

Tax Information

Bulletin

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California State Board of Equalization
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Manufacturer's coupons and rebates—Are you reporting the right amount of tax?

Manufacturers offer a variety of discount coupons and rebate programs to promote the sale of their products. If you receive payments for participating in one of these programs, you should be aware that these amounts are often considered part of your taxable gross receipts. In other words, tax generally applies to the total amount you receive from the sale of taxable merchandise—the amount paid by the customer *and* the amount paid by the manufacturer. To make sure your customer reimburses you for the total tax due, you should calculate tax on the selling price of the item *before* you deduct the coupon or rebate amount.

Coupons

When you redeem discount coupons issued by a manufacturer, the amount you receive from the manufacturer is considered part of your gross receipts from the sale of the product.

Example: A grocery store accepts a manufacturer's coupon for \$1.00 off laundry detergent that has a sales price of \$12.00. The grocery store should calculate tax on \$12.00

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Sales and use tax rate to increase in the City of Sebastopol and the City of West Sacramento

The following new sales and use tax rates will take effect on April 1, 2003:

City of Sebastopol: 7.625%

Voters have approved a 0.125% City of Sebastopol Transactions and Use Tax (SEGR), which will increase the tax rate within the city limits of Sebastopol from 7.50% to 7.625%.

City of West Sacramento: 7.75%

Voters have approved a 0.50% City of West Sacramento Transactions and Use Tax (WSTU), which will increase the tax rate within the city limits of West Sacramento from 7.25% to 7.75%.

Who must collect tax at the new rates?

You must apply the new tax rate if you

- Are a retailer in the city and your merchandise is sold and delivered within the city.
- Are a retailer located outside of the city who is engaged in business in the city and you sell merchandise for use in the city. You are considered to be engaged in business in the city if you (1) have any type of business location there, (2) deliver into the city using your own vehicles, or (3) have an agent or representative in the city for the purpose of taking orders, delivering, installing, selling, or assembling.
- Are a dealer of vehicles, vessels, or aircraft and sell those items to persons who will register or license them to an address located in the city.
- Collect tax on lease payments you receive for leased property used by the lessee in the city.

Is there an exemption from the tax rate increase?

In general, fixed-price contracts and fixed-price lease agreements entered into prior to April 1, 2003, are subject to the tax rates in effect at the time you and your customer entered into the contract or lease agreement. To qualify as "fixed-price," neither party can have the unconditional right to adjust the price for an increase in costs or terminate the contract or lease [Revenue and Taxation Code sections 7261(g) or 7262 (f)]. In addition, the tax amount or rate must be specifically stated in the contract or lease agreement. If the contract or lease qualifies as fixed-price, you should continue to report and remit the specified tax rate—that is, the rate in effect at the time you entered into the contract.

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Other business-related taxes administered by the Board

Businesses are often surprised to learn that we administer more than 20 other tax and fee programs besides sales and use taxes. Read below to learn more about four of these programs and how they can affect your business operations.

Environmental Fee

Is your corporation subject to the environmental fee?

Corporations (including "S" corporations and out-of-state corporations) must register with us and file environmental fee returns if they have at least 50 employees who are employed more than 500 hours during the calendar year in this state. Corporations with fewer than 50 qualifying employees are not required to register and pay the fee.

The environmental fee, administered by the Board on behalf of the Department of Toxic Substances Control, is used to fund the Site Mitigation Program that cleans up contaminated sites in the state.

For more information and to register your corporation, call the Environmental Fees Division at 916-323-9555 or write to the address in the middle column. You can also obtain information from publication 90, *Environmental Fee*, which is available online at www.boe.ca.gov. Or call our Information Center for a copy.

Generator Fee

Does your business generate hazardous waste or clean it up?

You may not consider yourself a "generator" of hazardous waste, but under California's Hazardous Substances Tax Law, your actions under certain conditions may qualify you as such and subject you to the Generator Fee, which is payable to and collected by the Board.

For example, in addition to those businesses who actually produce hazardous waste from their operations, the definition of a *generator* includes "a person who cleans up

a release of hazardous waste caused by another" and "a person who contracts with an environmental cleanup company to clean up property." The fee is based on the tonnage of waste involved, such as contaminated soil, and can amount to substantial sums. This could be of particular significance, especially if you are planning an excavation of real property or are purchasing commercial property for improvement.

For more information, contact:

Environmental Fees
Division, MIC: 57
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-0057
916-323-9555

For a copy of Regulation 3000, *Generator of Hazardous Waste*, go online or call our Information Center.

