



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Items withdrawn from inventory for use other than resale (including use as gifts and free samples or for personal use)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



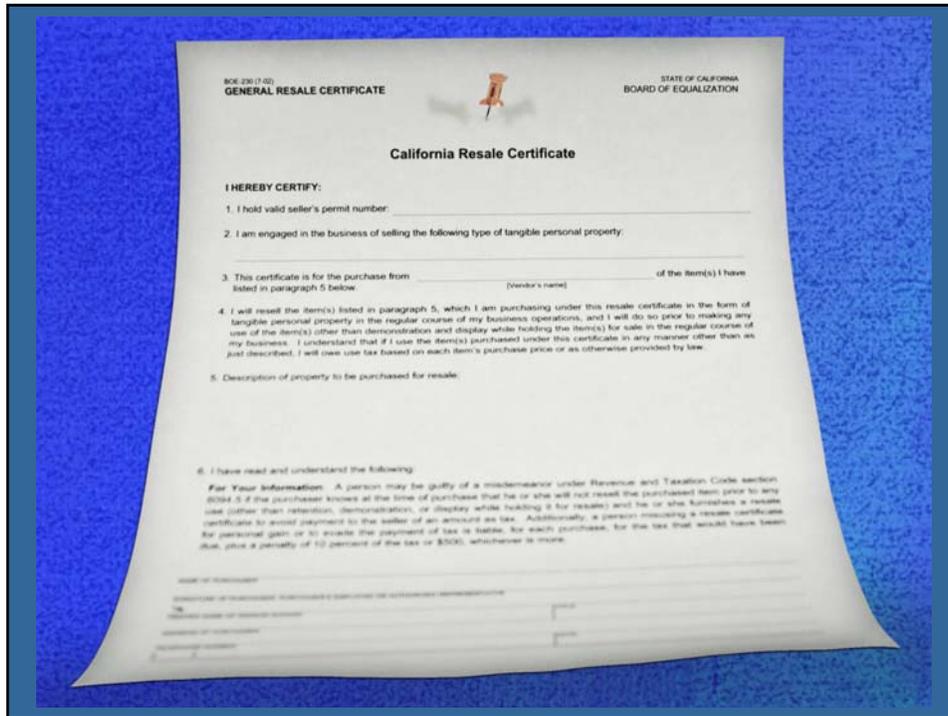
Permit/License Verification

The screenshot shows the California State Board of Equalization (BOE) website. The page title is "Permit/License Verification". The header includes the BOE logo, navigation links (Home, File a Return, Make a Payment, Taxes & Fees, Forms & Pubs, Permits & Licenses, Online Services, News & Events), and a search bar. The main content area is titled "Verification" and contains a form titled "Verify a Permit, License, or Account". The form has 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

Bishop Small Business Seminar of July 28, 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”**

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

California Resale Certificate

I HEREBY CERTIFY:

- I hold valid seller's permit number: RI 123-456789
- I am engaged in the business of selling the following type of tangible personal property:
Jewelry
- This certificate is for the purchase from: Acme Wire of the item(s) I have listed in paragraph 5 below. (Seller's name)
- 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.
- 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 A COMPANY OR AUTHORIZED REPRESENTATIVE):
Ruby M. Malone
 ADDRESS OF PURCHASER: 123 Pine Street, San Francisco, CA 95614
 TELEPHONE NUMBER: (415) 555-1234

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

STATE OF CALIFORNIA
CALIFORNIA STATE BOARD OF EQUALIZATION

SELLER'S PERMIT

ISSUE PERMIT NO. 1875914445 NEW D. SER. TE. LITERAL 123456789

ISSUE DATE: 12/15/2010

ISSUE TO: NEW FORM ADDRESS
 PERMITTEE'S NAME: JO
 TAXPAYER ID NO./DBA OR TRADING BUSINESS: 123456789
 SSN: 123456789 / ADDRESS: 123456789
 CITY: 123456789 / STATE: 123456789

ISSUE TO: NEW FORM ADDRESS
 PERMITTEE'S NAME: JO
 TAXPAYER ID NO./DBA OR TRADING BUSINESS: 123456789
 SSN: 123456789 / ADDRESS: 123456789
 CITY: 123456789 / STATE: 123456789

For general tax questions, please call our Information Center (800) 403-7110.
 For information on your rights, contact the Taxpayer's Rights Advocate Office at (800) 224-2798 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.



**Employee or
Independent
Contractor**

EDD Employment
Development
Department
State of California

v13a

Introductions

Gilbert Fernandez
Employment Tax Consultant
www.edd.ca.gov
Taxpayer Assistance Center:
1-888-745-3886

Reasons to Properly Classify Workers

- Avoid reclassification audits due to:
 - Worker Claims
 - Worker Informants
 - Competitor Informants
- Prevent additional taxes, penalties, and interest.
- Avert possible revocation of state or local licenses.

Misclassification Example

One worker, earning \$20,000 for one year (tax year 2013)	Employer A (Correctly classifies worker as employee)	Employer B (Misclassifies worker as independent contractor)
UI (3.4%)*	\$238	\$238
*New employer rate		
ETT (0.1%)	\$7	\$7
SDI (1.0%)		\$200
PIT (6.0%)		\$1,200
Total due for one year	\$245	\$1,645**
		** Plus penalty and interest

Types of Workers

- Employees
 - Common Law
 - Statutory
 - Exempt
- Independent Contractors

Common Law Guidelines

Common Law Employee:

An individual who performs services for you and is subject to your control regarding what will be done **and** how it will be done.

