

## **560.0000 UNITED STATES, SALE BY—“SURPLUS PROPERTY”**

*Sales to the United States, see Sales to the United States and its Instrumentalities.*

**560.0080 Coast Guard Auxiliary—Instruction Pamphlets.** Sales of instruction pamphlets by the Coast Guard Auxiliary are not subject to tax. In selling the pamphlets the Auxiliary is carrying out the purposes set forth in Title 14 of the U.S. Code and, therefore, at least to that extent is acting as an instrumentality of the United States Government. 3/19/59.

**560.0090 Gold and Silver Olympic Coins.** Sales to the public by depository financial institutions (banks or savings and loans) of gold and silver Olympic coins, which are legal tender of the United States, under consignment agreements with the United States Mint are sales by the United States and are not subject to either the sales or use tax under sections 6352 and 6402 respectively, notwithstanding the fact that the financial institutions, as consignees, had power to pass title. The exemption for sales by the United States takes precedence over the general rule for consignees for the following factors:

- (1) Title to the coins remains with the United States, and the institutions hold the coins in trust for the United States.
- (2) The United States sets the retail selling price and the institutions have no authority to raise or lower the price.
- (3) The United States has not authorized the institutions to collect tax or tax reimbursement from the customers.
- (4) The institutions make no profit on the transactions, retaining only a discount to cover the costs of sales.
- (5) All unsold coins must be returned to the United States by a specified date, and the institutions bear the risk of loss. 6/6/84.

**560.0100 Incorporated Agencies.** Sales at auction by an auctioneer on behalf of an incorporated agency of the federal government are subject to use tax. This is true even though the auctioneer is supplied with the incorporated agency's tax exempt number.

Revenue and Taxation Code section 6402 provides an exemption from payment of use tax for purchases made “from any unincorporated agency or instrumentality of the United States”. There is no exemption for purchases from an incorporated agency of the United States. Thus, an auctioneer is required to collect use tax on its sales of personal property on behalf of incorporated agencies of the federal government such as the Resolution Trust Company (RTC) and the Federal Deposit Insurance Corp. (FDIC) without regard to its “tax exempt” status when the RTC and FDIC are acting in the role of a conservator.

When acting as a receiver, the RTC and FDIC are immune from all state and local taxation. State and local taxing authorities may only tax the RTC and FDIC if they consent to such taxation, by waiver of the immunity. Congress has expressly waived this immunity for state and local ad valorem real property taxes. 12/20/90; 2/1/93.

**560.0120 Public Housing Administration.** The Public Housing Administration is an incorporated instrumentality of the United States. Accordingly, a purchase from the Public Housing Administration is subject to use tax whether surplus property or not.

Sales of buildings “in place” would be exempt as a sale of real property provided the purchaser is to use the building at its existing location under a lease. Any equipment included would, of course, be taxable. 1/24/56.

**560.0140 Red Cross.** The American Red Cross is exempt from payment of sales tax on sales made by it. However, use tax must be collected by the Red Cross from purchases if it makes a sufficient number of

sales to be classified as a retailer. Section 6019 provides that a corporation making more than two retail sales during any 12-month period shall be considered a retailer. 1/2/63.

**560.0170 Sale to Enforce Federal Tax Liens.** The United States is not the owner of an auto seized and sold pursuant to section 6335 of the Internal Revenue Code. The purchaser at such a sale receives only the right, title and interest of the Federal tax debtor. The United States acts only as a lienor enforcing a lien on the property seized. The United States is not regarded as the seller of the property, therefore, the buyer is liable for use tax on the vehicle at the time it is registered at the Department of Motor Vehicles. 12/13/71.

**560.0173 Sale by Federal Deposit Insurance Corporation.** The sale of tangible personal property by the Federal Deposit Insurance Corporation (FDIC) is exempt from sales tax. The use of the property purchased from the FDIC is not, however, exempt from use tax. 7/22/94.

**560.0174 Sales of Used Cars by General Services Administration (GSA).** Under 40 U.S.C. section 484(c), any executive agency authorized by GSA to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer upon such terms as GSA deems proper. 40 U.S.C. section 481(c) provides that in acquiring personal property, any executive agency, pursuant to certain regulations, may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or part payment for the property acquired.

It is the position of the Board that property purchased from GSA under 40 U.S.C. section 484(c), (surplus property), is subject to use tax but property purchased under 40 U.S.C. section 481(c) is exempt. Sales to the public of vehicles from the federal motor vehicle pools are sold pursuant to 40 U.S.C. section 484(c) and are, therefore, subject to use tax. 3/11/92.

**560.0180 Surplus Property.** Where a vessel is purchased from the Maritime Commission as a disposal agency after such vessel had been declared as surplus property by the owning agency, the purchase price is subject to use tax. 9/4/53.

**560.0200 Surplus Property.** The General Services Administration has succeeded to the functions of the Surplus Property Board and property declared to be "excess" is surplus property as defined in section 6402. 1/11/56.

**560.0235 Tax Liability of F.D.I.C.-Operated Banks.** Federal law exempts the Federal Deposit Insurance Corporation (F.D.I.C.) from all state and local taxes, except ad valorem property taxes, and from all penalties or fines. However, where the F.D.I.C. acts as a receiver for a bank, it is required to pay all valid obligations of the insured depository institution. Therefore, it is proper for the Board to accept tax payments from the F.D.I.C. on continuing leases which predate the receivership. These payments represent the continuing obligation of the bank to collect and remit use tax on the leases, and are not a tax imposed on the F.D.I.C. Penalties and interest for late filing or payments are not authorized. 8/17/93.

**560.0245 U.S. Customs Service.** The sale by the U.S. Customs Service of a vessel forfeited to the U.S. Government is not subject to use tax. The U.S. Customs Service is an unincorporated agency of the United States and the property was not "surplus property" nor "contractor inventory," as discussed in Revenue and Taxation Code section 6402. 9/29/93.

**560.0260 Vessels—Sale by a U.S. Marshal.** The sale of a yacht, by a U.S. Marshal, pursuant to an order of a federal court in an admiralty matter is a sale by an instrumentality of the United States. The purchaser of the yacht is exempt from use tax liability under sections 6402 of the Sales and Use Tax Law. 12/2/65.