established under the Criminal Justice Act. The grant from the Judicial Conference of the United States provides that all property purchased with grant funds costing more than \$100 belongs to the United States and may not be disposed of except as specified in the grant.

Purchases of items costing more than \$100 are therefore purchased for immediate resale to the U.S. Government and are nontaxable sales for resale followed by exempt sales to the United States. Purchases of items costing less than \$100 are not for resale and the gross receipts of the retailer are subject to sales tax. 10/19/84.

505.0190 **Federal Savings and Loan Associations.** Sales to federal savings and loan associations, federal savings banks and federal savings associations are taxable regardless of the decision by the United States Supreme Court in *Diamond National Corp., et al. v. State Board of Equalization*, since 12 U.S.C. §1464(h) simply provides that such associations shall not be subject to state or local taxes greater than imposed on similar local institutions. 5/27/76.

505.0192 **Federal Savings and Loan Insurance Corporation.** The Federal Savings and Loan Insurance Corporation (FSLIC) is a corporation wholly owned by the United States. Sales to the FSLIC are therefore exempt from tax. 5/12/87.

505.0200 **“General Agent” for an Instrumentality of the United States.** Section 6381 of the Sales and Use Tax Law exempts from the sales tax sales to the “United States, its unincorporated agencies and instrumentalities.” Since the National Shipping Authority is a unit within the Department of Commerce, sales to the Authority are exempt. Accordingly, sales of petroleum products to a General Agent, Agent for the National Shipping Authority are exempt from the California sales tax. 2/4/52.

505.0220 **Guam.** Sales to the Government of Guam, an agency of the United States, are exempt from tax. 5/19/59.

505.0223 **Installation Club System.** The National Training Center at an Army base will commence operations of an Installation Club System, consisting of four revenue generating operations: three clubs (officer, noncommissioned officer and enlisted) and one packaged beverage retail store on or about April 1, 1981. These facilities will operate as federal instrumentalities.

To the extent the proposed Installation Club System is established pursuant to Army Regulation 260–1, it will be considered to be an instrumentality of the U.S. Government and tax will not apply to its sales to customers at the three clubs and the package liquor store. Tax also will not apply to sales by California retailers to the three clubs and liquor store. 3/31/81.

505.0225 **Instrumentalities of the United States.** The following are instrumentalities of the United States and exempt from sales tax under Regulation 1614.

Federal Land Bank Association Federal Home Loan Mortgage Corporation Federal Intermediate Credit Banks Neighborhood Reinvestment Corporation Export-Import Bank Federal Financing Banks. 7/1/83.

505.0226 **Instrumentalities of the United States.** The Federal Deposit Insurance Corporation as an incorporated agency of the United States was appointed receiver for a bank closed by the State Superintendent of Banks. FDIC continued to lease equipment under lease by the bank to various lessees. The tax on the leases is a use tax imposed on each lessee but the lessor has the responsibility to collect the tax from the lessee at the time the rentals are paid. The fact that FDIC is an instrumentality of the United States does not excuse it from this collection pursuant to section 6204 obligation (since the tax is not imposed directly on it), even if the tax was not collected from the lessee. 7/29/81.

[505.0230](#) **Job Corps Centers.** Effective October 16, 1986, pursuant to 29 USCA 1707, a sale of tangible personal property to or by, or purchase of tangible personal property by, the operator of a Job Corps Center, program, or activity under contract with the U.S. Department of Labor is exempt from sales or use tax. Such exemption applies even though the tangible personal property will be used to improve real property within sections 6007.5 and 6384. Such exemption is not retroactive. For periods prior to October 16, 1986, sales by a Job Corps Center, program, or activity were taxable, and sales to or purchases by a Job Corps Center, program or activity were taxable unless title to the tangible personal property passed from the Job

Corps Center, program, or activity to the United States prior to use, and the tangible personal property was not used in improving real property. 6/12/87.

