

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax
Regulation 1668 Sales for Resale

OAL Approval

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The following items are exhibited:

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 - Initial Statement of Reasons
 - Proposed Text of Regulations 1668
 - Regulation History
9. *Statement of Compliance*
10. *Reporter's Transcript, Item F1, Regulation 1668, Sales for Resale, May 27, 2009*
11. *Minutes, May 27, 2009, and Exhibits*

The following items are exhibited:

 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Regulations 1668
 - Regulation History

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 8/10/2009
RE: Return of Approved Rulemaking Materials
OAL File No. 2009-0618-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2009-0618-01S regarding Sales for Resale).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2009-0303-05	REGULATORY ACTION NUMBER 2009-0618-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED FILED IN THE OFFICE OF

2009 JUL 30 PM 2:32

2009 JUN 18 AM 11:22

OFFICE OF ADMINISTRATIVE LAW

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 09-11-2	PUBLICATION DATE 3-13-2009

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Sales for Resale	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1668
	REPEAL
TITLE(S) 18	

3. TYPE OF FILING

- Regular Rulemaking (Gov. Code §11346)
- Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- Emergency (Gov. Code, §11346.1(b))
- Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- Emergency Readopt (Gov. Code, §11346.1(h))
- File & Print
- Other (Specify) _____
- Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- Effective 30th day after filing with Secretary of State
- Effective on filing with Secretary of State
- \$100 Changes Without Regulatory Effect
- Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- Department of Finance (Form STD. 399) (SAM §6660)
- Fair Political Practices Commission
- State Fire Marshal
- Other (Specify) _____

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diane G. Olson</i>	DATE 7/30/09
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 30 2009

Office of Administrative Law

Regulation 1668. Sales for Resale.

(a) Resale Certificate.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) Form of Certificate.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) Qualified Resale Certificate. If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for ~~retail resale, or tax applies to the order.~~ The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology

described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ ~~assumed~~ that the property covered by that purchase order was not purchased for use, and not for resale and that sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials produced parts for resale and also for tooling used to ~~produce the parts~~ process the raw materials should specify that the raw materials parts are purchased for resale and that the sale of the tooling is subject to tax.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) Good Faith. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) Improper Use of Certificate. Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) Other Evidence to Rebut Presumption of Taxability. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in subdivision (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) Use of XYZ Letters. ~~{~~A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters."~~}~~ XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain

information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, {verify the information provided in the response to the XYZ letter,} including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use {or whether tax was paid by the purchaser.} When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

{(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).}

(g) Purchaser's Liability for Tax. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and

must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) Mobilehomes. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(i) Mobile Transportation Equipment. Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

NOTE: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6012.8, 6012.9, 6072, 6091–6095, 6241–6245, 6484, 6485, and 7153, Revenue and Taxation Code.

APPENDIX A

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: _____.
2. I am engaged in the business of selling the following type of tangible personal property:
_____.
3. ~~The~~This certificate is for the purchase from _____ of the item(s) I have listed in paragraph 5 below.
[Vendor's name]
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:

_____.
6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

APPENDIX B
California Resale Certificate
for the Auto Body Repair and Painting Industry

I HEREBY CERTIFY:

1. I hold valid California seller's permit number: _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have *initialed* in paragraph 5 below.

[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under ~~the~~this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (**not** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			

6. I have read and understand the following:

Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may **not** be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

- | | | | |
|------------------|------------------------|---------------------|-------------------|
| Abrasives | Equipment repair parts | Masks | Reducers |
| Books | Goggles | Metal conditioners | Respirators |
| Cans | Hand cleaners | Paint remover | Rubbing compounds |
| Cleaning solvent | Manuals | Plastic bottles | Rubbing machines |
| Color charts | Masking paper | Polishing compounds | Thinners |
| Equipment | Masking tape | Polishing machines | Touch-up bottles |

7. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2009-0624-01
BOARD OF BARBERING AND COSMETOLOGY
 Building Standards

The Board of Barbering and Cosmetology (Board) submits this nonsubstantive rulemaking pursuant to Title 1 of the California Code of Regulations, section 100. The Board changes existing citations found in Title 16, California Code of Regulations section 995 relating to building and plumbing codes within Title 24 to update the citations to reflect current and accurate Title 24 citations.

Title 16
 California Code of Regulations
 AMEND: 995
 Filed 08/05/2009
 Agency Contact: Kevin Flanagan (916) 575-7104

File# 2009-0618-01
BOARD OF EQUALIZATION
 Sales for Resale

This regulatory action provides that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as, "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in section 1668. Other amendments include providing that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale.

