



STATE BOARD OF EQUALIZATION

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State Controller, Sacramento

TIMOTHY W. BOYER  
Interim Executive Director

December 9, 2003

Dear Interested Party:

Enclosed is the *Initial Discussion Paper* on proposed amendments to Regulation 1619, *Foreign Consuls*. Discussion regarding proposed amendments to Regulation 1619 is scheduled for the Board's **April 2004 Business Taxes Committee** meeting.

However, before the issue is presented at the Business Taxes Committee meeting, staff would like to provide interested parties an opportunity to discuss the issue and present any suggested changes or comments. Accordingly, a meeting is scheduled in **Room 122 at 10:00 a.m. on December 18, 2003**, at the Board of Equalization; 450 N Street; Sacramento, California.

If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the December 18 meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting on December 18, 2003, or would like to participate via teleconference, I would appreciate it if you would let staff know by contacting Ms. Cecilia Watkins at (916) 445-2137 or by e-mail at [cecilia.watkins@boe.ca.gov](mailto:cecilia.watkins@boe.ca.gov) prior to December 16, 2003. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing. In addition, please let Ms. Watkins know if you wish to have future correspondence, including the second discussion paper and all attachments, sent to your e-mail address rather than to your mailing address.

Whether or not you are able to attend the above interested parties' meeting, please keep in mind that the due date for interested parties to provide written preliminary responses to staff's analysis is **January 12, 2004**. Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/meetings.htm#two>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your consideration. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Mr. Geoffrey E. Lyle, Supervisor, Business Taxes Committee and Training Section, at (916) 322-0849.

Sincerely,

Jeffrey L. McGuire  
Tax Policy Division  
Sales and Use Tax Department

JLM: caw

Enclosures

cc: (all with enclosures)  
Honorable Carole Migden, Chairwoman  
Honorable Claude Parrish, Vice Chairman  
Honorable Bill Leonard, Member, Second District (MIC 78)  
Honorable John Chiang, Member, Fourth District  
Honorable Steve Westly, State Controller, C/O Ms. Marcy Jo Mandel  
Ms. Carole Ruwart, Board Member's Office, First District (MIC 71)  
Ms. Sabina Crocette, Board Member's Office, First District  
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)  
Mr. Romeo Vinzon, Board Member's Office, Third District (via e-mail)  
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)  
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)  
Mr. Tim Treichelt, Board Member's Office, Second District (via e-mail)  
Ms. Sylvia Tang, Board Member's Office, Fourth District (MIC 72)  
Mr. Michael Thomas, Board Member's Office, Fourth District  
Mr. Timothy Boyer (MIC 73)  
Acting Chief Counsel (MIC 83)  
Mr. Ramon J. Hirsig (MIC 43)  
Ms. Janice Thurston (MIC 82)  
Mr. Warren Astleford (MIC 82)  
Ms. Trecia Nienow (MIC 82)  
Mr. Randy Ferris (MIC 82)  
Ms. Jean Ogrod (via e-mail)  
Mr. Jeff Vest (via e-mail)  
Mr. David Levine (MIC 85)  
Mr. Steve Ryan (via e-mail)  
Mr. Dave Hayes (MIC 67)  
Mr. Joseph Young (via e-mail)  
Mr. Vic Anderson (MIC 40 and via e-mail)  
Mr. Larry Bergkamp (via e-mail)  
Ms. Oveta Riffle (MIC 37)  
Mr. Geoffrey E. Lyle (MIC 50)  
Ms. Lauren Simpson (MIC 50)  
Ms. Cecilia Watkins (MIC 50)  
Mr. Todd MacMurray (MIC 50)

# INITIAL DISCUSSION PAPER

## Proposed Regulatory Changes Regarding Procedures for Documenting Exempt Sales of Vehicles to Foreign Consuls

### Regulation 1619, Foreign Consuls

#### Issue

Should Regulation 1619 be amended to include updated requirements of the U.S. Department of State's Office of Foreign Missions (OFM) regarding sales of vehicles to foreign consuls?

#### Background

Regulation 1619 explains the application of tax to sales of tangible personal property, including vehicles, to foreign consular officers, employees, or members of their families (hereafter collectively referred to as Foreign Consuls).