**505.0235 Leases to Government Contractor.** Generally, property leased to a government contractor is not exempt because the lessee is the contractor, not the United States. The exemption for sales to the United States would apply only if the property was leased ex-tax by the contractor and then subleased to the United States. The fact that the contract with the United States would require the contractor to lease such equipment, in order to perform the contract, is not a sufficient basis to conclude that the property is leased to the United States. 6/3/91.

**505.0240 Military Food Contracts.** Sales under military food contracts for meals served to members of the armed forces are sales to the U.S. Government and are tax exempt. 11/27/63.

**505.0250 National Committee for Employer Support of the Guard and Reserve.** The National Committee for Employer Support of the Guard and Reserve (NCESGR) was established by the Department of Defense as an operational committee, which is not a corporation. Accordingly, it is a federal instrumentality and sales to it are exempt from sales tax. 3/31/88.

**505.0260 National Guard.** Sales of property purchased from funds administered by the Department of the Army and the Air Force National Guard Bureau for the support of the California National Guard are exempt sales to the United States when the purchase documents clearly indicate that the purchaser is the United States and that the funds from which payment is made are actually appropriated Federal funds. 4/28/61.

**505.0270 National Potato Promotion Board (NPPB).** The National Potato Promotion Board (NPPB) has all of the establishment history and duties and authorities to classify it along with many other such boards and committees as an unincorporated agency or instrumentality of the United States. Sales to it are exempt from both sale and use taxes, and the NPPB may certify in writing to vendors pursuant to section 6421 that sales to it are exempt from tax pursuant to section 6381. The exemption in section 6421 applies to sales made directly to NPPB or a duly authorized agent purchasing for NPPB's account. 11/9/78.

**505.0300 Post Restaurants and Cafeteria Associations.** Civilian post restaurants and cafeteria associations organized and operated under regulations of the armed services are agencies or instrumentalities of the United States and sales to or by such restaurants or associations are exempt from tax. 10/27/59.

**505.0325 Red Cross Disbursing Orders.** The American Red Cross issues disbursing orders to disaster victims. The orders authorize merchants to deliver described articles or services to a specific disaster victim. They are nontransferable. Merchants who accept them submit orders to the Red Cross and the Red Cross makes payment. The sales are regarded as being to the Red Cross and are exempt from tax. 1/27/94; 5/29/96.

**505.0330 Resolution Trust Corporation (RTC).** RTC when acting in the role of a conservator, is regarded as an incorporated agency or instrumentality of the United States, and sales to the RTC, including leases, are exempt from California sales and use tax. However, tangible personal property purchased from an incorporated agency or instrumentality, such as the RTC, is subject to use tax. If the property is purchased for use in California, use tax must be collected by RTC. The RTC was created to replace FSLIC as receiver for failed thrifts. The context and language of its creation, to act in the place of FSLIC, makes it clear that RTC shall be treated the same as the FDIC and FSLIC (12 U.S.C. section 1421 et seq.).

When acting as a receiver, the RTC is immune from all state and local taxation. State and local taxing authorities may only tax the RTC if it consents to such taxation, by waiver of the immunity. Congress has expressly waived this immunity for state and local ad valorem real property taxes. 4/16/91; 1/22/92; 2/1/93.

505.0332 **Sales by the American Red Cross.** The following sales or activities conducted by the American Red Cross and its chapters together with a discussion of the application of tax to these functions are set forth below.

(1) Health, Safety, and Emergency Preparedness Materials. In connection with its health, safety, and emergency preparedness training, the Red Cross sells instructional books, pamphlets, disaster kits, and first aid kits. It also sells devices to prevent the transmission of disease, e.g., face shields, pocket masks, and mouth barriers, as an integral part of CPR training. section 6409 provides an exemption for the use of health and safety educational materials and insignia “routinely sold in connection with health and safety and first aid classes,” sold or purchased by a qualified organization such as the Red Cross. The term “in connection with” is regarded as much broader than a phrase such as “related to.” It does not imply that the purchase or sale of such materials must be made as part and parcel of the classes which is implied by the latter phrase but rather that those purchases or sales must be associated with or pertinent to such classes. It is concluded that sales of such items made as a direct result of specific Red Cross training and educational programs fall within the exemption provided by section 6409.

