

State Board of Equalization

OPERATIONS MEMO

For Public Release

No. : 1164

Date : April 1, 2009

SUBJECT: In-State Service Businesses Tax Gap Program

I. PURPOSE

This Operations Memo provides guidelines and procedures for the implementation of the In-State Service Businesses Tax Gap Program (TGI). TGI efforts will help level the playing field between individuals and businesses that consistently and correctly report their use tax liability, and those that are unaware of their use tax obligations or choose to ignore them.

The Board of Equalization (BOE) anticipates TGI efforts will generate use tax revenue in the short-term, as well as enhance overall voluntary use tax compliance in the long-term. Improving use tax compliance will reduce the competitive disadvantage faced by many California retailers when compared to out-of-state retailers who do not charge California use tax. The TGI also assures that all in-state businesses contribute fairly to the funding of state and local programs.

Over two million service businesses in California are not currently registered with the BOE. When these businesses purchase items (for example, furniture, fixtures, supplies and equipment) for use in California from out-of-state retailers that are not registered to collect the California use tax, the purchaser (in-state service business) is liable for the use tax.

II. HEADQUARTERS RESPONSIBILITIES

A. Outreach Services Division

The Outreach Services Division has primary responsibility for the education and outreach efforts for this program. Initial outreach efforts consisted of an informational letter campaign to educate in-state service business associations about the use tax. The initial education and increased public awareness will:

1. Provide the information and tools necessary to allow those that are willing to comply, the ability to do so,
2. Encourage future self-compliance by businesses who are currently circumventing their tax obligations, and
3. Reassure compliant taxpayers.

Continued education and outreach efforts by the Outreach Services Division will include:

1. Providing use tax information at all Small Business Fairs and BOE events,
2. Mailing additional outreach letters to other service business associations as required,
3. Creating and placing articles in trade magazines, and
4. Creating and disseminating press releases to the media.

B. Data Analysis Section

The Data Analysis Section (DAS) in the Tax Policy Division will routinely examine data from various sources, both within and outside the BOE, to identify in-state service businesses that have a high potential of purchasing items (for example, furniture, fixtures, supplies and equipment) for use in California from out-of-state retailers. Once the in-state service businesses are identified, DAS will forward them to the Centralized Collection Section for further investigation.

C. Centralized Collection Section

The Centralized Collection Section (CCS) will investigate the in-state service businesses identified by DAS to determine if use tax may be due. CCS will send a contact letter (Exhibit A) to the in-state service businesses explaining what use tax is, and how it may apply to their purchases. Included with the contact letter will be the *Use Tax Return Worksheets* (Exhibit B) and publication 123-TG, *California Businesses: How to Identify California Use Tax Due* (Exhibit C). The business may complete the *Use Tax Return Worksheets* to report the items purchased outside California that are subject to use tax during the previous three calendar years. Publication 123-TG explains how businesses can establish the California use tax due on purchases of physical merchandise from out-of-state sellers.

The in-state service businesses are provided 30 days to respond to the contact letter. If a response is not received within 45 days from the inquiry date, a follow-up contact letter will be sent to the business. Initially, CCS staff will track and process the responses received manually. Automated tracking software however will be available to CCS by late-2009.

Based on the contact letter responses, CCS may do one or more of the following:

1. Create Compliance Assessments (CAS) based on the completed *Use Tax Return Worksheets*,
2. Issue account numbers for future reporting,
3. Assist in filing returns for previously unreported use tax liability periods,
4. Request additional information (for example, federal income tax return depreciation schedules),
5. Refer leads to district audit staff for further investigation (if CCS has determined *additional* use tax may be due),
6. Close assignments if no account number (i.e., arbitrary or permanent) is required and no use tax liability is due.

To capture and identify the revenue and payments resulting from TGI efforts, CCS will assign the Lead Source and Lead Source Sub-type code **TGI EDC** (Exhibit D) to an account when a new account number for future reporting is issued

and to a CAS or other FO (Financial Obligation) that may be created by CCS. The Lead Source and Lead Source Sub-type code can be assigned to an account or FO by accessing the LSR ML, *Maintain/Inquire Lead Source Information*, screen in IRIS. Attached are IRIS instructions (Exhibit E) on viewing, adding/deleting, and generating reports for Lead Source and Lead Source Sub-type information.

If a response is not received within 30 days from the follow-up contact letter date or is received but is not consistent with similar industry responses, CCS will further investigate/research the business to determine if use tax may be due.

CCS will contact the business and request the following:

1. Federal income tax returns
2. Depreciation schedules
3. Sample purchase invoices for fixed assets

CCS will also further investigate the business by:

1. Performing a like business analysis,
2. Viewing SOS/business websites, and/or
3. Conducting other research.

Based on the findings from the additional investigation/research of the business, CCS will:

1. Contact the business to further explain use tax and request the business to complete or revise previously submitted *Use Tax Return Worksheets* so as to report the items purchased outside California that were subject to use tax during the previous three calendar years,
2. Refer the use tax lead to district audit staff for audit, or
3. Close the assignment if no account number (i.e., arbitrary or permanent) is required and no use tax liability is due.