The regulation currently provides that the sale or lease of vehicles to Foreign Consuls are exempt from the sales and use taxes if the purchaser furnishes the retailer with a Tax Exemption Card (Personal or Mission) issued by the U.S. Department of State that identifies the bearer-purchaser as exempt from tax and that specifies the extent of the exemption. In the absence of a Tax Exemption Card, the transaction is exempt if an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number, and date of assumption of duties of the person seeking the exemption and must be furnished to the retailer at the time of the transaction.

The tax exemption privileges for Foreign Consuls are generally based on reciprocity in accordance with two treaties: *the Vienna Convention on Diplomatic Relations* and *the Vienna Convention on Consular Relations*. That is, no tax exemption privileges are granted to Foreign Consuls here unless the United States Embassy and Consular personnel receive reciprocity, i.e., equivalent privileges in the Foreign Consul's country. As such, not all Foreign Consuls are entitled to an exemption from tax.

#### Discussion

The OFM enforces the reciprocity requirement necessary for the tax exemption on sales and leases of vehicles to eligible Foreign Consuls. The OFM has found instances where vehicles were being sold or leased on a tax-exempt basis to Foreign Consuls from countries that do not reciprocate with equivalent privileges to United States Embassy and Consular personnel. In addition, sales and leases of vehicles to Foreign Consuls who are not eligible for a Tax Exemption Card may be exempt from tax.

Effective June 1, 2003, the OFM revised its policies and procedures to require that all sales or leases of vehicles to Foreign Consuls be authorized for tax-exempt eligibility by the OFM. (See Exhibit 1 for a copy of a May 13, 2003, letter from the OFM explaining the authorization requirements.) To obtain authorization from the OFM, a retailer of vehicles must: 1) obtain and retain a copy of the Tax Exemption Card (Personal or Mission) or protocol identification card from the Foreign Consul; and 2) contact and obtain a letter directly from the OFM verifying the

## **INITIAL DISCUSSION PAPER**

### **Proposed Regulatory Changes Regarding Procedures for Documenting Exempt Sales of Vehicles to Foreign Consuls**

#### **Regulation 1619, Foreign Consuls**

eligibility of a vehicle sale or lease to the Foreign Consul as exempt from tax. These requirements will enable OFM to verify reciprocity for purposes of determining whether the sale or lease of a vehicle to a Foreign Consul is exempt from the sales and use taxes.

In order to provide guidance to Foreign Consuls and retailers on the requirements for establishing exempt sales or leases of vehicles, staff is proposing amendments to Regulation 1619, as shown in Exhibit 2.

Staff recommends a Rule 100<sup>1</sup> change to effectuate the requirements of the OFM.

#### **Summary**

Staff believes Regulation 1619 should be amended to include the OFM's updated requirements for establishing exempt sales or leases of vehicles to Foreign Consuls, and welcomes suggestions from affected interested parties.

Prepared by the Tax Policy Division, Sales and Use Tax Department.

Current as of 12/04/2003

Initial Discussion.doc rev. 9-30-03

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<sup>1</sup> Under Rule 100 of California's Administrative Procedure Act, under certain circumstances, an agency may add to, revise, or delete text in a regulation without observing all the steps usually required to amend a regulation (e.g., a public hearing need not be held). One set of circumstances under which such a streamlined approach may be taken occurs when the proposed change is mandated by federal and/or state law. As with other proposed regulatory changes, "Rule 100" changes are subject to the approval of the Office of Administrative Law.

United States Department of State



*Office of Foreign Missions*  
*Washington, D.C. 20520*

May 13, 2003

Carol Migden, Chairwoman  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 95814

Dear Ms. Migden,

Effective immediately, the procedure and policy for the authorization of tax exemption on vehicle purchases by all diplomatic missions and members in the United States has changed.

**Before the transaction is completed and tax exemption is allowed, each purchase of a vehicle must be cleared or denied for tax exemption by the Office of Foreign Missions.**

In instances where the diplomatic mission or agent are denied tax exemption the vendor should collect any tax that is normally imposed at the time of purchase. All vehicles owned by diplomatic missions or members are required to be registered with the Department of State, regardless of whether tax exemption is granted, therefore jurisdictions that impose taxes on vehicle registration as opposed to vehicle purchases will not be effected by this policy change.

Vendors when authorizing a diplomatic tax exemption on the purchase of a vehicle must follow these procedures:

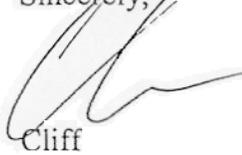
- (1) The purchaser should present a mission tax exemption card, a personal tax exemption card, or a protocol identification card to the seller of the automobile. This proves to the seller that the purchaser is indeed a diplomatic agent or is authorized to make official purchases on behalf of a diplomatic mission. The seller is required to retain a copy of this card. *(Due to reciprocity, some diplomatic agents, who are not eligible for a tax exemption card, may be eligible, for exemption from taxes on vehicles. In these cases a copy of their protocol identification card would be necessary.)*
  - Members of the United Nations (UN), Organization of American States (OAS), World Bank (WB), and the International Monetary Fund (IMF) requesting a diplomatic tax exemption on the purchase of a vehicle must present their personal tax exemption card. This is the only documentation of exemption that may be accepted to authorize a diplomatic tax exemption for members of the United Nations.

- (2) When a mission or diplomatic agent plans to purchase a vehicle, the vendor must contact the Office of Foreign Missions for a determination on the tax- exempt status of the purchaser. The telephone number that the seller should contact is (202) 895-3563. If the purchase is being made outside of the Washington D.C. area, the purchaser may contact an OFM Regional Offices.
- (3) The Office of Foreign Missions will determine the tax-exempt status of the purchaser and provide a letter to the vendor. This letter will state whether or not the purchaser is eligible for exemption from any sales and use tax imposed at the point of purchase by the jurisdiction in which the sale will occur. If sales and use taxes are imposed by the jurisdiction in which the sale is taking place, and the purchaser is determined not to be eligible for exemption from this tax, the purchaser is required to pay this tax to the vendor. If the purchaser pays a sales and use tax to the vendor, proof of this transaction must be presented to the Office of Foreign Missions. The amount of tax paid to the seller will then be credited against the surcharge imposed at the time of registration.

Existing vehicle registration procedures will not change as a result of this new policy. Diplomatic missions and their members, including dependents, are required by federal law (22 U.S.C. Sec. 4303) to register all vehicles that they own or lease with the Office of Foreign Missions, Diplomatic Vehicle Office. At the time of purchase, all original ownership documents must be submitted to the Diplomatic Motor Vehicle Office for proper vehicle registration.

The Office of Foreign Missions Diplomatic Tax Program is available for any questions or concerns regarding this change in policy. We welcome any feedback or professional opinions that your office or department may offer. If I can be of further assistance, please contact me at (202) 895-3541.

Sincerely,



Cliff  
Seagroves  
Diplomatic Tax Exemption Officer  
Office of Foreign Missions

**Regulation 1619. Foreign Consuls.**

**(a) Application of Tax.**

(1) IN GENERAL. Neither sales tax nor use tax applies to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, to the extent that such persons have been identified by the U. S. Department of State as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Tax Exemption Card by the U. S. Department of State which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

Tax applies to sales of tangible personal property to foreign consular officers, employees, or members of their families, who do not hold a Tax Exemption Card issued by the U. S. Department of State except as provided in subparagraph (a)(2) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(2) VEHICLES. In addition to the exemption provided in subparagraph (a)(1), the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U. S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and the date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.

Effective June 1, 2003, the sale or lease of vehicles to foreign consular officers, employees, or members of their families will be exempt from the sales and use taxes if:

(A) The purchaser provides a valid Tax Exemption Card (Personal or Mission) or a protocol identification card to the retailer; and

(B) The retailer contacts and obtains directly from the OFM a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ("OFM Eligibility Letter").

**(b) Records of Retailers.** Invoices or other written evidence of sale must be retained by the retailer to support any deduction claimed on sales tax returns for sales to foreign consuls. The invoices should show the name of the purchaser, the name of the mission, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. In addition, to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the OFM Office of Foreign Missions, U. S. Department of State, confirming the exempt status of the diplomat must be retained by the retailer.

Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above, the retailer must retain a copy of the Tax Exemption Card (Personal or Mission) or protocol identification card, and the OFM Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his/her family.

Note: For special provisions affecting record retention, see Regulation 1698.

Authority: Section 7051, Revenue and Taxation Code.

Reference: Sections 6272, 6352, and 7053, Revenue and Taxation Code; and Vienna Convention on Diplomatic Relations of April 18, 1961, Article 34 (23 UST 3242) T.I.A.S. No. 7502.