(2) Insignia/Recognition Items. The sales of T-shirts, hats, sweats, pens, patches, nameplates/tags all bearing the Red Cross emblem are primarily sold to Red Cross volunteers and paid staff for the express purpose of identification when on a Red Cross assignment. The Red Cross customer’s purchases of the above items are not subject to use tax as long as they bear the Red Cross emblem.

(3) Promotional Items. Items such as mugs, ball point pens, ties, scarves, backpacks, watches, key chains, greeting cards, special event T-shirts all bearing the American Red Cross emblem are frequently purchased by the chapter for the purpose of recognizing a volunteer. They may also, however, be made available for purchase in some chapters as a promotional item. Similar to insignia/ recognition items, the customer’s purchases of promotional items from the Red Cross are not subject to the use tax as long as they bear the Red Cross emblem.

(4) Auctions/Fundraising Events. Some chapters may be involved in fundraising auctions. Sometimes these are held on behalf of someone else on non-Red Cross property, other times these events are held at the Chapter, or there may be a combination of these two situations. The items are donated to the organization with the understanding by the donor that the item will be auctioned off to the highest bidder with the proceeds of said auction benefiting the humanitarian work of the American Red Cross. The exemption provided by section 6409 does not extend to donated items with the intent that they be sold to raise money. Sales for the purpose of fund raising do not qualify for the general exemption for sales by charitable organizations under Regulation 1570. The Red Cross must collect use tax on its customers’ purchases of such donated items at such sales. If items bearing the Red Cross emblem are sold at auction, the purchases of these items from the Red Cross are not subject to the use tax.

(5) Special Events. Red Cross chapters frequently participate in special events like health fairs and community events for the express purpose of building health and safety awareness by providing health and safety information, materials, and recognition items, often for sale. The chapters need not have a seller’s permit to sell items of a type that regularly bear the Red Cross emblem, e.g., T-shirts, pencils, jackets, etc. When selling donated items and items that are not of a type normally bearing the Red Cross emblem (e.g., a chapter cannot put the emblem on a donated car in order to try to get the exemption) at auctions, fundraising and special events, the chapter must obtain a temporary permit for that event. If the chapter participates in a large number of these events during the year, it may be more efficient to obtain a seller’s permit rather than many temporary permits. A Red Cross chapter may issue resale certificates to vendors for items whether or not the chapter’s resale of the items is subject to use tax. 10/29/93.

505.0333 **Sales of Equipment to Office of a Former President.** Sales of equipment to the office of a former president, which are paid for by a check drawn on the U.S. Treasury, qualify as sales to the U.S. Government. Such purchases are made by the General Service Administration pursuant to funds appropriated by Congress. 3/30/90.

[505.0335](#) **Service Corps of Retired Executives (SCORE).** SCORE is an unincorporated Federal instrumentality exempt from sales and use tax. 5/28/93.

505.0340 **Smithsonian Institution.** A sale of property to the Smithsonian Institution, an agency of the United States, is exempt from the sales tax. 8/29/57.

505.0345 **Southern California District Export Council.** Although this council is composed of individuals appointed by the U.S. Secretary of Commerce, it is not an agency or instrumentality of the United States. Accordingly, neither its sales nor purchases are exempt from sales or use tax. 6/14/91.

505.0350 **Trustee in Bankruptcy as Federal Instrumentality.** As a result of an administrative order of the referee in bankruptcy of the United States District Court for the Central District of California, all administrative cases filed under Chapter XIII in Integral Commercial Area No. 1 will be performed by the Office of the Trustee, the title of that office shall be Chapter XIII Trustee, and all trust bank accounts, goods, services, and taxes will be in the title of that office with the appointed Trustee as the authorized signatory. As a consequence, purchases of tangible personal property by that Office of the Trustee for use in the specified administration of Chapter XIII of the Bankruptcy Act, purchased with trust funds administered by that office, are purchases by an unincorporated instrumentality of the United States, the Office of the Chapter XIII Trustee in that area, and are exempt from sales and use taxes. 7/12/76.

