



State Board Of Equalization

Avoiding Common Sales and Use Tax Problems

Get it in Writing!

This Presentation is designed to illustrate general tax concepts, and does not address every situation. If you email us a request for written advice and provide us the details specific to your business operations, we can provide you with tax guidance you can rely on.

Contact us at www.boe.ca.gov/info/email.html or mail your inquiry directly to a BOE field office near you.

Presumptions of the Tax Code

- All sales are taxable unless otherwise specifically exempted
- Claimed exemptions must be supported by documentation
- Taxpayer is responsible for maintaining and providing documentation for potential examination



Common Types of Noncompliance

- Untaxed Purchases from Out-of-State Vendors
- Withdrawal from Resale Inventory for Own Use
- Unsupported Sales for Resale
- Difference Between Recorded and Reported Taxable Sales
- Reported Sales Lower than Expected Sales Based Upon a Markup on Purchases
- Errors in Compiling Return
- Difference Between Tax Accrued and Tax Paid
- Inadequate Records Resulted in Unreported Sales
- Unsupported Sales in Interstate Commerce Delivered to Instate Customer

Untaxed Purchases From Out-of-State Vendors

Items purchased without payment of California tax:

- Purchase for own use (not resale inventory) and
- From out-of-state businesses (including online purchases)



Withdrawal from Resale Inventory for Own Use

Inventory items purchased with a resale certificate without payment of tax

Items withdrawn from inventory for use other than resale (including use as gifts and free samples or for personal use)

Use Tax
= Due on
Cost

Resale Inventory



Gift



Use Tax
= Due on
Cost

Use Tax for Individuals

- Can be reported on California Income Tax Return
- Can be reported on Sales & Use Tax Return
- Can be reported on BOE individual Use Tax Return



Sales For Resale

Common ways to document sales for resale (examples to follow):

- A Resale Certificate
- A Purchase Order containing all the essential elements of a resale certificate



Basic Elements of a Resale Certificate

- Purchaser's name
- Purchaser's address
- Purchaser's valid seller's permit number
- Item(s) being purchased
- Statement that purchase is "for resale"
- Authorized purchaser's signature
- Date resale certificate is signed
- Purchaser's title
- Purchaser's type of business activity
- Seller's name



Permit/License Verification

To verify Seller's Permit number(s)
submitted on resale certificates, retailers
may call

888-225-5263

or access our website at

www.boe.ca.gov (Click Verify Permit)