The leads CCS determines may owe additional tax should be referred to District Principal Auditor in the respective area for audit. The referral will include all pertinent information, for example, copies of prior correspondence sent by CCS to the business and the responses received, transcribed federal income tax return depreciation schedule information, like business analysis, etc.

For tracking purposes, CCS will issue arbitrary account numbers *only* to the use tax leads referred to district. CCS will conduct periodic follow-ups to determine the status of all in-process use tax leads referred to the district offices.

Additionally, CCS will maintain a list of vendor names reported on the *Use Tax Return Worksheets* received from all in-state service businesses. Periodically, CCS will sort the entries to identify and advise Out-of-State District Compliance, using form BOE-1032, *Information on Out-of-State Retailers*, of the out-of-state vendors who are routinely making sales into California. The notation "In-State Service Tax Gap" should be written in red at the top of form BOE-1032 as a flag to the Out-of-

State District Compliance staff for special handling and to help determine the correct Lead Source and Lead Source Sub-type code to assign if an account number is created. This will assist Out-of-State District Compliance staff in properly identifying and registering out-of-state retailers who are engaged in business in California resulting from TGI efforts. If the out-of-state retailer is registered with the BOE, form BOE-1164, *Audit Memorandum of Possible Tax Liability*, should be used rather than form BOE-1032.

D. Audit Determination and Refund Section

Audit Determination and Refund Section staff will handle determinations and refunds through the normal billing/refund process.

E. Petitions Section

Petitions staff will handle petitions through the normal petitions process.

III. DISTRICT RESPONSIBILITIES

A. In-State District Offices

The District Principal Auditor, or designee, will select all use tax leads referred by CCS for audit using the audit selection reason code **GAP** and assign the lead to district audit staff to determine if use tax may be due. Using the select reason code **GAP** will provide the BOE the ability to track the use tax audits of the in-state service businesses by utilizing the AUD AS screen in IRIS to generate reports for all selected audits with this select reason code.

The audit period for these use tax audits will be the prior three calendar years or other, as determined by the District Principal Auditor, or designee. Although CCS requested the in-state service businesses review their records and self-report purchases subject to use tax that were made during the prior three calendar years, the Revenue and Taxation Code authorizes the BOE to conduct an audit which may go back eight years (longer if fraud is detected) in cases where no return was filed.

Additionally, the District Principal Auditor, or designee, will add the Lead Source code **TGI** and the respective District Lead Source Sub-type code (see Exhibit D) to the account and FO at the time the leads are selected for audit and the FO is created for the audit period. For example, **TGI KHC** will be the Lead Source and Lead Source Sub-type code added to the account and FO created when a use tax lead referred by CCS is selected for audit and is located in the Sacramento District. The Lead Source and Lead Source Sub-type code can be assigned to an account and FO by accessing the LSR ML, *Maintain/Inquire Lead Source Information*, screen in IRIS. Attached are IRIS instructions (Exhibit E) on viewing, adding/deleting, and generating reports for Lead Source and Lead Source Sub-type information.

District audit staff will perform audits on the use tax leads referred by CCS to determine if use tax may be due. The appropriate new BOE-80-TG series "Audit Engagement Letter" (Exhibit F) for the In-State Service Businesses Tax Gap Program should be used to confirm audit engagements or to establish contact.

1. BOE-80-ATG, *Audit Engagement Letter - Confirm Start Date.*
2. BOE-80-BTG, *Audit Engagement Letter - Agreement to Delay Start Date.*
3. BOE-80-CTG, *Audit Engagement Letter - Initiate Contact.*
4. BOE-80-DTG, *Audit Engagement Letter - 10-Day Follow Up.*

The audits will be conducted following general audit procedures set forth in the Audit Manual Chapter 4, *General Audit Procedures.*

District audit staff should advise Out-of-State District Compliance, using form BOE-1032, *Information on Out-of-State Retailers*, when an auditor discovers a business is purchasing items subject to use tax from an unregistered out-of-state retailer. The notation "In-State Service Tax Gap" should be written in red at the top of form BOE-1032 as a flag to the Out-of-State District Compliance staff for special handling. This will assist Out-of-State District Compliance staff in properly identifying and registering out-of-state retailers who are engaged in business in California resulting from TGI efforts (See Out-of-State District Compliance below). The original form BOE-1032 should be forwarded to the Out-of-State District Compliance (Audit Manual section 0213.03 and 0408.22). If the out-of-state retailer is registered with the BOE, form BOE-1164, *Audit Memorandum of Possible Tax Liability*, should be used rather than form BOE-1032.

Additionally, district audit staff should be alert to recognizing transactions where the in-state business is remitting California use tax to an out-of-state unregistered retailer who is not billing the in-state business for the use tax. Auditors should utilize the CTS CS, *Client Search/Registration*, screen in IRIS to determine whether such out-of-state vendors are registered to collect the use tax. When an auditor discovers that an in-state business is erroneously paying use tax to an unregistered out-of-state retailer, the auditor should immediately advise Out-of-State District Compliance (Audit Manual section 0408.23). The business should be informed of the responsibility for the payment of the tax to the proper authority per Regulation 1685, *Payment of Tax by Purchasers.*

District Audit Supervisors will follow the normal audit procedures when processing completed audits. The District Audit Supervisor should also provide CCS feedback, as to the quality of the use tax leads received and suggestions for improvement. This can be done via e-mail to the referring CCS Supervisor.

B. Out-of-State District Compliance

Out-of-State District Compliance staff will register the out-of-state retailers who are found to be engaged in business in California resulting from the In-State Service Businesses Tax Gap Program (TGI). To capture and identify the revenue and payments resulting from TGI efforts, Out-of-State District Compliance staff will assign the Lead Source and Lead Source Sub-type code **TGI OHC** (Exhibit D) to an account when a new account number is issued and the BOE-1032 form was flagged with the notation "In-State Service Tax Gap" written in red at the top. Attached are IRIS instructions (Exhibit E) on viewing, adding/deleting, and generating reports for Lead Source and Lead Source Sub-type information.

IV. PROPERTY AND SPECIAL TAXES PROGRAM REFERRALS

There may be occurrences when CCS or the in-state district audit staff determine in-state service businesses are purchasing items from outside of California for consumption and are not being charged appropriate special taxes or fees (for example, purchases of new televisions, computer monitors, portable DVD players, tires, fuel, alcoholic beverages and cigarette or tobacco products). Similarly, there may be cases where Out-of-State District Compliance staff register out-of-state retailers who are engaged in business in California that also require registration under Property and Special Taxes Department programs.

In such cases, the CCS Supervisor, District Principal Auditor, Out-of-State District Compliance Supervisor, or their respective designee, should send an email notification to the Operations Manager of the Property and Special Taxes Department. The email notification should be sent to the Outlook mailbox titled **“PSTD – Referrals from SUTD.”**

The email notification should include the name, address and telephone number of the in-state service business or out-of-state retailer. The notification should also include an account number as well as information concerning the quantity of items purchased and the periods in which the purchases occurred. The Property and Special Taxes Department staff will review the notification and forward the information to the appropriate division for further investigation.

V. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

Randie L. Henry
Deputy Director
Sales and Use Tax Department

Attachments:

- Exhibit A – Form BOE-403-CL, *Tax Gap In-State Service Contact Letter*
- Exhibit B – Form BOE-403-CLW, *Tax Gap In-State Service Contact Letter (Worksheet)*
- Exhibit C – Publication 123-TG, *California Businesses: How to Identify California Use Tax Due*
- Exhibit D – Audit Select Reason and Lead Source Codes
- Exhibit E – How to Assign a Lead Source and Lead Source Sub-type Instructions
- Exhibit F – Audit Engagement Letters for In-State Service Businesses Tax Gap Program
 - (BOE-80-ATG, *Audit Engagement Letter - Confirm Start Date*)
 - (BOE-80-BTG, *Audit Engagement Letter - Agreement to Delay Start Date*)
 - (BOE-80-CTG, *Audit Engagement Letter - Initiate Contact*)
 - (BOE-80-DTG, *Audit Engagement Letter - 10-Day Follow Up*)
- Exhibit G – In-State Service Businesses Tax Gap Program Flowchart

Distribution: 1-D

Exhibit A – Form BOE-403-CL, Tax Gap In-State Service Contact Letter

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
 TAX SOURCE GROUP MIC-98
 PO BOX 942879, SACRAMENTO, CA 94279-0098
 916-445-3670
 www.boe.ca.gov

BETTY T. YEE
 First District, San Francisco
 BILL LEONARD
 Second District, Ontario/Sacramento

MICHELLE STEEL
 Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
 Fourth District, Los Angeles

JOHN CHIANG
 State Controller

RAMON J. HIRSIG
 Executive Director

[Date]

Reference Number: []

The State Board of Equalization (BOE) is in receipt of information from the Employment Development Department (EDD) indicating you have been registered with EDD since [Fixed start date]. Industry studies indicate there is a likelihood that your business has purchased fixtures, equipment, machinery, furnishings, consumable supplies or other items from retailers outside California for use in California.

Many individuals and businesses in California make purchases from out-of-state retailers (both foreign and domestic) that would be subject to sales tax if the same items were bought in California. If your business has made out-of-state purchases without paying the California sales or use tax and used, given away, stored, or otherwise consumed the purchases in this state, you may owe California use tax. This is true whether the purchases were made in person, over the Internet, by telephone, or by mail. Some items are exempt from use tax. For example, food products are generally exempt (excluding alcoholic beverages or hot food). In addition, purchases for resale, prescription medicines, and shipping charges are generally not subject to use tax. Refer to enclosed publication [123-TG, How to Identify California Use Tax Due](#), for more information regarding use tax.

Although the State Revenue and Taxation Code authorizes the BOE to conduct an audit which may go back eight years (longer if fraud is detected) and reserves the right to do so, at this time the BOE is asking you to do the following:

- Review your records and self report any purchases that were made without tax during the last three years (primarily purchases made out of state) using the enclosed worksheets.
- Provide us with copies of the following documentation:
 - IRS federal income tax return for the past year;
 - Asset depreciation schedules for the past three years
- Sign and date this letter, and return it to the address listed in the heading along with your federal income tax information, completed and signed worksheets, and payment for the total due.
- If you have not made any purchases from outside California, please confirm that at the end of this letter, sign and date it, and return it to the address listed in the heading along with your federal income tax information and signed worksheets indicating zero to report.

Please use the [BOE-403-CLW, Use Tax Return Worksheets](#) on the following pages of this letter to report the items purchased out of state without payment of California sales or use tax during 2005, 2006, and 2007 that are subject to California use tax. If additional pages are needed, you may copy and attach them to the respective worksheet.

The use tax rate for a California location is the same as the sales tax rate for that same location. Rates currently range from 7.25 percent to 9.25 percent depending on the county and city where the items are used. If you do not know the tax rate for the area where an item was used, you may call our Taxpayer Information Section at 800-400-7115 for assistance or refer to [publication 71, California City and County Sales and Use Tax Rates](#).

After calculating the tax, penalty, and interest due for each year, add the amounts due for all three years and send the worksheets with payment for the total amount due, made payable to the State Board of Equalization, by [Date]

Exhibit A – Form BOE-403-CL, Tax Gap In-State Service Contact Letter (Cont.)

In addition, if during any 12-month period you make three or more sales of fixtures, equipment, machinery, furnishings, or other items used to conduct your business, or other tangible personal property, you should generally hold a California seller's permit to report sales on a regular basis and to pay the sales tax on those items sold at retail. If you are making three or more sales of this nature in any 12-month period on a consistent basis, please check the box below and a representative will contact you to help you determine if you should hold a seller's permit.

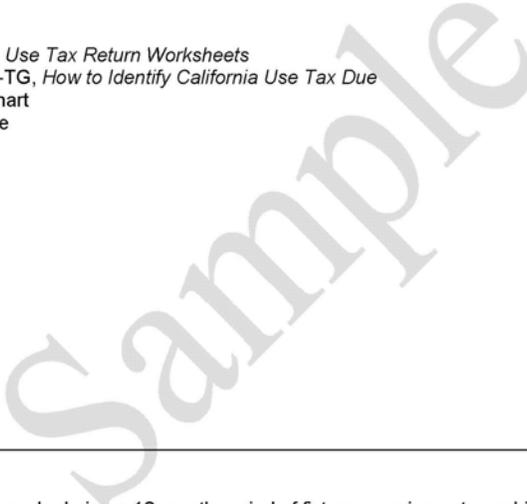
To obtain copies of any of the publications referenced in this letter, you may call our Taxpayer Information Section at 800-400-7115 or visit our website at www.boe.ca.gov.

If you have any questions or concerns regarding your reporting requirements, please contact me at [Work Phone].

Sincerely,

Tax Source Group

Enclosures: BOE-403-CLW, *Use Tax Return Worksheets*
Publication 123-TG, *How to Identify California Use Tax Due*
Interest Rate Chart
Return Envelope



-
- Three or more sales are made during a 12-month period of fixtures, equipment, machinery, furnishings, or other items used to conduct business, or other tangible personal property.
 - We have a California Seller's Permit. The number is: _____
 - Enclosed are completed BOE-403-CLW, *Use Tax Return Worksheets*.
 - We have not made any purchases subject to tax without paying the sales or use tax and we have no use tax to report.

PRINT NAME OF PERSON RESPONDING TO LETTER	DAYTIME PHONE
SIGNATURE	()
	DATE

Exhibit B – Form BOE-403-CLW, Tax-Gap In-State Service Contact Letter (Worksheet)

BOE-403-CLW REV. 1 (1-09)

**USE TAX RETURN WORKSHEET
FOR PURCHASES MADE FROM DUE THROUGH**

Reference No:
DBA:

	A ITEM PURCHASED	B A/S	C PURCHASE DATE	D LOCATION USED	E PURCHASE PRICE	F TAX RATE	G TAX	H VENDOR
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25	Total from attached spreadsheet(s)							
26	TOTAL (sum of lines 1–25)							
27	PENALTY of 10% (0.10) is due on tax paid after the due date. See instruction for line 27.							
28	INTEREST: One month's interest is due on tax for each month or fraction of a month that payment is made after the due date. See instruction for line 28.							
29	Total Due – (sum of lines 26–28) Mail with payment to PO Box 942879, Sacramento, CA 94279-0098							

I certify to the best of my knowledge that I am a corporate officer, partner, owner, or hold a power of attorney to execute this document and that to the best of my knowledge the amounts reported are a true and complete reporting of purchases of supplies, fixtures, and equipment for use in this state without the payment of California use tax.

Sign, date, and provide contact information on each return worksheet and submit them with payment in full by the response date referenced in the letter. Keep a copy for your records.

NAME (print)	DATE	PHONE (include area code)
SIGNATURE	TITLE	EMAIL ADDRESS

Exhibit B – Form BOE-403-CLW, Tax-Gap In-State Service Contact Letter (Worksheet) (Cont.)

BOE-403-CLW REV. 1 (BACK) (1-09)

INSTRUCTIONS—USE TAX RETURN WORKSHEET**LINE BY LINE INSTRUCTIONS**

- Column A.** Items Purchased – Provide a general description of the item being reported (for example, mixer, printer, x-ray machine, printing press, solvents, towels, furnishings, computer software, computer hardware).
- Column B.** A/S – If the item purchased is being depreciated, enter A (asset). If the item purchased was expensed, enter S (supply).
- Column C.** Purchase Date – For purchases of single items (for example, x-ray machine, printing press) enter the date of purchase. For multiple purchases of like items, group them together by month and enter a purchase date that is the last day of the month. That is, if you make 6 purchases of towels in September 2006, group these purchases together and use September 30, 2006 as the purchase date. If you made additional purchases of towels in October 2006, group them separately and use a purchase date of October 31, 2006 for these purchases.
- Column D.** Location Used – Enter the city where the purchase was first used. If you made multiple purchases of like items that have been grouped together, but used in various locations, enter the city where the majority of the purchases were used for the first time. If the location is different than the mailing address, please provide the full street address of the location used.
- Column E.** Purchase Price – Excluding separately stated charges for shipping by common carrier, enter the purchase price (cost) for single items being reported (for example, x-ray machine, printing press). For reporting multiple purchases grouped together, enter the total purchase price of all purchases being grouped.
- Column F.** Tax Rate—Enter the tax rate in effect at the time of purchase. If you do not know the sales and use tax rate, you may call our Taxpayer Information Section at 800-400-7115 or visit our website, www.boe.ca.gov for assistance.
- Column G.** Tax—Multiply the tax rate entered in column F by the Purchase Price entered in column E and enter the result (round to the nearest dollar).
- Column H.** Vendor—Enter the name of the vendor from whom you made your purchase.
- Lines 1 thru Lines 24.** Enter items purchased
- Line 25.** Enter on this line the amount of tax due from any supplemental worksheet(s) you prepared.
- Line 26.** Enter on this line the total tax (the sum of lines 1-25).
- Line 27.** For payments made after the return worksheet due date, a 10% penalty applies. Multiply line 26 by 0.10 and enter the result on this line.
- Line 28.** For payments made after the return worksheet due date, one month's interest is due on the tax (line 26 amount) for each month or fraction of a month that payment is late. To assist you in calculating the correct amount of interest due, an interest calculator is available on the BOE website. To access the calculator go to www.boe.ca.gov and type Interest Rates in the search box, or under Quick Links, click on Sales and Use Tax, then under General Interest click on Interest Calculator, or type <https://efile.boe.ca.gov/boewebservices/interestCalculation.jsp> in the address box of your web browser. If you prefer, you may call the Taxpayer Information Section at 800-400-7115 for assistance. Enter the interest due on this line.
- Line 29.** Enter the total of lines 26-28.

Exhibit C – Publication 123-TG, *California Businesses: How to Identify California Use Tax Due*

State Board of Equalization **April 2009**

California Businesses: How to Identify California Use Tax Due

This fact sheet explains how to examine your records to establish the use tax due on your purchases of physical merchandise (for example, supplies, furniture, fixtures, and equipment) from out-of-state sellers. If your business purchases items for *use, storage, or consumption* in California from a seller located outside California that does not collect and report the California use tax, you may owe California use tax. The use tax rate is the same as your local sales tax rate.

The use tax is intended to protect California sellers who otherwise would be at a competitive disadvantage when out-of-state sellers make sales of physical products to California customers without charging tax. The use tax also assures that all businesses in the state contribute fairly to the funding of state and local programs whether they choose to make purchases in California or outside the state.

When do you owe use tax on your purchases from out-of-state vendors?

You generally owe California use tax when you purchase physical merchandise from out-of-state sellers for *use, storage, or consumption* in California. If the out-of-state seller does not collect and report the California use tax on your purchase, then you must generally pay the use tax directly to the Board of Equalization (BOE).

If an out-of-state seller charges you California tax, you should be sure to obtain a receipt. The receipt must describe the item and show the purchase amount, the tax amount, the seller’s name, address, and California seller’s permit number (or use tax registration number), and your name and address.

While out-of-state sellers often apply tax at the statewide rate (currently 8.25 percent), you are liable for use tax at the full rate in effect at the California location where you will first use the merchandise. When that location is within a special tax district, the full tax rate in effect for the district applies (statewide tax rate + district tax rate[s]). If the seller charged you tax at a rate lower than the rate in effect for your location, you generally owe the remaining use tax. Tax rate information is available from our Taxpayer Information Section at 800-400-7115 or on our website at www.boe.ca.gov

How do you review your purchase invoices for California use tax due?

Generally, if sales tax would apply when you buy physical merchandise in California, use tax applies when you make a similar purchase from a business located outside the state.



For additional information you may download regulations, forms and publications from our website or you may call our Taxpayer Information Section to talk to a Board of Equalization representative.

BOE website and Board Member contact information: www.boe.ca.gov

Taxpayer Information Section
800-400-7115
TDD/TTY 800-735-2929

Taxpayers’ Rights Advocate
888-324-2798



BOARD OF EQUALIZATION MEMBERS

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MICHELLE STEEL
Third District
Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District
Los Angeles

JOHN CHIANG
State Controller

Exhibit C – Publication 123-TG, California Businesses: How to Identify California Use Tax Due (Cont.)

**State Board of Equalization • Publication 123-TG
California Businesses: How to Identify California Use Tax Due • April 2009**

Examine your purchase invoices from out-of-state retailers in detail to make sure the retailer collected California use tax when it was due and that it was the correct amount (see previous section). Review of the general ledger asset accounts and Federal Income Tax Return depreciation schedules may assist you in identifying purchases that may be subject to use tax.

The California use tax is generally the liability of the purchaser and must be paid either directly to the BOE or to the seller from whom the physical merchandise was purchased, if such seller holds a seller’s permit or a Certificate of Registration—Use Tax. If you believe that your out-of-state seller may have paid use tax on your purchase, thereby relieving you of responsibility for all or part of your California use tax liability, you may contact your out-of-state seller to verify their tax payment to the BOE.

Are “Shipping and Handling” charges subject to California use tax?

Shipping charges are generally exempt from tax provided they are:

1. For delivery directly to the purchaser by common carrier, contract carrier, or US Mail;
2. The invoice clearly lists delivery, shipping, freight, or postage as a separate charge; and
3. The charge is not higher than your *actual cost for delivery*.

If any of the three requirements are *not* met, the shipping charge is generally taxable. If “handling” is charged with shipping, the handling portion of the charge is subject to tax. (See publication 100, *Shipping and Delivery Charges*)

Additional information available from our Taxpayer Information Section or website.

<i>Regulations</i>	<i>Publications</i>
1628 Transportation Charges	71 California City and County Sales and Use Tax Rates
1684 Collection of Use Tax by Retailers	79 Documented Vessels and California Tax
1685 Payment of Tax by Purchasers	79A Aircraft and California Tax
1686 Receipts for Tax Paid to Retailers	100 Shipping and Delivery Charges
1823 Application of Transactions (Sales) Tax and Use Tax	
1827 Collection of Use Tax by Retailers	

Taxpayers’ Rights Advocate

Call toll-free for help with problems you have not been able to resolve through normal channels: 888-324-2798.

Note: The statements in this fact sheet are general and are current as of April 2009. The sales and use tax law and regulations are complex and subject to change. If there is a conflict between this publication and the law or regulations, decisions will be based on the law and regulations.

Exhibit D – Audit Select Reason and Lead Source Codes

Audit Select Reason Code

The audit *Select Reason* code is **GAP** for audit leads resulting from Tax Gap efforts.

Lead Source and Lead Source Sub-type Code

The *Lead Source* code is **TGI** for the In-State Service Businesses Component of Tax Gap.

1. *Lead Source Sub-type* code **EDC** will be used by Centralized Collection Section (CCS) when they issue a new account number and/or create a compliance assessment (CAS) or other financial obligation (FO) for an In-State Service Businesses Component assignment.
2. *Lead Source Sub-type* codes used by district offices for an In-State Service Businesses Component audit lead referred by CCS are as follows:
 - **AAC** – Norwalk District
 - **ACC** – Van Nuys District
 - **APC** – West Covina District
 - **ARC** – Ventura District
 - **ASC** – Culver City District
 - **BHC** – San Francisco District
 - **CHC** – Oakland District
 - **EAC** – Santa Ana District
 - **EHC** – Riverside District
 - **FHC** – San Diego District
 - **GHC** – San Jose District
 - **JHC** – Santa Rosa District
 - **KHC** – Sacramento District
 - **OHC** – Out-of-State District
3. *Lead Source Sub-type* code **EDF** will be used by district offices for an In-State Service Businesses Component audit lead referred by Data Analysis Section (DAS).

Note: *The lead source sub-types noted in 2. and 3. above will be used by the respective district office when adding the lead source and lead source sub-type to the FO's for an Audit/FBO created as a result of Tax Gap audit referrals sent to the district by CCS or DAS.*

Exhibit E – How to Assign a Lead Source and Lead Source Sub-type Instructions

Lead Source Screen

1. From the Go line, type “**LSR ML**”.
2. Press [**Enter**].
3. Type the account number in the Acct field.
4. Press [**Enter**].

Teale - myEXTRA! Enterprise

File Edit View Tools Session Options Help

LSISCLM1 - LSR Lead Source 10/24/07
 LSISCLP1 - ML Maintain/Inquire Lead Source Information 09:23

Acct: 005200000 start: close:

TP:
 DBA:

Item Type: FOB Financial obligation Per(MMY): ____
 Corp Data ID: 00005200000

Lead Source: CUS U.S. Customs
 Lead source subtype: CUS Centralized collection section

Report Start Date: 05 11 06
 Report End Date: 05 11 08

Change Reason: ____
 Last Update on: ____

Go: ____
 F1=Help, F2=Ntask, F3=Retn, F5=Updt, F6=Hist, F10=VwReg, F11=Cmnts, F12=Flip, F14=Clear
 F15=Menu, F21=Brwse, F24=Asc

4B :00.1 17/25

Connected to host mvssy5.teale.ca.gov [134.187.32.5] (EQTN0330)

NUM 9:23 AM

Start Inbox - Microsoft O... Rem2000 Teale - myEXTRA... Operation Memor... Z Microsoft Office... 9:23 AM

Note: To minimize the potential for problems when maintaining Lead Source Information, use the [F14] clear key before moving from one account number to another, or to start over again.

To Add or Change a Lead Source and/or Lead Source Sub-type at the Account Level

1. Verify TAR is displayed in the Item Type field.
2. Type the Lead Source code in the Lead Source field (active help is available).
3. Type the Lead Source Sub-type in the Lead Source Sub-type field (active help is available).
4. Type the report start date in the Report Start Date field (required when adding, optional when changing).