[505.0356](#) **Uniforms Paid from Employees' Uniform Allowances.** Employees of the United States Post Office Department are authorized uniform allowances by the Department. When employees need to acquire or supplement their uniforms, the employees order the necessary items from a vendor. Upon receipt of the items ordered, the employees present the accompanying invoice to the Department's disbursement officer. The disbursement officer then deducts the amount of the invoice from the employees' allowances and pays the invoice amount to the vendor by means of a Department check. Since payment is made by the Department, sales of uniforms to post office employees in which the Department makes payment to the vendors are sales to the United States and sales tax does not apply to such sales. 9/21/70.

505.0360 **Unincorporated Agencies or Instrumentalities.** Sales of tangible personal property to the following committees and boards are exempt sales to unincorporated agencies or instrumentalities of the United States under section 6381(a):

Almond Board of California  
California Date Administrative Committee  
California Desert Grape Administrative Committee  
California Olive Committee  
Cotton Board  
Hass Avocado Board  
Kiwi Fruit Administrative Committee  
Lemon Administrative Committee  
Mushroom Council  
Navel Orange Administrative Committee  
Nectarine Administrative Committee  
Oregon-California Potato Committee  
Prune Marketing Committee  
Raisin Administrative Committee  
Tokay Industry Committee  
Valencia Orange Administrative Committee  
Walnut Marketing Board

The following four agencies are commonly known as the "California Tree Fruit Agreement Control Committee:"

Pear Commodity Committee,  
Peach Commodity Committee,  
Plum Commodity Committee,

Winter Pear Control Committee. 4/25/89; 12/4/90; 3/8/91; 5/17/94. (Am. 2000–1; Am. 2008–1).

505.0362 **United States Holocaust Memorial Council.** The United States Holocaust Memorial Council is a federal instrumentality and sales to this Council are exempt from tax. 12/5/89.

[505.0362.120](#) **United States Information Agency (USIA).** USIA is an agency of the United States Government. Therefore, tax does not apply where staff members, acting in their official government capacity, purchase goods by issuing a U.S. Government purchase order, where the goods are paid for by credit card issued to the United States, or where payment is made by U.S. treasury check or wire transfer of funds. On the other hand, tax does apply to sales and leases to U.S. Government employees, including employees acting in their official capacity, if payment is made directly by the employee by cash, check, or personal credit card notwithstanding the fact that the U.S. Government may reimburse the employees for expenses. 6/24/96.

505.0363 **U.S. Marshal.** A restaurant was seized by the U.S. Marshal who contracted with a property management company to operate the restaurant business on behalf of the United States. There is no indication in the contract that anyone other than the United States is the owner of the restaurant. The United States must be regarded as the owner of the restaurant making the sales. The sales made by the restaurant are exempt as sales by the United States. 10/16/90.

505.0365 **U.S. Treasury Checks.** Under federal statutes, the funds for necessary services and facilities for operating the offices of former presidents of the United States are appropriated by Congress and provided by the General Services Administration. Payment for such facilities and services is made by U.S. Treasury checks. Under these circumstances, the purchaser is the United States Government, and the sales are exempt from sales and use tax. 3/30/90.

505.0370 **Western Farm Credit Bank.** Western Farm Credit Bank is a federally chartered instrumentality of the United States pursuant to section 1.3 of the Agriculture Credit Act of 1987. Thus, it is exempt from state sales and use taxes. 3/26/91.

**(b) AGENCIES NOT QUALIFYING FOR EXEMPTION**

[505.0377](#) **Alameda Officers' Wives Club (AOWC).** The Alameda Officers' Wives Club was not established nor does it operate under the authority of the federal statutes or regulations. Therefore, it is not an agency or instrumentality of the United States. AOWC owes sales tax on its gift shop's retail sales. 7/11/95.

505.0380 **American Legion Posts.** Sales of personal property to American Legion Posts operating in Federal areas are subject to sales tax. Such Posts are not Federal instrumentalities. 9/20/54.