Title 18
 California Code of Regulations
 AMEND: 1668
 Filed 07/30/2009
 Effective 08/29/2009
 Agency Contact:
 Richard Bennion (916) 445-2130

File# 2009-0623-08
BOARD OF PHARMACY
 Ethics Course

The Board of Pharmacy is adopting criteria for board approval of an ethics course. Currently in regulation, the Board's Disciplinary Guidelines (16 C.C.R. 1760) allow for imposition of an ethics course as an optional term of probation. These amendments specify course duration, faculty, educational objectives, method of instruction, content, class size, record retention and program completion.

Title 16
 California Code of Regulations
 ADOPT: 1773.5 AMEND: 1773
 Filed 08/04/2009
 Effective 09/03/2009
 Agency Contact: Carolyn Klein (916) 574-7913

File# 2009-0723-02
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY
 Renewable Energy Program

The Public Resources Code creates the California Alternative Energy and Advanced Financing Authority (Authority) and authorizes it to fix fees and charges for projects to fund expenses incurred by the Authority in carrying out its duties. Existing section 10020 of title 4 of the California Code of Regulations sets fees for projects generally, but there are no specific fees established for renewable energy projects. This emergency regulatory action adds a separate fee structure to section 10020 to establish a renewable energy program and lower the cost of financing these technologies while allowing the Authority to be self sustaining. This regulatory action was deemed necessary for the immediate preservation of the public peace, health and safety, and general welfare by the Legislature pursuant to section 26011.6(b) of the Public Resources Code.

Title 4
 California Code of Regulations
 AMEND: 10020
 Filed 07/31/2009
 Effective 07/31/2009
 Agency Contact: Brian Gorban (916) 651-8006

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax
Regulation 1668 Sales for Resale

1. *Final Statement of Reasons*
2. *Updated Informative Digest*
3. *Business Tax Committee Minutes, February 3, 2009*
 - Minutes
 - Text of Proposed regulation
 - Formal Issue Paper Number 08-015
4. *Reporter's Transcript Business Taxes Committee, February 3, 2009*
5. *Estimate of Cost or Savings, February 4, 2009*
6. *Economic and Fiscal Impact Statements, March 3, 2009*
7. *Notice of Publications*
 - Form 400 and notice, Publication Date March 13, 2009
 - Proposed Text of Regulations 1668
 - Email sent to Interested Parties, March 13, 2009
 - CA Regulatory Notice Register 2009, Volume No. 11-Z
8. *Notice to Interested Parties, March 13, 2009*

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulations 1668
 - Regulation History
9. *Statement of Compliance*
10. *Reporter's Transcript, Item F1, Regulation 1668, Sales for Resale, May 27, 2009*
11. *Minutes, May 27, 2009, and Exhibits*

✓ 11. Minutes, May 27, 2009, and Exhibits

The following items are exhibited:

- ✚• Notice of Proposed Regulatory Action
- ✚• Initial Statement of Reasons
- ✚• Proposed Text of Regulations 1668
- ✚• Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on June 17, 2009 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

June 17, 2009



Richard E. Bennion
Regulations Coordinator
State Board of Equalization

Final Statement of Reasons
Proposed Amendments to California Code of Regulations,
Title 18, Section 1668,
Sales for Resale

Update of Information in the Initial Statement of Reasons

The specific purpose, factual basis, and rationale for the proposed amendments to Regulation 1668 are the same as provided in the Initial Statement of Reasons.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the amendments to Regulation 1668 that was not identified in the Initial Statement of Reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

The Board has determined that the proposed amendments to regulation 1668 will not have a significant adverse economic impact on business. The Board did not rely on any facts, evidence, documents, testimony, or other information to support its determination that was not identified in the Initial Statement of Reasons.

No Mandate on Local Agencies or School Districts

The Board has determined that the proposed amendments to Regulation 1668 do not impose a mandate on local agencies or school districts.

Response to Public Comment

On May 27, 2009, the Board held a public hearing on the proposed amendments to Regulation 1668. No one appeared at the public hearing and no written comments were received.

Alternatives Considered

By its motion, the Board determined that no alternative to the proposed amendments to Regulation 1668 would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

No Federal Mandate

The adoption of the proposed amendments was not mandated by federal law or regulations and there is no federal regulation that is similar to Regulation 1668.

Updated Informative Digest

Proposed Amendments to California Code of Regulations, