

**DISTRIBUTED ELECTRONICALLY**

**State Board of Equalization**

**OPERATIONS MEMO**

For Public Release

No: 1174  
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**SUBJECT:** Required Registration for Use Tax

**I. GENERAL**

Assembly Bill (AB) x4-18 (Stats. 2009, Ch. 16), effective October 23, 2009, added section 6225 to the Revenue and Taxation Code (RTC), which requires “qualified purchasers” to register with the Board of Equalization (BOE) and report and pay use tax directly to the BOE. “Qualified purchasers” under RTC section 6225 are required to file annual use tax returns, with a due date of April 15<sup>th</sup> of the following year. Although the registration requirement under this statute is new, the use tax itself is not a new tax. The use tax has been part of the RTC since July 1, 1935.

**II. QUALIFIED PURCHASER**

A qualified purchaser (QP) under RTC section 6225 is a person<sup>1</sup> who meets all of the following conditions:

- The person receives at least \$100,000 in gross receipts<sup>2</sup> from business operations per calendar year.
- The person is not required to hold a seller’s permit or certificate of registration for use tax under RTC section 6226.
- The person is not a holder of a use tax direct payment permit as described in RTC section 7051.3.
- The person is not otherwise registered with the BOE to report use tax.

In an effort to accelerate compliance with RTC section 6225, the BOE will attempt to register all potential QPs through automated registration as explained below. Ultimately, however, it is the QP’s responsibility to come forward, register and file their use tax

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<sup>1</sup> A “person” is defined in section 6005 of the RTC.

<sup>2</sup> Gross receipts means the total of all receipts from both in-state and out-of-state business operations. Gross receipts may be verified by use of income tax or other financial statement records.

returns. Currently, QPs are responsible for filing years 2007, 2008 and 2009 return periods. Return filing information is explained later in this Operations Memo.

### **III. HEADQUARTERS RESPONSIBILITIES**

#### **A. Selection of Qualified Purchasers**

##### 1. Data Analysis Section

Annually, the Data Analysis Section (DAS) in the Tax Policy Division receives data provided by the Internal Revenue Service, the Franchise Tax Board, and the Employment Development Department. The data received will be used to identify and register potential QPs under RTC section 6225 as part of the automated registration process. That data will be compared and matched against the account records located in BOE's IRIS program to prevent duplicate registration of taxpayers. Any accounts matched in IRIS will be eliminated from the dataset, leaving only the persons identified as potential QPs. Once the potential QPs are identified, a list will be generated and furnished to the Centralized Collection Section (CCS) for further analysis and processing.

##### 2. Centralized Collection Section

Annually, upon receipt of the dataset of potential QPs furnished from DAS, CCS will notify these potential QPs via the BOE-404, *Initial Notification Letter* that they are identified as a QP based upon income tax returns. Included with the *Initial Notification Letter*, the potential QP will receive a BOE-123-TG, *California Businesses: How to Identify California Use Tax Due*. The BOE-404 instructs the taxpayer to fill out the form provided on the reverse side of the letter. Upon receipt of the QP's information, CCS will examine and note any taxpayers who are already registered with the BOE. Those taxpayers will be eliminated from the pool of potential QPs thereby leaving only those identified as QPs under RTC section 6225. CCS will then provide the remaining list of identified QPs to the Technology Services Department (TSD) to be registered via automated registration.

##### 3. Technology Services Department

Annually, using the list of identified QPs furnished by CCS, TSD will create a client in IRIS (CTS) for each QP via automated registration. The TAR subsystem in IRIS will generate an account using TAT SU with a calendar year reporting basis. The account will be identified with countywide Tax Area Code (TAC) 999 (regardless of location), an account characteristic code (ACC) 34 with a Lead Source Code and Lead Source Sub-Type ABX, and if a NAICS code cannot be determined a default code of 811999 will be used. Upon registration of the account, an express log-in code will be provided to the QP taxpayer, which will enable the taxpayer to efile returns.

## B. Electronic & Manual Return Filing

The efileing capability will be online March 1, 2010. QPs will be able to efile their 2007, 2008 and 2009 returns after that date. However, should a QP wish to file their 2007 and 2008 returns prior to March 1, 2010, the QP must go to a local BOE field office to manually register (explained below) and request paper returns to file for those periods. In addition, QPs who are unable to efile must submit an exemption form, which can be obtained through the Taxpayer Information Section.

