



***The Honorable Michelle Steel  
California State Board of Equalization  
Welcomes you to the  
Third District's  
Basic Sales and Use Tax Presentation***

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## **About This Presentation**

The contents of these slides do not constitute written advice from the Board of Equalization under Revenue and Taxation Code, Section 6596.

The following presentation is to be used only as an aid to illustrate general tax concepts, but it does not address every situation.

The Revenue and Taxation Code, regulations, court decisions and other applicable laws generally control the decision making process.

Throughout this presentation, you'll find reference cites in the bottom right hand corner of the screen. They are found in the Board of Equalization's Business Taxes Law Guide, Volume I, which is available on our website at [www.boe.ca.gov](http://www.boe.ca.gov).

Please contact Board of Equalization staff for a comprehensive response to your specific questions.

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## Presentation Objectives

- ❖ To provide a basic understanding of the Sales and Use Tax Law
- ❖ To teach business owners how to avoid common mistakes
- ❖ To publicize services available to business owners

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## A Seller's Permit ...

- ❖ Allows sales to be made in California.
- ❖ Must be issued in the owner's name for each business address.
- ❖ Does not allow buying items for personal use without paying tax.



<http://www.boe.ca.gov/info/reg.htm>

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## Do I Need a Seller's Permit?

- ❖ Every person, (i.e. individual, firm, partnership, corporation, etc.,)
- ❖ Engaged in the business of selling or leasing tangible personal property
- ❖ Wholesalers, as well as retailers, must secure such permit.
- ❖ No fee is required to obtain a permit

Analysis of the California Sales and Use Tax Law

## How Do I Apply For a Seller's Permit?

The screenshot displays the California State Board of Equalization (BOE) website. At the top, the BOE logo and name are visible, along with a search bar and navigation links for 'Log In', 'About BOE', 'Languages', and 'Contact Us'. The main navigation menu includes 'Home', 'File a Return', 'Make a Payment', 'Taxes & Fees', 'Forms & Pubs', 'Permits & Licenses', and 'eServices'. A yellow arrow labeled 'eREG' points to the 'eServices' menu item. Below the navigation, there are sections for 'Registration (eReg)', 'Request Relief from Penalty or Interest', 'File a Return (eFile)', and 'Make a Payment (ePay)'. A central image shows a person's hands using a tablet. At the bottom, there are three columns of links: 'Popular Topics', 'How Do I...', and 'Business Center'. The 'Popular Topics' column includes links for 'Tax Rates (July 2013) Lookup', 'eFile Sales & Use Tax', 'Express Login', 'Tax Rates', 'Verify Permit', 'Login', 'eServices Overview', 'Sales & Use Tax in California', 'eFile Links', and 'Register for a Permit, License, or Account'. The 'How Do I...' column includes links for 'Register for Permit, License, or Account', 'Verify a Permit or License', 'Find a City or County Sales Tax Rate', 'Change My Business Information', 'Request Extension or Relief from Penalty/Interest', 'Close a Permit, License, or Account', 'Find Information About Use Tax', 'Learn About the Fire Prevention Fee', and 'Reduce My Property Tax Assessment'. The 'Business Center' column includes links for 'Starting or Closing Your Business?', 'Small Business Tax Guide', 'What is a Seller's Permit?', 'Industry Guides', 'Resale Certificate Tips', 'Internet Sales Information', 'Registration for Out-of-State Sellers', 'California Tax Service Center', 'Useful Forms & Publications', and 'Helpful Tax Seminars'. A small number '6' is visible in the bottom right corner of the screenshot.

## Electronic Registration eReg



- ❖ June 2012, the BOE implemented “eReg” an Internet-based registration system.
- ❖ Taxpayers are able to register online for most tax and fee programs administered by the BOE.
- ❖ The eReg system will identify the permits, licenses, and accounts a taxpayer is required to hold and will allow them to register for all of them by submitting one application

Publication 214 – *Doing Business Just Got Easier with eReg*

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## What Is A Sale?

Any transfer of title or possession, of tangible personal property for consideration, *regardless* of when payment is received.



§ 6006, § 6012

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## What Is Sales Tax?

- ❖ Sales tax is imposed upon the retailer (seller) on the sale of tangible personal property at retail in the State of California.
- ❖ Retailer may be reimbursed for the sales tax by their customers.
- ❖ Tax is due based upon the gross receipts from retail sales.

Analysis of the California Sales and Use Tax Law

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## What Are Total Gross Receipts?

- ❖ Total amount received for the sale whether received in money or other consideration, e.g. barter.
- ❖ Valued in money.
- ❖ Generally includes charges related to your sales, such as fabrication labor, service, etc.
- ❖ Includes any credit allowed for trade-ins.



§ 6006, § 6012

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## Presumptions of the Sales and Use Tax Law

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



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## What Is Use Tax?

- ❖ California purchaser owes and must pay the use tax due on items purchased for use, stored, consumed, or given away in California (without payment of tax).
- ❖ Out-of-state retailers “engaged in business” in California must collect and pay use tax on items sold to Californian consumers.



# When Might Use Tax Be Due?

## Example 1

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**

**Resale Inventory**



*Billy's Bikes*

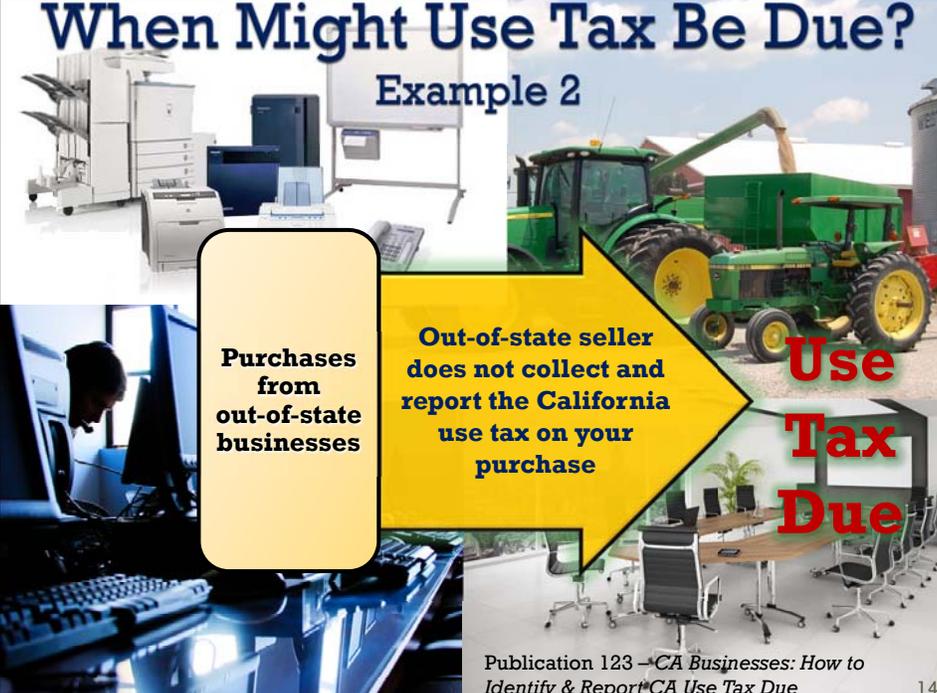
Analysis of the California Sales and Use Tax Law

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# When Might Use Tax Be Due?

## Example 2

Purchases from out-of-state businesses → Out-of-state seller does not collect and report the California use tax on your purchase = **Use Tax Due**



Publication 123 - CA Businesses: How to Identify & Report CA Use Tax Due

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## How Do I Pay California Use Tax Due?

If you have a Seller's Permit, you must report your purchases subject to use tax on your Sales & Use Tax Return.

If you do not have a Seller's Permit or a Consumer Use Tax account, you may report purchases subject to use tax on:

- ❖ Your California Individual Income Tax Return filed with the Franchise Tax Board (FTB), or
- ❖ A Consumer Use Tax Return (form BOE 401-DS)

<http://www.boe.ca.gov/pdf/boe401a2.pdf>

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## Common Exemptions & Deductions



**Sales for Resale**



**Food Products**



**Labor**



**Sales to the U.S. Government**



**Sales in Interstate and Foreign Commerce**



**Sales Tax Included in Gross Receipts**

<http://www.boe.ca.gov/sutax/staxregs.htm>

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## Sales for Resale

If you sell tangible personal property for resale, the transaction is not subject to sales or use tax provided the sale is properly documented.

As a result, you need to have them provide a resale certificate as proof that the property was purchased for resale.

The certificate must be taken on a timely basis and it must include certain specific information.

Publication 73 – *Your California Seller's Permit (includes a copy of a resale certificate)*

Publication 42 – *Resale Certificate Tips*

Publication 103 – *Sales for Resale*

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## Sample Resale Certificate

<b>California Resale Certificate</b>	
<b>VALLEY MUSIC COMPANY</b>	
(Name of Purchaser)	
<b>15350 Sherman Way, Van Nuys, CA</b>	
(Address of Purchaser)	
I HEREBY CERTIFY: That I hold valid seller's permit No. <u>SR AC 99-999999</u>	
issued pursuant to the Sales and Use Tax Law; that I am engaged in the business of	
selling	<b>Musical Instruments</b>
that the tangible property described herein which I shall purchase from	
<b>STEINWAY PIANO COMPANY</b>	
will be resold by me in the form of tangible personal property; provided	
however, that in the event any of such property is used for any purpose	
other than retention, demonstration, or display while holding it for sale	
in the regular course of business, it is understood that I am required by	
the Sales and Use Tax Law to report and pay tax, measured by the	
purchase price of such property or other authorized amount.	
Description	
of the property to be purchased: <b>PIANOS</b>	
Date: <u>Jan 30</u> 19 <u>96</u>	<u>John Doe</u>
	(Signature of Purchaser or Authorized Agent)
	<b>PRESIDENT</b>
	(Title)

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Event Presentations  
San Diego Small Business Fair of September 23, 2014

Available in Regulation 1668, Publication 73, and the BOE website, Form BOE-230.

Must be filled out completely

Must be taken timely and in good faith.

**GENERAL RESALE CERTIFICATE**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**California Resale Certificate**

**I HEREBY CERTIFY:**

1. I hold valid seller's permit number: \_\_\_\_\_
2. I am engaged in the business of selling the following type of tangible personal property: \_\_\_\_\_
3. This certificate is for the purchase from \_\_\_\_\_ 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 sale 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:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. I have read and understand the following:  
**For Your Information:** A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell 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 \_\_\_\_\_  
ADDRESS OF PURCHASER (PURCHASER'S PURCHASE OR AUTHORIZED REPRESENTATIVE) \_\_\_\_\_  
7% TAX \_\_\_\_\_  
PHONE NUMBER OF PURCHASER \_\_\_\_\_ TITLE \_\_\_\_\_  
ADDRESS OF PURCHASER \_\_\_\_\_  
TELEPHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_  
( ) \_\_\_\_\_

Copies of BOE-230, California Resale Certificate are available on our website and from our Information Section [faxback service](#).

SEPTEMBER 2012 YOUR CALIFORNIA SELLER'S PERMIT 20

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# Good Faith

A seller will be presumed to have taken a resale certificate in good faith if it contains the essential elements and otherwise appears to be valid on its face.

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## Verify a Seller's Permit



Call 1-888-225-5263



Access our online resale verification program by accessing our website at [www.boe.ca.gov](http://www.boe.ca.gov)



Free BOE app on smart phones and tablets (iPhones/iPads)

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## Penalties for Misuse of Resale Certificates

Misuse of a resale certificate is a *misdemeanor*.

The penalty is \$500 or 10% of the amount of tax *per transaction*, whichever is greater.

Business owners can be held responsible for the actions of their employees.

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## Food Products

The discussion of the taxability of food and beverage sales is divided into two categories:



**Food and beverages sold for consumption at your place of business, which are generally taxable**



**Cold food products sold to-go**

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## Food Products



**Non-alcoholic & Non-carbonated beverages**



**Most food items sold in grocery stores**



**Snack foods**



**Cold prepared food items sold "to go"**

**Non-Taxable Food Items**

Regulations 1602 & 1603  
Publication 22 – Dining & Beverage Industry  
Publication 24 – Liquor Stores  
Publication 31 – Grocery Stores

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## Labor Repair & Installation

**Labor or service charges related to a nontaxable sale are NOT taxable**

- ❖ **Labor repair**
- ❖ **Installation**

**Fabrication AND Assembly Labor IS taxable! Fabrication is considered to be work done in creating, producing, processing, or assembling a product.**

Publication 108 – *Labor*

Publication 9 – *Construction and Building Contractors*

Publication 25 – *Auto Repair Garages and Service Stations*

Publication 34 – *Motor Vehicle Dealers*

Publication 35 – *Interior Designers and Decorators*

Publication 37 – *Graphic Design, Printing, and Publishing*

Publication 62 – *Locksmiths*

Publication 125 – *Dry Cleaners*



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## Sales to the U.S. Government

- ❖ Sales to the U.S. (federal) government or its instrumentalities (e.g. the Army) are typically not taxable.
- ❖ Sales to the State of California, to counties and to cities are normally subject to tax.
- ❖ Government purchase order or documents demonstrating direct payment by the United States are required to support any claimed exemption.

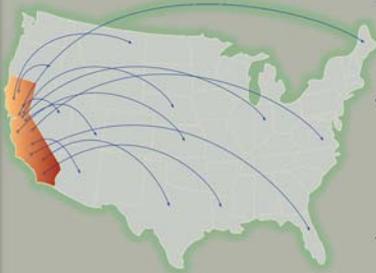
Regulation 1614

Publication 102 – *Sales to the U.S. Government*



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## Sales in Interstate and Foreign Commerce



- ❖ Title or possession must pass outside of California's borders.
- ❖ Must be shipped out of state by common carrier or retailer's facilities.
- ❖ If change of possession or title occurs in California, the sale is taxable unless otherwise exempt.
- ❖ Must maintain shipping or export documents.

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## Other Exemptions & Deductions

**Delivery Charges** - If items are delivered by retailer's facilities, delivery charges are generally taxable if the sale is taxable. "Handling" charges typically are taxable if the sale is taxable. (Publication 100 & Regulation 1628)

**Bad Debts** - Deductible only for previously reported taxable sales that have been written off on the business owner's books and records. (Regulation 1642)

**Tax-paid Purchases Resold Prior to Use** - If a vendor charged tax for your inventory items. (Regulation 1655)

**Returned Taxable Merchandise** - Retailer must refund the customer's entire sales amount including sales tax.

**Numerous Other Exemptions** - See Publication 61, Sales and Use Taxes: Exemptions and Exclusions

<http://www.boe.ca.gov/sutax/staxregs.htm>

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## Required records must be maintained for at least 4 years



**Records of sales including: sales invoices, cash register tapes, sales journals, etc.**



**Records of purchases including: purchase invoices, cancelled checks, purchase journals, etc.**



**Documentation to support claimed exemptions such as: resale certificates, exemption certificates, purchase orders, shipping documents, etc.**



**Normal books of account.**



**Schedules or working papers used in preparing tax returns.**

Publication 116 – Sales and Use Tax Records

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## Filing Requirements

**When you are issued a seller's permit, the Board will assign you a reporting basis, based on the information you furnished.**

**A tax return (with payment) is due each period**

**Even if no sales are made, you must file a "0" return**

**E-filing is the BOE method for filing tax returns**

**Yearly (Calendar Year)**

**Fiscal Yearly (July 1 - June 30)**

**Quarterly (Calendar Quarters)**

**Quarterly Prepayment**

**Quarterly Prepayment with EFT (Electronic Funds Transfer)**

Publication 159 – eFiling

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## Filing Requirements

**Penalty is assessed for:**

**Not filing a return (10%) or prepayment (6%)**

**Late filing of returns (10%) or prepayments (6%)**

**Late payments (10%)**

**Payment by other than Electronic Funds Transfer (EFT) accounts (10%)**

*Penalty is based on tax due.*

**Collects tax reimbursement but fails to timely remit tax (40%)**

Regulation 1703  
 Publication 75 – *Interest and Penalties*

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## Components of the Tax

**State Tax Rate increased by .25% effective 1/1/13**

**\* District Tax(es) may be up to 2.50%**

Component	Rate (%)
State Tax	6.5
County Tax	0.25
Local Tax	0.75
*District Tax(es)	2.5

Any city or county with applicable district taxes will have a sales and use tax rate over 7.50%

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## Other Important Facts and Responsibilities

Advise the BOE of ownership changes. This may affect your liability for future taxes.

Advise the BOE of changes in business, mailing, and email addresses.

Retailers should report sales in the return period when the sale is made even though payment may be received in a later return period.

Retailers are responsible for payment of sales tax even when the customer does not pay it.

Publication 73 – *Your California Seller's Permit*  
Publication 74 – *Closing Out Your Seller's Permit*

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## Other Online Services Available

### BOE Website ([www.boe.ca.gov](http://www.boe.ca.gov))

- ❖ Online Verification of Seller's Permit Numbers
- ❖ Enhanced Tutorials
- ❖ Email Notification Lists
- ❖ Class & Seminar Schedules
- ❖ Publications Specific to Your Type of Business
- ❖ Frequently Asked Questions (FAQ's)
- ❖ Directory of BOE Offices
- ❖ Tax News, Special Notices
- ❖ Credit Card Payments
- ❖ Useful Links to Other Websites

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# Event Presentations

## San Diego Small Business Fair of September 23, 2014

**Free In-Person Seminars & Workshops**

CA.GOV California State Board of Equalization

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**News & Events**

News Releases | Media Resources & Reports | Special Notices | **Events**

Free In-Person Seminars & Workshops

For Business Owners

- Business Owner
- Women Entrepreneur
- Restaurant
- Cigarette/Tobacco Sellers
- Sales and Use Tax Classes
- International Fuel Tax (IFTA) Workshops
- Town Hall Meetings

For Nonprofit & Exempt Organizations

- Seminar Dates & Locations

For Tax Professionals

- Tax Practitioner Conferences
- Online Services Workshops

Additional Outreach Resources

- Online Seminars
- Business Owner Resources
- Nonprofit and Exempt Publications
- Event Guidelines
- Archive of BOE In Person Seminars
- Speakers' Bureau

**Under "Events" Tab:**

**Seminars & Workshops:**

- ❖ Business Owners
- ❖ Women Entrepreneur
- ❖ Restaurant
- ❖ Cigarette/Tobacco Sellers
- ❖ Sales & Use Tax Classes
- ❖ International Fuel Tax (IFTA)
- ❖ Town Hall Meetings
- ❖ Nonprofit & Exempt
- ❖ Tax Practitioner
- ❖ Online Seminars & Resources

**Industry Tax Guides**

CA.GOV California State Board of Equalization

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**Industry Tax Guides**

**Industry Tax Guides**

The Board of Equalization's Tax Industry Guides are a one-stop-shop for owners and operators looking for information on key tax and fee issues relevant to their business.

Each guide covers the most common industry issues, and includes links to relevant resources, all in a convenient tab-based format. They are a source of basic information that complement the BOE's many online publications, and are not a substitute for any applicable laws and regulations.

Please send your suggestions to improve our Industry Guides series of web pages to [SUIC-Industry\\_Guides@boe.ca.gov](mailto:SUIC-Industry_Guides@boe.ca.gov).

Please choose your industry:

- Auto Repair Garages
- Caterers
- Construction Contractors
- Gas Stations
- Liquor Stores
- Mobile Phone Vendors
- Nonprofit Organizations
- Restaurants
- Tax Practitioners

More Industry Guides are coming soon!

**One-Stop-Shop for owners and operators looking for tax and fee issues relevant to their business:**

Industries include:

- ❖ Auto Repair Garages
- ❖ Caterers
- ❖ Construction Contractors
- ❖ Gas Stations
- ❖ Liquor Stores
- ❖ Mobile Phone Vendors
- ❖ Nonprofit Organizations
- ❖ Restaurants
- ❖ Tax Practitioners
- ❖ More Industry Guides coming soon!



**Get It in Writing!**  
 For your protection, it is best to get tax advice in writing.

Requests for written advice can be emailed to the Board of Equalization (BOE) at [www.boe.ca.gov/info/email.htm](http://www.boe.ca.gov/info/email.htm) or mailed directly to the BOE field office nearest you (addresses are listed on the reverse).

The Sales and Use Tax Law can be complex, and you are encouraged to put your tax questions in writing. Not only will that give us more information on which to base our advice to you, it may protect you from owing tax, interest, or penalties if we should give you erroneous information. Such protection is not provided for advice given to you verbally, in person, or on the telephone.

The Sales and Use Tax Law (section 6596) provides that you can obtain relief from tax and any penalty or interest charges if you fail to report tax on a transaction because you relied on erroneous written advice from the BOE.

*For this relief to apply, the following conditions must be met:*

- You must have written to the BOE for tax advice, and your request must have described the specific facts and circumstances of the activity or transaction (if someone writes on your behalf, you must be identified as the taxpayer to whom the advice applies) and
- The BOE must have responded in writing and stated whether the described activity or transaction was subject to tax or stated the conditions under which tax would be imposed.

*If you have received written advice from the BOE and request tax relief under section 6596, it cannot be granted if, following our course of advice:*

- We wrote to you and modified or rescinded our earlier advice, and your tax liability is a transaction that occurred after such modification; or
- There has been a change in the law or a final decision of a court, which renders our written advice no longer valid.

*In addition to written advice, the BOE offers other resources to help you understand the law:*

- You can call or visit the nearest BOE field office and talk to a tax representative.
- You can request a copy of a regulation or a publication.
- You can subscribe to our law guide service.

All of these resources are designed to help you better understand your rights and responsibilities and are available on our website at [www.boe.ca.gov](http://www.boe.ca.gov) or by calling our Taxpayer Information Line at 1-800-405-7115.

## Get It in Writing

### Revenue and Taxation Code Section 6596 - Excusable Delay-Reliance on Advice, states:

“If the Board finds that a person’s failure to make a timely return or payment is due to the person’s reasonable reliance on written advice from the Board, the person may be relieved of taxes imposed by §6051 and §6201 and any penalty or interest added thereto...”

§6596

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# 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](http://www.boe.ca.gov/tra/tra.htm)



Publication 70 - Understanding Your Rights as a California Taxpayer

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## Taxpayer Information Section



Taxpayer Information Section  
(general tax questions answered)  
1-800-400-7115  
Mon – Fri, 8:00 a.m. to 5:00 p.m.



24 hr. fax-back service for  
commonly requested forms and  
publications to choose from  
automatically faxed back to you.



24 hr voice recordings  
on specific topics  
1-800-735-2929



## Social Media

BOE on the following social  
media outlets



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

We welcome your comments and suggestions.



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State of California  
Franchise Tax Board

2013

## Forms of Ownership



Presented by  
Small Business Education and Outreach Section

2013



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.
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State of California  
Franchise Tax Board

## Sole Proprietorship Characteristics

The image shows a portion of the IRS Form 987, 'Profit or Loss From Business'. The form is titled 'SCHEDULE C Profit or Loss From Business' and includes sections for 'Part I Income', 'Part II Expenses', and 'Part III Net Profit or Loss'. The 'Net Profit or Loss' section shows a total profit of \$12,000. The form is used to report the business's profit or loss on the owner's Form 540 income tax return.

- 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.

## General Partnerships



## 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.

## 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.

## California Legal Entities

Limited Partnerships

Limited Liability Partnerships

Corporations

Limited Liability Companies



These legal entities are taxed.

## California Legal Entities

Formed by filing the appropriate document or form with the Secretary of State (SOS).

### Limited Partnership

- Certificate of Limited Partnership
- Form LP-1

### Limited Liability Partnership

- Begin as General Partnership
- Application to Register a Limited Liability Partnership
- Form LLP-1

Taxed annually until formally closed.

## California Legal Entities

Formed by filing the appropriate document or form with the SOS.

### 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.



2013



## Limited Partnerships & Limited Liability Partnerships



State of California Franchise Tax Board

The slide features a dark blue header with the year "2013" on the right and the State of California Franchise Tax Board logo on the left. The main content area has a white background with a large dark blue box on the left containing the text "Limited Partnerships & Limited Liability Partnerships" in white. To the right of this box is a photograph of three men in business suits shaking hands. The State of California Franchise Tax Board logo is also present at the bottom left of the slide.

## Limited Partnership

### General Partner

- Manages business affairs.
- Personally assumes all partnership debts.

### Limited Partner

- Only provides capital.
- May not participate in management.
- Liability limited to the amount of investment.

Taxed annually until formally closed.

## Limited Liability Partnership



Only used by persons licensed to practice:

- Public Accountancy
- Law
- Architecture
- Engineering
- Land Surveying

## Limited Partnership and Limited Liability Partnership Characteristics

The image shows a thumbnail of the 2012 Partnership Return of Income Form 565. The form is titled "2012 Partnership Return of Income 565" and includes a yellow box at the top that says "Get 565 limited liability partnership instructions for the 2012 form". The form contains various sections for reporting income, deductions, and credits, with a table at the bottom for listing partners and their respective shares.

- Not a separate taxable entity.
- Subject to \$800 annual tax.
- 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.

## C Corporations



## 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.

## 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.

2013



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

The image shows a thumbnail of the California S Corporation Franchise or Income Tax Return form (Form 100S) for the year 2012. The form includes fields for the taxpayer's name, address, and city, as well as checkboxes for various tax options and instructions. A yellow box at the top of the form reads 'Get 2013 Bulletin to see the instructions for the 2013 form'.

- 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.

2013



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 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.

## LLC Characteristics Single Member and Partnership

Check one	File with
1 Sole member	Form 568
2 Partnership	Form 568

Check one	File with
1 Sole member	Form 568
2 Partnership	Form 568

- 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.

## LLC Characteristics C Corporation Classification

- 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

- 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



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

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Email

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**Lila Fedler**  
**Technical Advisor to the**  
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## Recordkeeping for Small Business/Self Employed Individuals



### Necessity of Books and Records

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



## 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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## Electronic Report Examples

- General ledger
- Profit & loss
- Voided / deleted
- Transactions summary
- Transactions detail
- Transaction list by date
- Audit trail



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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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## Your Guide to an IRS Audit

- Video explains examination process and assists in preparing for an audit
- Available at IRS.gov video portal at: [irsvideos.gov/audit](http://irsvideos.gov/audit)



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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](http://IRS.gov)



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## Contact information

Name:

Phone Number:

E-Mail Address:



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Employee or  
Independent  
Contractor



v13a

## Introductions

Lynn Pidal  
Tax Administrator  
Taxpayer Educational Assistance Program

[www.edd.ca.gov](http://www.edd.ca.gov)

Taxpayer Assistance Center:  
1-888-745-3886

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



## Objectives

- Common misconceptions
- Ways to combat payroll tax fraud
- Employees or independent contractors
- Resources to help classify workers

## Common Misconceptions

When is an individual an employee?

There are several common misconceptions which often lead to misclassifying workers as *independent contractors*.

*Resource:*  
*Independent Contractor Misconceptions*  
(DE 573M)

## 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%)* *New employer rate	\$238	
ETT (0.1%)	\$7	
SDI (1.0%)		
PIT (6.0%)		
<b>Total due for one year</b>	\$245	

## What is Payroll Tax Fraud?

- Paying employees “under the table” to avoid paying taxes.
- Filing false payroll returns.
- Neglecting to report all wages paid.
- Intentionally misclassifying employees as independent contractors.

## Payroll Tax Fraud Resources

For more information:

- *Paying Cash Wages “Under the Table”* (DE 573CA)
- *Help Us Fight Fraud* (DE 2370)
- *Employment Development Department  
Underground Economy Operations* (DE 631UEO)

## Types of Workers

- Employees
  - Common Law
  - Statutory
  - Exempt
- Independent Contractor

## 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)*

## Distinct Trade or Occupation

Not established in business.  
Usually works for a company.

➤ Employee

Company hires and pays assistants. Manages company employees.

Available and advertises to public. Has business expenses, issues invoices and has a business license.

➤ Independent Contractor

Hires, supervises and pays own assistants.

## Supervision

No supervision.

➤ Independent Contractor

Supervised as to manner and method of performing job.

➤ Employee

## Skill Level

Company provides additional training, processes, methods, and/or systems. ➤ Employee

No training required. They are an expert in their field. ➤ Independent Contractor

## Tools and Place of Work

Determined by the business. Provided, if required. ➤ Employee

Worker chooses and provides tools. ➤ Independent Contractor

## Length of Time

Continuous relationship  
(includes seasonal,  
temporary, and / or part-  
time). ➤ Employee

Project oriented.  
Sporadic in nature. ➤ Independent Contractor

## Method of Payment

Time-based rate: hour,  
week, or other regular  
basis. ➤ Employee

Flat rate, per project or  
progress payments,  
retainer, or contingency  
basis. ➤ Independent Contractor

## Regular Part of Business

Services are part of the company's regular business activity.

➤ Employee

Services are incidental or supportive of business activity.

➤ Independent Contractor

## Belief of Parties

Both parties believe relationship to be of employment.

➤ Employee

Both parties believe relationship to be independent.