Exhibit E – How to Assign a Lead Source and Lead Source Sub-type Instructions (Cont.)

5. Type the report end date in the Report End Date field (required when adding, optional when changing).
6. Type the change reason in the Change Reason field (active help is available).
7. Press [F9] if adding or [F5] if updating.

Note: *Whenever a Lead Source is associated to the account or FO, account characteristic code 25 will automatically be added in TAR AI.*

To Add or Change a Lead Source for a Specific FO

1. Type FOB in the Item Type field.
2. Delete the Corp Data ID.
3. Press [Enter].

Note: *The FO Smart Search screen will appear.*

4. Place the cursor on the selected FO.
5. Press [Enter].
6. Type the Lead Source code in the Lead Source field (active help is available).
7. Type the Lead Source Sub-type in the Lead Source Sub-type field (active help is available).
8. Type the change reason in the Change Reason field (active help is available).
9. Press [Enter].
10. Press [F9] if adding or [F5] if updating.

To Delete a Lead Source and Lead Source Sub-type at the Account Level (Item Type TAR and only for SR TATs)

1. Verify TAR is displayed in the Item Type field.

Note: *Create a comment explaining the reason for the deletion.*

2. Press [F22].
3. Press [F5].

To Delete a Lead Source and Lead Source Sub-type at the FO Level (Item Type FOB excluding UTP FOs on SD TATs)

1. Type FOB in the Item Type field.
2. Delete the Corp Data ID.

Exhibit E – How to Assign a Lead Source and Lead Source Sub-type Instructions (Cont.)

3. Press [**Enter**].

Note: *The FO Smart Search screen will appear.*

4. Place the cursor on the selected FO.
5. Press [**Enter**].

Note: *Create a comment explaining the reason for the deletion.*

6. Press [**F22**].
7. Press [**F5**].

To Add or Change the Revenue Report Dates

Note: *To add revenue report dates, there must be a Lead Source and Lead Source Sub-type.*

1. Type the report start date in the Report Start Date Field.
2. Type the report end date in the Report End Date Field.
3. Press [**F9**] if adding or [**F5**] if changing.

**Exhibit F – Audit Engagement Letters for In-State Service Businesses Tax Gap Program
(BOE-80-ATG, Audit Engagement Letter - Confirm Start Date)**



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

[UNIT NAME]
[BOE STREET ADDRESS]
[BOE MAILING ADDRESS]
[XXX-XXX-XXXX] • FAX [XXX-XXX-XXXX]
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco
BILL LEONARD
Second District, Ontario/Sacramento
MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

[Date]

[Service Business Name]
[DBA]
[Street Mailing Address]
[City] [State] [Zip]

In Reply Refer To:
[Account Number]

Dear [Service Business]:

As discussed in our phone conversation of [Date of telephone call], your business has been selected for a use tax audit under the Sales and Use Tax Law. The purpose of this letter is to confirm our agreement to begin the audit on [Day of audit appt.] at [Time of audit appt.] at [Place of audit appt.].

The audit will involve a review of your books and records for the period from [Audit period-begin date] through [Audit period-end date] to verify that you have neither underpaid nor overpaid your California use tax liability. Although audit periods generally coincide with the period for which records are requested, audit periods may be extended as permitted by statute.

Please have the following books and records available:

1. General ledger and related journals.
2. Purchase invoices (paid bills) for consumable supplies and fixed assets (for example, furniture, fixtures, and equipment).
3. Federal income tax returns, including depreciation schedules.
4. Property tax statements.
5. Sales invoices for fixed assets sold during the audit period.

We may request information for additional filing periods or other records not listed above after we review the records provided.

I have enclosed four of our publications that you may find helpful. Publication 123, *California Businesses: How to Identify California Use Tax Due*, explains how to establish the California use tax due on your purchases of physical merchandise from out-of-state sellers. Publication 70, *Understanding Your Rights as a California Taxpayer*, discusses your rights as a California taxpayer. Publication 76, *Audits*, provides general information about what to expect and how to prepare for the audit. Publication 17, *Appeals Procedures*, discusses what to do if you disagree with the audit results.

If you have any questions or concerns, please call me at the telephone number shown above.

Sincerely,

[Author's Name]
[Working Title]

Enclosures
cc: [courtesy copy]

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**Exhibit F – Audit Engagement Letters for In-State Service Businesses Tax Gap Program
(BOE-80-BTG, Audit Engagement Letter - Agreement to Delay Start Date)**



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

[UNIT NAME]
[BOE STREET ADDRESS]
[BOE MAILING ADDRESS]
[XXX-XXX-XXXX] • FAX [XXX-XXX-XXXX]
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco
BILL LEONARD
Second District, Ontario/Sacramento
MICHELLE STEEL
Third District, Rolling Hills Estates
JUDY CHU, Ph.D.
Fourth District, Los Angeles
JOHN CHIANG
State Controller
RAMON J. HIRSIG
Executive Director

[Service Business Name]
[DBA]
[Street Mailing Address]
[City] [State] [Zip]

[Date]

In Reply Refer To:
[Account Number]

Dear [Service Business]:

As discussed in our phone conversation of [Date of telephone call], your business has been selected for a use tax audit under the Sales and Use Tax Law. The purpose of this letter is to confirm our agreement to delay the start of the audit until [Day of audit appt.] at [Time of audit appt.] at [Place of audit appt.].