## IV. DISTRICT OFFICE RESPONSIBILITIES

### A. Receipt of Application from QP's pursuant to RTC section 6225

If the district field office receives an application for a use tax account BOE 404 or 404-A, *Use Tax Registration*, or a BOE-400-CSU, *California Consumer Use Tax Account Application*, staff should first determine whether or not the applicant is a QP under RTC section 6225 by ensuring the qualifications in Section II of this Operations Memo are met. District staff should also search IRIS to confirm whether or not the applicant is currently registered with the BOE, or previously registered. If the applicant is currently registered with the BOE for a sales tax permit or use tax account, the applicant is not considered a QP under RTC section 6225. If the applicant was previously registered with the BOE at one time, staff should ensure the applicant is not still required to be registered with the BOE for some reason other than as a QP under RTC section 6225. If the applicant is still required to be registered, the applicant is not considered a QP under RTC section 6225. If, however, the applicant *is* deemed to be a QP, the account should be established using TAT SU, assigned a calendar year reporting basis, TAC 999 (regardless of location), ACC 34, and if a NAICS code cannot be determined assign it code 811999<sup>3</sup>. New accounts established with an ACC 34 will automatically be tagged with a Lead Source Code ABX with a Lead Source Sub-type ABX. If the ACC 34 is established at a later date, staff must "tag" the account manually with the Lead Source and Lead Source Sub-types ABX (see Operations Memo #1154, *IRIS Lead Source*, for instructions).

### B. Applicant Is Not a Qualified Purchaser

If an applicant is not a QP under RTC section 6225, they may still obtain a Consumer Use Tax Account. SU accounts that are established on an annual reporting basis will automatically be established with an April 15<sup>th</sup> due date, so that all SU accounts filing on an annual basis will have the same due date. However, some SU accounts may be established with a reporting basis other than annual. Staff should also take the time to explain how to properly report use tax and verify the BOE has the correct information regarding the applicant.

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<sup>3</sup> Staff should not use NAICS code 100000.

### C. Collections and Close Outs

Accounts manually registered in the district field office will remain under that district's control. Accounts registered with Lead Source and Sub-type ABX will remain in CCS for one year. After the one-year period, those accounts will transfer to the district of control via ACMS *unless* during the account's first year of registration the account incurs an accounts receivable (AR), or there is a legal notation indicating the taxpayer is in bankruptcy status, at which time the account will be transferred to the district office immediately. Accounts with an ACC 34 should not be closed out *unless* the QP's business operations have ceased, there is a change in ownership, or the QP obtains a seller's permit.

### D. Reporting Basis & Interest Accrual

The due date for first-time QP filers is April 15<sup>th</sup>. Existing SU accounts on a calendar year reporting basis that do not have an ACC 34 were changed to an April 15<sup>th</sup> due date beginning with the 2009 calendar year reporting period. Subsequent to the annual review of accounts, some SU accounts may be changed to a quarterly reporting basis. For accounts with a due date of April 15<sup>th</sup>, interest will begin to accrue on any unpaid tax beginning April 16<sup>th</sup> and will calculate through the 15<sup>th</sup> of each subsequent month thereafter until the tax is paid.

## V. AUDIT SELECTION AND REFERRALS

### A. In-State District Offices

Regulation 1698, *Records*, governs the BOE's ability to examine taxpayers' records under the Sales and Use Tax Law. When CCS or district compliance staff determine that additional use tax may be owed by the taxpayer, such accounts should be referred to the district office of account for audit. The referral should include all pertinent information, for example, prior return history, copies of any related correspondence, federal income tax information, like business analysis, etc.

District audit staff will perform audits on leads referred by CCS and district compliance staff. The audits will be conducted following general audit procedures set forth in the Audit Manual (AM). For audits encompassing periods post and *prior* to January 1, 2009, the audit must be split and two audit periods generated in IRIS because the return due dates for years prior to January 1, 2009 end on January 31<sup>st</sup> of each year and for periods beginning January 1, 2009, the due date is April 15<sup>th</sup>. The reason for the split audit periods is so that IRIS will calculate audit interest on a monthly basis following the due date of the respective return period(s).

District audit staff should inform the Out-of-State District Compliance Unit via form BOE-1032, *Information on Out-of-State Retailers*, when an auditor discovers a taxpayer is purchasing items subject to use tax from an unregistered out-of-state

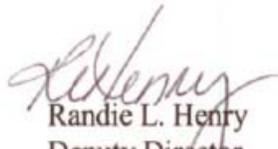
retailer. The original form BOE-1032 should be forwarded to the Out-of-State District Compliance Unit (see AM sections 0213.03 and 0408.22).

## **VI. PROPERTY AND SPECIAL TAXES PROGRAM REFERRALS**

When a QP who is purchasing items from outside of California subject to a special tax and/or fee (for example the purchase of new televisions, computers, tires, cigarettes and tobacco products, etc.), the supervisor or designee should send an email notification to the "PSTD – Referrals from SUTD" mailbox in Outlook. The Property and Special Taxes Department staff will investigate the notification and refer such leads to the appropriate division for further investigation.

## **VII. OBSOLESCENCE**

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manual(s).

  
Randie L. Henry  
Deputy Director  
Sales and Use Tax Department

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