505.0413 **California Army National Guard.** Pursuant to a licensing agreement, the California National Guard operates three clubs at an Armed Forces Reserves Center. The licensing agreement is for an indefinite term but revocable at will by the Secretary of Army. Among the licensing provisions is one which requires performance in accordance with Department of Defense regulations subject to the provisions of adequate funding to the licensee. Absent such funding, each component occupying the facilities must pay its pro-rata share of costs. The licensing agreement also allows for short term licenses to community service activities provided such use is not at the expense of the Federal Government.

The operation of the club system is a "community service activity" and therefore is run at no expense to the Federal Government. Since federal funds are not used the clubs cannot be considered instrumentalities of the United States. Accordingly, tax applies to any sales and purchases made by the club. 4/29/80.

505.0420 **Community Action Organizations.** Community action organizations under Title II of the Economic Opportunity Act of 1964 (PL 88-452) are not agencies or instrumentalities of the United States. However, purchases made by such organizations through the United States General Services Administration are sales to the United States and not subject to the sales tax. 6/28/65.

505.0440 **District Agricultural Association.** A District Agricultural Association is an agency of the State of California, is not an instrumentality of the United States, and sales to such agencies are subject to sales tax. 8/7/52.

505.0480 **Irrigation Districts,** organized in connection with federal reclamation projects, are not federal instrumentalities, sales to which would be exempt. 12/8/50.

505.0518 **Legal Services Corporation.** Section 1005(e)(1) of the Legal Services Corporation Act specifically states that the Corporation shall not be considered a department, agency, or instrumentality of the federal government. Sales to the Corporation in California are therefore subject to tax. 7/28/76.

505.0520 **Legal Services Foundation.** The Contra Costa Legal Services Foundation, a community action organization organized pursuant to Title II of the Economic Opportunity Act of 1964, is not classified as an instrumentality of the United States Government. Accordingly, sales thereto are not exempt from sales tax. 1/4/68.

505.0530 **Members of the House of Representatives.** A printer printed mailers and flyers which invited the public to attend a community meeting to discuss various issues for a member of the U.S. House of Representatives. The printer delivered this property to the congressman's staff in this state for distribution in this state. The mailers were intended to be mailed free of postage under the congressman's franking privileges.

The printer's billing invoices were addressed to the congressman personally and not to the government. The fact that the congressman may have used this property in performing his official duties does not necessarily mean that the sale was to the United States. The printer did not obtain a government purchase order or remittance advice as required by the regulation. Tax is due on this transaction. 5/23/89.

[505.0535](#) **Merged Association.** Federal land bank associations are specifically granted immunity from taxation as provided by the Farm Credit Act. Production credit associations are subject to state taxation. (*Director of Revenue of Missouri v. CoBank ACB* (2001) 531 U.S. 316). The merger of a federal land bank association and a production credit association(s) results in a "merged association" as authorized by 12 U.S.C. section 2279c-1. Since the statute does not declare the merged association to be a federal instrumentality nor provide the merged association with a specific grant of immunity or exemption from state taxation, sales of tangible personal property to a merged association are subject to tax. 8/16/02. (2003-2).

505.0540 **National Guard.** Until such time as the National Guard is called to federal duty, it operates pursuant to state authority and sales to members thereof and to members of R.O.T.C. units are subject to sales tax. 6/22/54.

505.0560 **National Guard Unit Funds.** Purchases by National Guard Unit Funds are not exempt from sales tax as sales to instrumentalities of the United States Government. 9/16/63.

[505.0580](#) **Navy Relief Societies.** Sales made to Navy Relief Societies are not sales to an agency or instrumentality of the United States and consequently not exempt. 7/28/53.

505.0590 **Pilot Training.** Leases of aircraft to pilot training schools which train students under federal programs are not exempt. Aircraft are mobile transportation equipment, leases of which are uses by the lessor. Thus, tax applies to the lessor's use of the aircraft whether the payments by the U.S. Government are made to the students or directly to the school. 2/8/79.

505.0600 **Raisin Advisory Board and California Avocado Commission.** Sales of personal property to the Raisin Advisory Board and the California Avocado Commission are subject to sales tax. They are both state Boards created pursuant to Food and Agricultural Code section 58841, not created pursuant to federal regulation. 12/4/90. (Am. 2008-1).