The audit will involve a review of your books and records for the period from [Audit period-begin date] through [Audit period-end date] to verify that you have neither underpaid nor overpaid your California use tax liability. Although audit periods generally coincide with the period for which records are requested, audit periods may be extended as permitted by statute.

Please have the following books and records available:

1. General ledger and related journals.
2. Purchase invoices (paid bills) for consumable supplies and fixed assets (for example, furniture, fixtures, and equipment).
3. Federal income tax returns, including depreciation schedules.
4. Property tax statements.
5. Sales invoices for fixed assets sold during the audit period.

We may request information for additional filing periods or other records not listed above after we review the records provided.

I have enclosed four of our publications that you may find helpful. Publication 123, *California Businesses: How to Identify California Use Tax Due*, explains how to establish the California use tax due on your purchases of physical merchandise from out-of-state sellers. Publication 70, *Understanding Your Rights as a California Taxpayer*, discusses your rights as a California taxpayer. Publication 76, *Audits*, provides general information about what to expect and how to prepare for the audit. Publication 17, *Appeals Procedures*, discusses what to do if you disagree with the audit results.

If you have any questions or concerns, please contact me at the telephone number shown above.

Sincerely,

[Author's Name]
[Working Title]

Enclosures
cc: [courtesy copy]

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**Exhibit F – Audit Engagement Letters for In-State Service Businesses Tax Gap Program
(BOE-80-CTG, Audit Engagement Letter - Initiate Contact)**



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

[UNIT NAME]
[BOE STREET ADDRESS]
[BOE MAILING ADDRESS]
[XXX-XXX-XXXX] • FAX [XXX-XXX-XXXX]
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

[Date]

[Service Business Name]
[DBA]
[Street Mailing Address]
[City] [State] [Zip]

In Reply Refer To:
[Account Number]

Dear [Service Business]:

Your business has been selected for a routine use tax audit under the Sales and Use Tax Law. This audit will involve a review of your books and records for the period from [Audit period-begin date] through [Audit period-end date] to verify that you have neither underpaid nor overpaid your California use tax liability. Although audit periods generally coincide with the period for which records are requested, audit periods may be extended as permitted by statute.

Generally, if sales tax would apply when a consumer purchases a particular item in California, then use tax applies when the consumer makes a similar purchase for use in California from a business located outside the state. In general, if a retailer does not collect and report the California tax on that particular purchase, then the consumer must report and pay the use tax to the California State Board of Equalization. This applies regardless of whether the merchandise is purchased in person, by telephone, by mail, or over the Internet. The use tax rate is the same as the sales tax rate in effect at the purchaser's location.

We request that you make the following books and records available:

1. General ledger and related journals.
2. Purchase invoices (paid bills) for consumable supplies and fixed assets (for example, furniture, fixtures, and equipment).
3. Federal income tax returns, including depreciation schedules.
4. Property tax statements.
5. Sales invoices for fixed assets sold during the audit period.

We may request information for additional filing periods or other records not listed above after we review the records provided.

I have enclosed four of our publications that you may find helpful. Publication 123, *California Businesses: How to Identify California Use Tax Due*, explains how to establish the California use tax due on your purchases of physical merchandise from out-of-state sellers. Publication 70, *Understanding Your Rights as a California Taxpayer*, discusses your rights as a California taxpayer. Publication 76, *Audits*, provides general information about what to expect and how to prepare for the audit. Publication 17, *Appeals Procedures*, discusses what to do if you disagree with the audit results.

Please contact me by [Date to respond by] to discuss the time and place best suited to begin the review of your records. I can be reached at the telephone number or mailing address listed above. If you would like the audit to be handled by an authorized representative, such as your accountant or bookkeeper, appropriate arrangements can be made. I will also be happy to answer any questions you may have.

Sincerely,

[Author's Name]
[Working Title]

Enclosures
cc: [courtesy copy]

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**Exhibit F – Audit Engagement Letters for In-State Service Businesses Tax Gap Program
(BOE-80-DTG, *Audit Engagement Letter - 10-Day Follow Up*)**



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

[UNIT NAME]
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-00XX
916-XXX-XXXX • FAX 916-XXX-XXXX
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

[Date]

[Service Business Name]
[DBA]
[Street Mailing Address]
[City] [State] [Zip]

In Reply Refer To:
[Account Number]

Dear [Service Business]:

Our records indicate that we have not yet received a response to our letter dated [Date of prior letter], regarding the use tax audit of your business. A copy of the letter is enclosed for your reference.

Revenue and Taxation Code Sections 7053 and 7054 provide that every seller or purchaser of tangible personal property keep appropriate records and provide those records to the Board of Equalization for examination upon request.

Please contact [Name of auditor] or myself by [Date], to arrange to begin the audit of your account. If your books and records are not provided by [Last day to provide records], we will be required to take appropriate administrative action which could include issuing a subpoena requiring that you provide the books and records or preparing a billing for estimated taxes due.

Sincerely,

[Author's Name]
Supervising Tax Auditor

Enclosures
cc: [courtesy copy]

Exhibit G – In-State Service Businesses Tax Gap Program Flowchart