➤ Independent Contractor

## Extent of Actual Control

Responsible to finish work – may face repercussions for terminated contract. ➤ Independent Contractor

Can quit or be terminated at will without liability. ➤ Employee

## Extent of Actual Control

Must follow company procedures. Meetings and/or reports may be required. ➤ Employee

Not required to follow instructions. Uses own professional judgment. ➤ Independent Contractor

## Extent of Actual Control

Services must be rendered personally. Work schedule set by the company. ➤ Employee

Worker can subcontract to others. Sets own work schedule. ➤ Independent Contractor

## Services Benefit the Principal

Work performed for personal benefit of individual. ➤ Independent Contractor

Work performed for benefit of business. ➤ Employee

## Profit / Loss

No financial investment required. Expenses reimbursed.

➤ Employee

Worker has financial investment. Assumes opportunity for profit and risk of loss.

➤ Independent Contractor

## Weighing the Factors

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



## When Hiring New Employees

Submit *Report of New Employee(s)* (DE 34)

- Locate parents who are delinquent in their child support obligations.
- Report new hires or rehires within 20 days.
- File timely to avoid penalty and interest.

## Independent Contractor Reporting

Submit *Report of Independent Contractor(s)*, (DE 542)

- 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.

## 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](http://www.cuiab.ca.gov/index.asp)
- Online Employee or Independent Contractor Course [www.edd.ca.gov/Payroll\\_Taxes/Web\\_Based\\_Seminars.htm](http://www.edd.ca.gov/Payroll_Taxes/Web_Based_Seminars.htm)

**Thank You.**

**Questions?**

## Who is the SBA and what can they do for me?

U.S. Small Business Administration



*Your Small Business Resource*

Rosa Rodarte

Business Development Specialist

San Diego District Office

## Small Business Training On-line

- ◆ Free training courses, workshops and knowledge resources for businesses.
- ◆ Wide array of business topics
- ◆ Available 24/7
- ◆ [www.sba.gov/training](http://www.sba.gov/training)

## SBA Financial Assistance

- ◆ **Guaranteed Loans** – Similar to VA/FHA Home loans
- ◆ SBA Lending Partners
  - ❖ **No Direct Lending**
- ◆ NO LOAN GRANTS



## Resource Partners

- ◆ SCORE – Counselors to America's Small Business. 619-557-7272
- ◆ SBDITC – Small Business Development & International Center (619) 482-6391
- ◆ Free business Counseling
- ◆ Workshops, free or fee (various subjects)
- ◆ (619) 727-4877 Rosa Rodarte, SBA



## SBA Business Loan Programs

- ◆ 7(a) Guaranteed Loans
- ◆ CDC (504) Loans
- ◆ Community Advantage Loans
- ◆ Lines of Credit
- ◆ Export Working Capital Loans
- ◆ International Trade Loans



## 7(a) Guaranty Loan Program



- ◆ Maximum loan is \$5 million
- ◆ Guaranty up to \$3.75 million
- ◆ Guaranty Percentages:
  - ❖ 85% for loans  $\leq$  \$150.0 k
  - ❖ 75% for loans  $>$  \$150.0 k
  - ❖ May vary with other programs



## Use of Loan Proceeds

- ◆ Any reasonable business purpose
  - ❖ Purchase machinery & equipment
  - ❖ Working capital
  - ❖ Leasehold improvements
  - ❖ Receivables & inventory
  - ❖ Refinance existing debt
  - ❖ Acquisition/Construction of real estate
  - ❖ Business acquisitions - Franchising



## Eligibility

- ◆ Small by SBA Size Standards
- ◆ Operated as a for-profit
- ◆ Business located in U.S.
- ◆ Unable to secure reasonable financing through other means
- ◆ Some businesses ineligible



## **Government Contracting**

- ◆ Ensure small businesses receive fair share of government contracts
- ◆ Goal is currently 23%



## **Government Contracting Assistance**

- ◆ Procurement Technical Assistance Center  
San Diego Contracting Opportunities Center  
4007 Camino del Rio South, Suite 210  
San Diego, CA 92108-4189  
(619) 285-7020  
<http://www.ptac-sandiego.org>



Event Presentations  
San Diego Small Business Fair of September 23, 2014

[www.sba.gov](http://www.sba.gov)



 **San Diego District Office**

## San Diego District Office

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