505.0602 **Regional Rail Commission.** A Regional Rail Commission which is a Joint Powers Agency organized pursuant to section 6500 et. seq. of the California Government Code has a primary purpose of instituting a commuter rail service between two California points. The question posed was whether a use tax imposed on the Commission's use of the vehicles would be a discriminatory tax in violation of the 4R Act as applied in the case of *National Railroad Passenger Corporation v. State Board of Equalization* (N.D. Cal. 1986) 652 F.Supp. 923.

The *National Railroad* case does not apply to this situation. In *National Railroad*, the consumer of the passenger rail vehicles was Amtrak, an entity created by the United States Government, and Amtrak was using the subject vehicles on actual interstate lines in actual interstate commerce. The Commission will be using the vehicles in intrastate commerce on a intrastate line. Therefore, the only exemption possibly applicable to the Commission's purchase and use of the vehicles is section 6368.5. That exemption, however, is limited to the use of rail freight cars in interstate and foreign commerce and, thus, is not applicable. 12/16/96.

505.0605 **Sale to Law Firm—Not U.S. Government.** A company sold microfilm to a law firm handling a case for the FSLIC. The law firm believes that it is exempt from paying sales tax since they are working for a branch of the federal government.

The law firm is mistaken in the belief that the sales to them are exempt merely because they work for the FSLIC. Since the microfilm was sold to the law firm and not to the federal government, the exemption for sales to the federal government does not apply. Rather the microfilm sales were taxable sales to the law firm for the law firm's use in its performance of its contract with the FSLIC. The company's sales of the microfilm are subject to sales tax. 2/17/88.

505.0608 **Sales to the U.S. Government.** Sales to a U.S. government contractor, that would otherwise be taxable, do not qualify for exemption on the strength of an amendment made to the contract with the U.S. providing that the contractor acted as an agent of the U.S. for certain purposes, including the disbursement of government funds for the acquisition of property. In ruling on this situation, the U.S. Supreme Court concluded that if the contractors can realistically be considered entities independent of the United States, a tax on them cannot be viewed as a tax on the United States. Also, there is some doubt whether a person not an instrumentality of the United States can act as an agent of the United States (see *United States v. New Mexico* (1982) 455 U.S. 720, 71 L.Ed.2d 580). 4/1/94.

#### (c) STATE OR LOCAL AGENCIES RECEIVING FEDERAL FUNDS

505.0620 **Economic Opportunity Council.** Sales to a local Economic Opportunity Council, not itself an agency or instrumentality of the United States, are not exempt as sales to the United States even though federal funds are used in whole or in part to pay for the goods purchased. 12/29/66.

505.0640 **Generally.** Where a United States Department merely furnishes funds with which a vendee makes a purchase the sale is not to the United States. 3/18/52.

505.0660 **Generally.** State or local government agency, merely in using funds supplied by Federal Government to make purchases does not become entitled to benefit of exemption of sale to United States. 7/18/51.

505.0680 **Generally.** In accordance with opinions of the State Attorney General, and the Comptroller General of the United States, tax is applicable notwithstanding that the state agency making the purchase used federal funds allotted to it for that purpose. 7/28/52.

505.0700 **Housing Authority of Long Beach City.** Tax applies to sales of tangible personal property to the Housing Authority of the City of Long Beach. The Housing Authority is not an agency or instrumentality of the United States Government. It is immaterial that the Authority is financed entirely by federal funds. 10/14/69.

505.0720 **National Guard.** Funds obtained by California National Guard Units as their share of so-called PX dividends from the United States, become funds of the state and purchases made out of such funds are subject to sales tax, even though the source of the funds was the United States and subject to regulation by the latter. 3/4/55.

505.0730 **Puerto Rico.** Puerto Rico is an agency or instrumentality of the United States Government. Sales to the Economic Development Administration (EDA) of Puerto Rico are, therefore, within the exemption provided by section 6381 and are not subject to sales tax. 10/7/80.