Independent Contractor:

An individual who performs services for you **but** you control only the result of the work.

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 and without cause is strong evidence of right to control.

Examining the Factors



Distinct trade or occupation	Method of payment
Supervision	Regular part of the business
Skill level	Belief of the parties
Tools and place of work	Extent of actual control
Length of time	Services benefit the principal
Ability to earn a profit or incur a loss	

Employment (DE 231)

Employment Determination Guide (DE 38)

Weighing the Factors

The importance or weight given each factor will vary, depending on the specific work situation, industry, and occupation.



Statutory Employees

Employee by law under a specific statute.

Examples include, but not limited to:

- Corporate officers
- Unlicensed contractors
- Certain Limited Liability Company members

Exempt Employees

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

Examples include:

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

Exempt Employment (DE 231EE)

Additional Resources

- *California Employer's Guide* (DE 44)
- *Determination of Employment Work Status* (DE 1870)
- California Unemployment Insurance Appeals Board website www.cuiab.ca.gov/index.asp
- Online Employee or Independent Contractor Course www.edd.ca.gov/Payroll_Taxes/Web_Based_Seminars.htm

Thank You.

Questions?



The slide features a light blue background with a darker blue horizontal band at the top. The text "Thank You." is centered in a white rounded rectangle, and "Questions?" is in a white circle below it. The EDD logo is in the bottom right corner.

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



Date

The slide has a dark blue background with a vertical light blue stripe on the left. The title is in white. The IRS logo is in the bottom left, and the word "Date" is in the bottom right.

Necessity of Books and Records

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



42

Necessity of Books and Records

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



43

Books and Records

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



44

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



45

Recordkeeping Requirements

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



46

Record Types Needed Gross Receipts

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



47

Record Types Needed Purchases and Expenses

- Amount paid
- Amount was for business purchases



48

Record Types Needed (Cont'd)

Charitable Contributions, Travel, Transportation,
Entertainment, Gifts

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



49

Record Types Required Employment Taxes

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



50

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



51

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



52

Responsibility of Books and Records

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



53

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



54

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



55

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



56

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



57

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



58

Contact information

Name
Phone Number
E-Mail Address



59

2015



State of California
Franchise Tax Board

Forms of Ownership



Presented by
Small Business Education and Outreach Section

2015



State of California
Franchise Tax Board

Sole Proprietorships



STATE OF CALIFORNIA
Franchise Tax Board

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

The image shows a portion of the California Schedule C form. Key sections visible include:

- Part I: Profit or Loss From Business** (Schedule C)
- Part II: Expenses** (Schedule C-EZ)
- Part III: Other Income** (Schedule C-EZ)
- Part IV: Other Expenses** (Schedule C-EZ)
- Part V: Other Income** (Schedule C-EZ)
- Part VI: Other Expenses** (Schedule C-EZ)

- 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.



2015



State of California
Franchise Tax Board

General Partnerships



STATE OF CALIFORNIA
Franchise Tax Board

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.



STATE OF CALIFORNIA
Franchise Tax Board

Partnership Characteristics



- 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



State of California
Franchise Tax Board

C Corporations



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 a meeting around a large wooden table. The bottom left corner of the slide contains the State of California Franchise Tax Board logo.

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.



STATE OF CALIFORNIA
Franchise Tax Board

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.



STATE OF CALIFORNIA
Franchise Tax Board

2015



State of California
Franchise Tax Board

S Corporations



STATE OF CALIFORNIA
Franchise Tax Board

S Corporation Characteristics



A separate legal entity owned by shareholders.



Must register with SOS before conducting business.



Election is made for S corporation status.



STATE OF CALIFORNIA
Franchise Tax Board

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.



2015



State of California
Franchise Tax Board

Limited Liability Companies (LLC)



STATE OF CALIFORNIA
Franchise Tax Board

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.



STATE OF CALIFORNIA
Franchise Tax Board

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.



STATE OF CALIFORNIA
Franchise Tax Board

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.



STATE OF CALIFORNIA
Franchise Tax Board

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 election types like "Final Return", "S Corporation", "Partnership", and "C Corporation". It also contains sections for "Schedule B Details" and "Schedule C" information.

- 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 checkboxes for "Final Return", "S Corporation", "Partnership", and "C Corporation". It also contains sections for "Schedule B Details" and "Schedule C" information.

- 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



STATE OF CALIFORNIA
Franchise Tax Board

Alvaro Hernandez Education and Outreach Manager

Telephone

• 916.845.5424

Email

• Alvaro.Hernandez@
ftb.ca.gov



STATE OF CALIFORNIA
Franchise Tax Board

Lucius Davis
Small Business Liaison (SBL)

SBL Line

• 916.845.4669

Telephone

• 916.845.3239

e-mail

• Lucius.davis@ftb.ca.gov



STATE OF CALIFORNIA
Franchise Tax Board

Marc Narlesky
Technical Advisor to the
Taxpayers Advocate

Telephone

• 916.845.4122

Email

• Marc.narlesky@ftb.ca.gov



STATE OF CALIFORNIA
Franchise Tax Board

Terri Isedeh
Trend and Issue Specialist

Telephone

• 916.845.3185

Email

• Terri.Isedeh@ftb.ca.gov



STATE OF CALIFORNIA
Franchise Tax Board