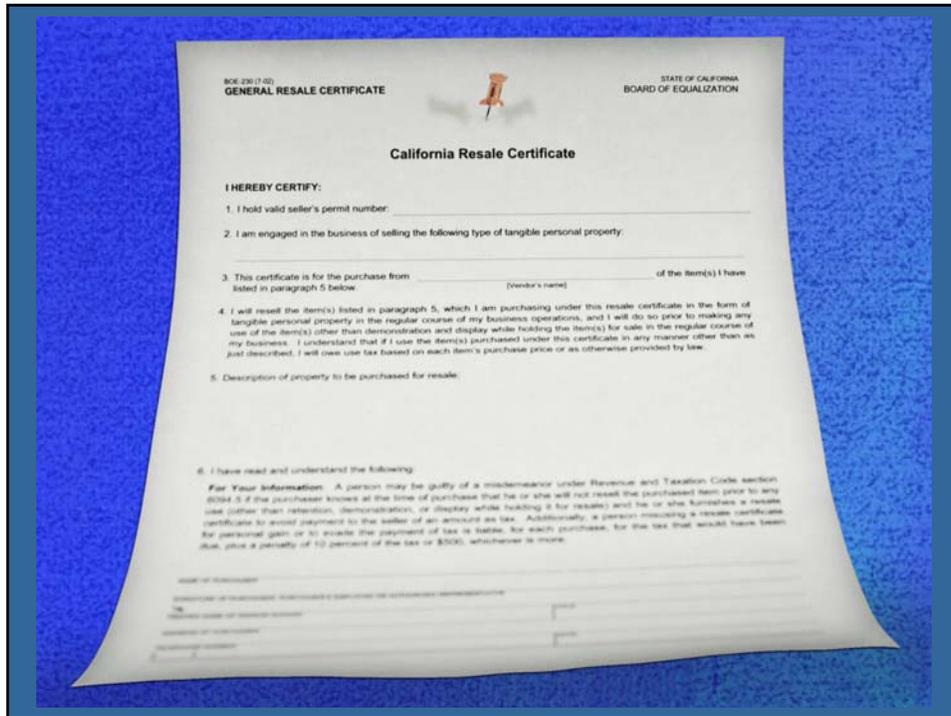
Permit/License Verification

The screenshot shows the California State Board of Equalization (BOE) website. The header includes the CA.GOV logo, the text "California State Board of Equalization", and a search bar labeled "Search BOE". A navigation menu contains links for Home, File a Return, Make a Payment, Taxes & Fees, Forms & Pubs, Permits & Licenses, Online Services, and News & Events. The main content area is titled "Verification" and features a sub-section "Verify a Permit, License, or Account". This section contains a text input field with the instruction "Enter the numeric portion only. Omit letters and other symbols (e.g. dashes.)" and two buttons: "Submit Request" and "Clear Request". Below the form, there are several paragraphs of text providing information about seller's permit verification, cigarette and tobacco product retailer license verification, ewaste account verification, and underground storage tank maintenance fee account verification. A "Scheduled Downtime" notice is also present at the bottom of the page.

Resale Certificates

- Available at some stationery stores, form BOE-230, in Regulation 1668, and in Publication 73
- Must be filled out completely
- Must be taken timely and in good faith

Truckee Small Business Seminar of July 19, 2016
Seminar Presentations



Purchase Order Used as a Resale Certificate

Must specifically state "For Resale."

Statements of "Nontaxable," "Exempt," or
"Taxable - No" do not fulfill this requirement

Purchase Order and a Resale Certificate

- Purchase Orders that state **“For Resale”** must contain the same information as required for a resale certificate
- The resale certificate will often say **“see purchase order”**

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GENERAL RESALE CERTIFICATE

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: RT 123-456789
2. I am engaged in the business of selling the following type of tangible personal property:
Jewelry
3. This certificate is for the purchase from: Acme Wre of the item(s) I have listed in paragraph 5 below. (Seller's name)
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:
SEE PURCHASE ORDER.

I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6504.5 if the purchaser knows at the time of purchase that he or she will not use the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person issuing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

NAME OF PURCHASER
Ruby M. Malone
ADDRESS OF PURCHASER (INDICATE IF EMPLOYEE OR AUTHORIZED REPRESENTATIVE)
Ruby M. Malone
ADDRESS OF PURCHASER (IF OTHER THAN ABOVE)
Ruby M. Malone Title: Owner
ADDRESS OF PURCHASER
123 Pine Street, Sacramento, CA 95814
TELEPHONE NUMBER (DAY) (EVENING)
(916) 355-1234 (916) 355-1234

About a Seller's Permit

- Allows sales to be made in California
- Provides a seller's permit number used to issue a resale certificate for purchases of inventory items without paying tax
- Does not allow buying items for personal or business use without paying tax
- Permit must be issued in the owner's name for each business address

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SELLER'S PERMIT

ISSUE PERMIT

187591445 NOV 2 5 58 TE LITERAL 123456789

ISSUE TO: NEW PERMIT ADDRESS
ISSUE TO: OWNER NAME
TAXPAYER TYPE/OWN OR BEING BOUGHT
ISS: BOX 123456789 / ADDRESS LIT
1 STREET CA 95839-9999 / MAIL

ISSUE TO: NEW PERMIT ADDRESS
ISSUE TO: OWNER NAME
TAXPAYER TYPE/OWN OR BEING BOUGHT
ISS: BOX 123456789 / ADDRESS LIT
1 STREET CA 95839-9999 / MAIL

For general tax questions, please call our Information Center (916) 483-7110.
For information on your rights, contact the Taxpayer's Rights Advocate Office at 888-324-2798 or 916-221-2796.

Penalties for Improper Use of Resale Certificates



- Misuse of resale certificate is a misdemeanor
- The penalty is \$500 or 10% of the amount of tax per transaction, whichever is greater

Recorded vs. Reported Taxable Sales



Comparison between taxable sales per your books and records and taxable sales reported to the BOE

Tax Accrued

Tax accrued, which is the amount of tax collected from customers or recorded as amounts due to the state, is compared to tax paid.



Required Records

Records must be maintained for at least four years, but we recommend you keep them for eight. Examples of records:

- Sales Invoices
- Cash Register Tapes
- Sales Journals
- Purchase Invoices
- Cancelled Checks
- Purchase Journals
- Resale Certificates
- Exemption Certificates
- Purchase Orders
- Shipping Documents
- Schedules
- Working Papers used in Preparing Tax Returns.



Sales in Interstate Commerce

Common ways to document sales in interstate commerce:

- Bills of Lading
- Freight Invoices
- Delivery Receipts
- Correspondence



Unsupported Sales in Interstate Commerce Delivered to Instate Customers

- Delivery to a purchaser in California for subsequent shipment to another state is taxable.
- When the goods are diverted by the purchaser in transit to a California location, the exemption is lost.
- Drop shipments.