505.0740 **R.O.T.C. Uniforms.** The sales tax applies to R.O.T.C. uniforms purchased by a university and for which the university is reimbursed by the Government under a contract contemplating that the university is to purchase the uniforms in its own name and on its own credit, the university not having the power to act as agent of the government or to pledge the government's credit. 2/26/58.

[505.0746](#) **Railroad Track Components.** A taxpayer enters into a contract to furnish railroad track components such as switches, frogs, point protectors, switch stands, guard rails, derails, and insulated joints to a California regional rail authority. Tax applies to sales to governmental entities other than the U.S. and its agencies. While 49 U.S.C. section 11503(b) operates to exempt sales of rolling stock from tax, it does not apply to track components. Further, a tax imposed on retail sales of track components does not discriminate against a rail carrier. 5/23/95.

505.0750. **San Francisco Peer Review.** Although the San Francisco Peer Review organization received federal funds to review Medicare and Medicaid services, it has no sales or use tax exempt status of its own. Therefore, sales tax applies to retail sales of equipment to the San Francisco Peer Review. 11/4/76.

505.0754 **State Agency.** A communication system for linking transportation vans to aged and disabled persons who are served by the vans is funded through the federal government. Funding is provided to the state which then disburses funds to persons who sell equipment. Since payment for the equipment is not made directly by the federal government, the sales are not exempt as sales to the federal government. 2/23/95.

#### (d) VETERANS' ADMINISTRATION PROGRAMS

505.0760 **Autos—Sale of—to Amputee Veterans.** Pursuant to Public Law 187, 82nd Congress, Chapter 532, First Session, Senate Bill 1864, the veteran first applies to the Veterans' Administration for an eligibility certificate to make the purchase, negotiates a sale with the dealer of his choice and takes delivery of the car. However, a copy of the sales invoice is sent to the Veterans' Administration, and the dealer sends a bill for \$1,600.00 to the Veterans' Administration, and the Veterans' Administration pays the \$1,600.00 directly to the dealer.

Such a transaction is a sale to the United States to the extent of the amount paid by the United States where that amount is billed directly to the United States by the dealer and where the United States makes payment directly to the dealer.

As further support of the contention that the sale is partially a sale to the Veterans' Administration the invoice should show the Veterans' Administration as the actual purchaser to the extent that payment is to be made by the Veterans' Administration. 12/5/51.

505.0780 **Drugs and Supplies.** Where the Veterans' Administration has entered into a contract with the California Pharmaceutical Association whereby the Association handles billing by member pharmacies for drugs and supplies furnished to authorized veterans, and the Veterans' Administration provides the funds which are ultimately paid over by the Association to the pharmacies, sales to veterans under this program are considered as sales to the United States and as such are exempt. 5/6/60.

505.0800 **Drugs and Supplies.** Where the supplies are in fact purchased and paid for by the Veterans' Administration, the sale thereof is exempt from sales tax as a sale to the United States. The seller should retain copies of purchase orders, invoices, and other pertinent documents in order to sustain the exempt character of the transactions.

There must be an actual sale to the Veterans' Administration for sales tax exemption. Thus, if supplies are furnished to the student-veteran and the Veterans' Administration merely reimburses the student or school for the cost of such supplies, the transaction is not exempt. 2/20/51.

505.0810 **Veterans' Administration Volunteer Service Advisory Committee** is an instrumentality of the United States. Accordingly, its retailing activities and purchases are exempt from sales and use taxes. 9/24/90.

505.0814 **Veterans Service Organizations.** There is no federal or state law creating an exemption from state or local sales or use tax for the sale of food or drink prepared by veterans' service organizations chartered by Congress for consumption on the premises of such organizations. 12/13/84.