Underground Storage Tank Maintenance Fee

Tank owners can authorize the Board to send returns to the tank operator

Owners of underground storage tanks used to store fuel are liable for the Underground Storage Tank Maintenance Fee—even if someone else operates the tanks. The tank owner may authorize the Board to send returns to the operator if the operator is going to report and pay the fee on behalf of the owner. The owner remains liable for any unpaid fees. Only the returns are mailed to the operator. All other notices are mailed to the owner. To obtain an authorization to mail returns to the operator, please contact our Fuel Taxes Division at 916-322-9669.

Cigarette and Tobacco Products Tax

Illegal cigarettes and tobacco products are subject to seizure

Retailers who purchase cigarettes or tobacco products from other than licensed wholesalers and distributors should be aware that they are in violation of the law and the product is subject to seizure by the Board of Equalization.

The Board's Investigations Division actively investigates and makes seizures of counterfeit stamped cigarettes and imports of domestic labeled cigarettes or export type cigarettes stamped in violation of the law.

A retailer's best defense against dealing in products subject to seizure is to purchase cigarettes only from a licensed cigarette wholesaler or distributor and to obtain a purchase receipt.

If you have any questions or concerns over the product you are purchasing, please contact us at 916-324-0105, or write to us at Board of Equalization; Investigations Division, MIC:42; P.O. Box 942879; Sacramento, CA 94279-0042.

Sales of food and beverages by mini-marts, liquor stores, convenience stores, and similar businesses . . .

This article assumes that you do not sell food and beverages for consumption at your place of business (that is, tables, chairs, or other seating facilities are not provided for eating food). This article also assumes that you sell food and beverages individually (you do not sell two or more items together for a single price).

There is some confusion among convenience stores, mini marts and liquor stores regarding the taxability of heated foods, hot drinks, and prepackaged foods that are heated in a microwave by the store clerk or customer. The following information should answer most of those questions.

Sales of heated foods. Sales of egg rolls, pizza slices, hot dogs, burritos, soup and other food items that are sold in a heated condition are taxable. These foods are typically displayed in heated units or under heat lamps. Sales of hot food are taxable even though they are sold to go.

Sales of microwaveable prepackaged foods. Sales of refrigerated or frozen burritos, sandwiches, microwave popcorn, soups, and so forth are taxable if the items are heated in a microwave oven that is accessible only to store employees. It is presumed that employees, rather than customers, will heat the food and sell it in a heated condition. If the microwave is located in a place that is accessible to customers, the sale of the cold prepackaged food is not taxable. It is presumed that the food will not be sold in a heated condition and that the customer, rather than employees, will use the microwave oven to heat the food.

Sales of hot drinks. Sales of hot beverages such as coffee, hot chocolate, and hot tea, are not taxable when they are sold to go and for a separate price.

For more information about how tax applies to your food sales, see publications 24, *Tax Tips for Liquor Stores* and 22, *Tax Tips for the Dining & Beverage Industry*.

Optional software maintenance agreements—change in the application of tax to lump-sum charges

Beginning January 1, 2003, the lump-sum charge for an optional software maintenance agreement is 50 percent taxable when the purchaser receives tangible personal property during the term of the agreement (such as software updates on CD). For reporting periods prior to January 1, 2003, the entire charge is subject to tax.

Optional means that the customer may purchase prewritten software without also purchasing the maintenance contract. If the customer must purchase the maintenance contract in order to purchase or lease a prewritten computer program, then the entire charge for the maintenance contract remains taxable as part of the sale or lease of the prewritten program. If no tangible personal property is transferred to the customer during the period of the maintenance contract, tax does not apply to any portion of the charge (for example, customers download software updates from a website and no CDs are sent). In addition, tax does not apply to a separately stated charge for consultation services if the purchaser is not required to purchase those services in order to purchase or lease any tangible personal property, such as a prewritten computer program or a maintenance contract.

For more information about the recent changes, call our Information Center or order Regulation 1502, *Computers, Programs, and Data Processing*; software maintenance agreements are discussed in subdivision (f)(1)(C).

Special printing aids sold with nontaxable sales of printing

Special printing aids are reusable manufacturing aids used by printers in the printing process and are useful only to a particular customer. Most printers are retailers of special printing aids and may purchase them for resale. However, when a printer sells special printing aids along with a nontaxable sale of printed matter, the printer is often making a retail sale of the special printing aids and owes tax on the sale price of the special printing aids to the printer.

For a supplemental article that explains printers' liability in more detail, please go online to www.boe.ca.gov/news/tib03.htm. The title of the article is "Special Printing Aids Sold with Nontaxable Sales of Printing."

Managed audit program ends

The Board's "self-audit" Managed Audit Program ended on January 1, 2003, as established in Revenue and Taxation Code section 7076.7. Only managed audits already in process prior to January 1, 2003, are eligible for the program's adjusted interest rate.

Local government tax reallocation inquiries

On January 1, 2003, we began following the local tax reallocation inquiry procedures established in proposed Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*. The regulation closely follows our existing process except that it includes new procedures for reallocation appeals made to the elected Members of the Board. For more information, please go online to www.boe.ca.gov/news/pdf/localtaxreallocate.pdf.

COUPONS, from page 1

(\$11.00 from the customer + \$1.00 from the manufacturer) and then deduct the \$1.00 coupon amount.

Tax does not apply to a retailer's own coupons that are provided free to customers. For example, a restaurant publishes a coupon in the newspaper for \$5.00 off a \$20.00 meal. Since the restaurant only receives \$15.00 on the sale—no amount is paid by a third party—tax is due on \$15.00.

Rebates

Amounts received from third-party rebate programs that require the retailer to reduce the selling price of a product are includable in gross receipts. Tax applies whether or not the customer is required to redeem a coupon, sticker, or other indicia. Similarly, tax applies whether the rebate is paid directly to you or to a distributor on your behalf.

Example 1: A vehicle manufacturer offers customers a \$1,000 rebate on the purchase of a new car. Rather than receive payment from the manufacturer, the customer assigns the rebate to the dealer who applies it toward the customer's down payment. The car dealer owes tax based on the selling price of the vehicle before the \$1,000 rebate is applied.

Example 2: A liquor store retailer buys cigarettes from a third-party cigarette distributor and receives a \$3.00 buy-down rebate from the cigarette manufacturer for reducing the selling price of a particular cigarette brand by \$3.00 a carton. Thus, a carton that normally sells for \$30.00 is reduced to \$27.00 under the program. The rebate is based on every carton sold at the reduced price and is paid by the manufacturer directly to the retailer. The liquor store retailer owes tax based on the gross receipts from the sale—\$30.00 (\$27.00 from the customer plus \$3.00 from the manufacturer).

Gross receipts do not include purchase discounts (discounts given by a vendor to a customer based on the amount of prior purchases by the

customer) and ad or rack allowances (agreements between the manufacturer and retailer to advertise a product, or give it preferential shelf space).

Rebate and incentives program under review

Although the taxability of manufacturer rebate programs has been discussed in depth over the last two years, there has been no change in how tax applies. Proposed Regulation 1671.1, *Rebates and Incentives*, was presented to the Board for consideration last December, but no action was taken. Therefore, retailers should continue to report tax on

manufacturer coupons and rebates as explained above.

In response to ongoing concern about the taxability of rebate programs, the issue will be discussed by the Business Taxes Committee at its August meeting. Interested members of the public are invited to these meetings to express their views and present proposals regarding the provisions and policies related to the tax and fee laws administered by the Board. For information about the August meeting and how you can participate, visit our website at www.boe.ca.gov/meetings/pdf/03btcltetter.pdf.

New or revised reference material

Sales and Use Tax Publications

- 9 Tax Tips for Construction and Building Contractors (11/02)
- 25 Tax Tips for Auto Repair Garages and Service Stations (11/02)
- 54 Tax Collection Procedures (01/03)
- 104 Sales to Residents of Other Countries (01/03)
- 106 Gift Wrapping Charges (01/03)

Translated Publications (C=Chinese; CN=Cambodian; HG=Hmong; K=Korean; S=Spanish; V=Vietnamese)

- 33-HG, CN Making Sales in California (02/01)
- 42-S Resale Certificate Tips (01/02)
- 51-C, K, S, V Guide to Board of Equalization Services (02/01)
- 71-C, S California City and County Sales and Use Tax Rates (04/02)
- 76-K Audits (12/01)
- 100-S Shipping and Delivery Charges (01/03)
- 101-S Sales Delivered Outside California (01/01)
- 103-S Sales for Resale (06/02)
- 104-S Sales to Residents of Other Nations (01/03)

Sales and Use Tax Regulations

- 1540 Advertising Agencies and Commercial Artists (effective 10/03/02)
- 1541 Printing and Related Arts (effective 10/03/02)
- 1543 Publishers (effective 09/18/02)
- 1528 Photographers, Photocopiers, Photo Finishers and X-Ray Laboratories (effective 08/01/02)

For More Information

All telephone numbers are toll-free.

Internet	www.boe.ca.gov ■ www.taxes.ca.gov
Information Center	800-400-7115 Telephone devices for the deaf 800-735-2929 (TDD) ■ 800-735-2922 (Voice)
Requests for Fax Copies	800-400-7115 (Choose automated services.)
Seller's Permit Verification	888-225-5263 ■ www.boe.ca.gov
Taxpayers' Rights Advocate	888-324-2798 ■ www.boe.ca.gov
Tax Evasion Hotline	888-334-3300
State Legislation	www.leginfo.ca.gov