Taxpayer Information Section

- 800-400-7115
711 (TTY)
- Mon. - Fri. 8am to 5pm
- 1-1 Assistance
- 24 hr. fax-back service
- Recorded Information



Taxpayers' Rights Advocate

888-324-2798

If you have been unable to resolve a disagreement with the BOE and you would like to know more about your rights under the law.

www.boe.ca.gov/tra/tra.htm



BOE Offers Free Personalized Assistance

- A staff consultant will review your business operation and record keeping system.
- Call your local BOE office today to make an appointment.



**We wish you success
in your business venture.**



We welcome your comments and suggestions.

2015



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Forms of Ownership



Presented by
Small Business Education and Outreach Section

2015



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Sole Proprietorships



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Sole Proprietorship Characteristics



The simplest form of doing business.

No formal transfer of assets to start business.

Business' taxable year is the same as the owner's taxable year.



Sole Proprietorship Characteristics

- Sole proprietors use Schedule C to report the business' profit or loss on their Form 540 income tax returns whether distributed or not.
- Losses generally offset other income.
- Sole proprietor is not considered to be an employee of the business.



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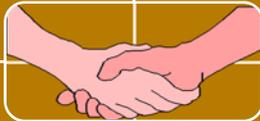
General Partnerships



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Partnership Characteristics

Two or more persons carrying on a business for profit.	Flexible form of business and relatively easy to set up.
Partners decide the organization's structure and distribution of profits and losses.	A formal written agreement is advisable.



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Partnership Characteristics

A thumbnail image of the 2014 Partnership Return of Income Form 565. The form is titled "2014 Partnership Return of Income" and "565". It includes fields for "For calendar year 2014 or fiscal year beginning" and "ending" with "MM/DD/YYYY" format. There are sections for "Name of partner (if any)", "Address", "Partnership name", "Check the appropriate box", "Check the applicable tax", and "Additional information".

- Not a separate taxable entity.
- Partnership files informational return using Form 565.
- Partners report profit or loss on their individual Form 540 income tax returns whether distributed or not.
- Losses may be limited.



Most Commonly Used Legal Entities

Corporations

Limited
Liability
Companies

There are other less common legal entities types available. For more information see our publication FTB 1123, *Forms of Ownership*.



California Legal Entities

Formed by filing the appropriate documents or forms with the California Secretary of State.

Corporation

- Articles of Incorporation
- Various Forms
- Minimum Tax

Limited Liability Company

- Articles of Organization
- Form LLC-1
- Annual Tax and Fee

Taxed annually until formally dissolved or cancelled.



2015



C Corporations



FTB STATE OF CALIFORNIA Franchise Tax Board

The slide features a dark blue header with the year '2015' on the right and the State of California Franchise Tax Board logo on the left. The main content area has a large dark blue rectangle on the left containing the text 'C Corporations' in white. To the right of this rectangle is an illustration of five business professionals (three men and two women) in business attire, gathered around a conference table in a meeting. At the bottom left of the slide is the FTB logo and the text 'STATE OF CALIFORNIA Franchise Tax Board'.

C Corporation Characteristics

A separate legal entity owned by shareholders.

Must register with SOS before conducting business.



Can be costly to set up and maintain.

Option of choosing an income year other than the calendar year.



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C Corporation Characteristics

- Files using Form 100.
- Taxed annually on its earnings at a rate of 8.84% on net income.
- Subject to \$800 minimum tax.
- Shareholders taxed on distributed dividends.



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S Corporations



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S Corporation Characteristics



A separate legal entity owned by shareholders.



Must register with SOS before conducting business.



Election is made for S corporation status.



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S Corporation Characteristics



No more than 100 shareholders.



Only one class of stock.



Shareholder can only be individuals, estates, or certain trusts.



S Corporation Characteristics

- A hybrid business entity.
- Files using Form 100S.
- State tax rate of 1.5% of net income. Not subject to federal tax.
- Subject to \$800 minimum tax.
- Shareholders report profit or loss on their individual Form 540 income tax returns whether distributed or not.



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Limited Liability Companies (LLC)



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LLC Characteristics

-  A separate legal entity owned by members.
-  Must register with SOS before conducting business.
-  A hybrid business entity.
-  Restriction may apply to professional services that require a license, certification, or registration.



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LLC Characteristics



IRS corporation classification: follow corporation rules.



IRS partnership classification: follow partnership rules.



For California only. A single member classification: follow sole proprietor rules.