(e) MEDICARE PROGRAM

505.0820 **Medical Supplies Furnished Under Medicare.** Medical supplies which are not "medicines" under section 6369, furnished to patients under the Medicare Act pursuant to contracts between the hospital and the United States Government, with the government making direct payment in whole or in part to the hospital for the supplies, are exempt sales to the United States Government to the extent payment is made by the government. If the supplies are furnished to the patient under the Medicare Act pursuant to contracts between the patients and the hospital, with direct payments made by the patients, the sales are taxable to the patients even though the patient may receive reimbursement from the California Medicare Assistance Program. The sale of such supplies to patients under California Medicare Assistance Program is subject to sales tax regardless of whether payment is made by the patient, county, or state. 8/22/66. (See Annotation 300.0030.)

505.0840 **Medicare Claims.** The sale of an item to a person insured pursuant to Part B of the Medicare Act, where the claim of the person for reimbursement is assigned to the supplier and the supplier files the claim with a carrier (administrator of Medicare claims under contract with the United States), is not exempt as a sale to the United States. This is in accord with the stated position of the United States Department of Health, Education and Welfare, which is charged with administering the Medicare Act. 10/25/78.

505.0850 **Federal Contractors.** Corporation A makes sales of tangible personal property to Corporation B. The property is shipped from within California to Corporation B in California. Corporation B has a contract with a federal agency to perform unspecified tasks on an island in the Pacific Ocean. Corporation B ships the property to the island. Corporation B claims that no tax is due on the transactions but specifically states that the property is not purchased for resale to the U.S. government. The sales are therefore at retail and subject to tax.

The sales are not exempt sales in interstate commerce because the property is delivered to the buyer in this state. The sales are not exempt sales to the U.S. government because federal contractors are not regarded as agents of the U.S. government (see *United States v. New Mexico* (1972) 455 U.S. 720). 7/25/94.

505.0860 **Medicare Contractor.** Purchases of tangible personal property by a life insurance company, serving as a Medicare contractor, for use in administering the Medicare program are not exempt under section 6381. Some states establish that a life insurance company which serves as a Medicare contractor is an instrumentality of the United States when administering the Medicare program for purposes of that state. However, unlike other states, California does not have a statutory provision which expands the definition of "instrumentality of the United States" beyond the definition given to that term by the United States. 4/9/91.

505.0865 **Medicare Reimbursement Payments.** Under Medicare rules, a medical supplier may not separately bill Medicare B for tax but should add the tax into the item billing. There are two different billing scenarios that can arise. In the first, Medicare B fully reimburses the medical supplier for its sales of medical supplies. In the second, Medicare B reimburses the medical supplier for only a portion of the sale and the remainder is received from a private insurer, Medi-Cal, or the patient. Regardless of whether or not Medicare B reimburses the medical supplier for the full retail sales price of the medical supplies, the billing to Medicare B is presumed to include sales tax and therefore, the payment from Medicare B to the taxpayer is inclusive of sales tax.

In order to obtain a refund of sales tax paid on sales of medical supplies that are subsequently determined to be exempt, the medical supplier must return the overpayment of tax reimbursement to the customer from whom it was received, i.e. Medicare B, Medi-Cal, private insurer or the patient. 07/16/02. (2003-2).

505.2250 **Sale of Orthotics and Prosthetic Devices.** Taxpayer is in the business of providing orthotic and prosthetic devices which are custom fit by the taxpayer's licensed professionals to meet the needs of each individual patient. All sales are made under prescription from the patients' physician. The direct material costs equal or slightly exceed direct labor costs, but the charges are commingled for acceptance by Medicare/Medicaid and private insurance carriers. That the taxpayer's customer may be reimbursed by a medical insurer is not relevant to the determination of whether taxpayer is making an exempt sale. If the sale does qualify for exemption, the taxpayer should obtain from the purchaser an exemption certificate conforming to the requirements of Regulation 1667 and retain it in its own records to support the exemption. If the sale is to Medicare A, it is a sale directly to the United States and is exempt from tax. However, if the patient is reimbursed under Medicare B, that is a sale to the patient, the normal taxation rules apply to determine if the sale was subject to tax. When the sale is not exempt, the taxpayer's entire charge is subject to tax. Whether separately stated or not, the taxpayer may not deduct its charges for fitting because the fitting devices are part of the taxable sale of taxpayer's tangible personal property. 4/19/96.