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LLC Characteristics Single Member and Partnership

- Single or partnership classified LLCs file using Form 568.
- Subject to \$800 annual tax.
- Maybe subject to an LLC fee based on total income (gross income plus cost of goods).
- Members report their share of profit or loss on Form 540 income tax returns whether distributed or not.



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LLC Characteristics C Corporation Classification

A thumbnail image of the California Corporation Franchise or Income Tax Return Form 100 for the year 2014. The form is titled "California Corporation Franchise or Income Tax Return" and includes fields for the calendar year, beginning and ending dates, and various checkboxes for tax status and reporting requirements.

- C Corporation classified LLCs file using Form 100.
- Taxed annually on its earnings at a rate of 8.84% on net income.
- Subject to \$800 minimum tax.
- Members receive profits and losses like C corporation shareholder.



LLC Characteristics S Corporation Election

A thumbnail image of the California S Corporation Franchise or Income Tax Return Form 100S for the year 2014. The form is titled "California S Corporation Franchise or Income Tax Return" and includes fields for the calendar year, beginning and ending dates, and various checkboxes for tax status and reporting requirements.

- S Corporation classified LLCs file using Form 100S.
- State tax rate of 1.5% on net income. Not subject to federal tax.
- Subject to \$800 minimum tax.
- Members report their share of profit or loss on Form 540 income tax returns whether distributed or not.



Forms of Ownership Information

Franchise Tax Board's Guide to:

Forms of Ownership

FTB Publication 1123, Franchise Tax Board's Guide to Forms of Ownership



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**Recordkeeping for
Small Business/Self
Employed Individuals**



Date

Necessity of Books and Records

- Monitor the business's progress
- Prepare financial statements
- Keep track of deductible expenses



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Necessity of Books and Records

- Prepare tax returns
- Prepare for examination
- Business
 - Verify expenses
 - Proof of payment not enough



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Books and Records

- Records
- Tax purpose of a record
- Accounting entry
- Accounting book
- Income statement
- Balance sheet



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UETA Definition of Electronic Books and Records

Uniform Electronic Transaction Act defines electronic records that, by electronic means, are:

- Created
- Generated
- Sent
- Communicated
- Received, or
- Stored



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Recordkeeping Requirements

- Internal Revenue Code §6001 and related Income Tax Regulations under §1.6001-1; generally provides that everyone must keep adequate records.



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Record Types Needed Gross Receipts

- Cash register tapes
- Receipt book
- Sales
- Invoices
- Credit charge slips
- Forms 1099



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Record Types Needed Purchases and Expenses

- Amount paid
- Amount was for business purchases



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Record Types Needed (Cont'd)

Charitable Contributions, Travel, Transportation,
Entertainment, Gifts

- Amount
- Each date
- Description
- Explanation of business benefit gained



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Record Types Required Employment Taxes

- Names
- Addresses and
- Taxpayer identification numbers for individuals
 - who work for you or
 - performs services and receives payment



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Record Types Needed - Assets

- Property used in business must be substantiated
- Maintaining records that show
 - When and how property acquired
 - Purchase price, and
 - Use of property



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Maintenance of Books and Records

- Use the method that works best
- Records should say:
 - what was received
 - from whom
 - for what reason
- Keep records timely



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Responsibility of Books and Records

- Taxpayer/business owner responsible for maintaining adequate books and records
- If paid preparer used, preparer's records needed also



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How Long to Keep Records

- Generally, three years from filing date to examine tax return
- Tax records must be kept at least until statute of limitations expires
- Certain tax returns much longer
- Keep source records (checks, receipts, and proof of business purpose) at least three years



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How Long to Keep Records (Cont'd)

- Until deduction no longer claimed
- Employment tax records, four years
- Assets, until sold or removed
- IRA contributions, permanently
- Broker statements, expiration of limitation period
- Improvements to residence, until sold
- Net operating losses, until statute of limitations expired on last tax return claiming a loss
- Follow state recordkeeping laws also



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IRS Resources

- Publication 15, Circular E - Employers Tax Guide
- Publication 463, Travel, Entertainment, Gift, and Car Expenses
- Publication 535, Business Expenses
- Publication 536, Net Operating Losses
- Publication 547, Casualties, Disasters and Thefts
- Publication 556, Examination of Returns, Appeal Rights & Claims



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IRS Resources

- Publication 594, The IRS Collection Process
- Publication 3498, The Examination Process
- Publication 5, Appeal Rights and Preparation of Protests for Unagreed Cases
- Circular 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service
- Publication 583, Starting a Business and Keeping Records



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IRS Resources (Cont'd.)

- Publication 225, Farmers Tax Guide
- Publication 1066-C, A Virtual Small Business Workshop CD
- Publication 2194, Disaster Losses Kit for Individuals
- Publication 2194B, Disaster Losses Kit for Businesses
- Publication 4758, Reconstructing Your Records
- Publication 4796, IRS Records at Your Fingertips
- Visit IRS.gov



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Contact information

Name
Phone Number
E-Mail Address



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Employee or Independent Contractor



Introductions

Employment Tax Consultant

www.edd.ca.gov

Taxpayer Assistance Center:

1-888-745-3886

Objectives

- Discuss the importance of proper worker classification.
- Explain the differences between employees and independent contractors.
- Define common law, statutory, and excluded employment.
- Identify resources to help properly classify workers.

Reasons to Properly Classify Workers

- Promote fair competition.
- Safeguard workers' rights.
- Avoid investigations due to:
 - Worker Claims
 - Worker and Competitor Informants
- Avoid additional taxes, penalties, and interest.
- Protect from possible revocation of your state or local licenses.

Misclassification Example

One worker, earning \$20,000 for one year (tax year 2015)	Employer A (Correctly classifies worker as employee)	Employer B (Misclassifies worker as independent contractor)
UI (3.4 percent)* *New employer rate	\$238	\$238
ETT (0.1 percent)	\$7	\$7
SDI (0.9 percent)		\$180
PIT		\$1,200 (6 percent)
Total due for one year	\$245	\$1,625** ** Plus penalty and interest

Types of Workers

- Employees
 - ✓ Common Law
 - ✓ Statutory
 - ✓ Excluded Services
- Independent Contractors



Common Law Guidelines

Common Law Employee:

An individual who performs services for you, and you have the **right** to control the manner and means of how they do their work.

Independent Contractor:

An individual who performs services for you who is not a common law or statutory employee.

Common Law Primary Factor

The **right** of the principal to control the manner and means of accomplishing a desired result.

The right to discharge a worker at will is strong evidence of the right to control.

Common-Law Secondary Factors

Distinct trade or occupation
Supervision
Skill level
Tools and place of work
Length of time
Method of payment
Regular part of business
Belief of the parties
Extent of actual control
Services benefit the principal
Profit/loss

Common Law Secondary Factors

FACTORS	EMPLOYEE	INDEPENDENT CONTRACTOR
Distinct trade or occupation	No separately established business	Separately established business
Supervision	Follows procedures	Own methods
Skill level	Training	Own expertise
Tools and place of work	Business provides	Worker provides
Length of time	Continuous	Isolated event
Method of payment	Guaranteed payment	Sets rate and pay date
Regular part of business	Vital to business	Incidental to business
Belief of parties	Employee	Independent contractor
Extent of actual control	Owner sets work schedule	Worker sets schedule
Services benefit principal	Benefits owner's business	Benefits owner as individual
Profit or loss	No investment or financial risk	Investment and financial risk

Statutory Employees

Employee by law under a specific statute.

Examples include, but are not limited to:

- ✓ Corporate officers
- ✓ Unlicensed contractors
- ✓ Certain Limited Liability Company (LLC) members

Resources:

Statutory Employees (DE 231SE)

Payments to Corporate Officers (DE 231PC)

Limited Liability Entities (DE 231LLC)

Excluded Services

Certain employees are not subject to specific taxes or withholding provisions.

Examples include, but are not limited to:

- Domestic Workers
- Direct Sellers
- Family Members
- Real Estate Agents

Exempt Employment (DE 231EE)

Additional Resources

- *California Employer's Guide* (DE 44)
- *Information Sheet: Employment* (DE 231)
- *Employment Determination Guide* (DE 38)
- *Determination of Employment Work Status for Purposes of State of California Employment Taxes and Personal Income Tax Withholding* (DE 1870)
- *Employee or Independent Contractor Seminars at:*
http://www.edd.ca.gov/Payroll_Tax_Seminars/

Independent Contractor Reporting

DE 542, Report of Independent Contractor(s)

- File timely to avoid penalty and interest.
- Report within 20 days if you are making payments totaling more than \$600 or entering into a contract of \$600 or more, whichever occurs earlier.

e-Services for Business



- Fast, easy, and secure way to manage your payroll taxes online.
- View and edit returns or reports prior to submission.
- Available 24 hours a day, 7 days a week.

<https://eddservices.edd.ca.gov/index.html>

e-Services for Business Features

- Register for an employer account
- File returns and reports online
- Make payments by EFT or credit card
- View account balance
- View payroll tax rates
- Make account updates
- View previous returns and payments
- Close account



Thank You!

Questions?

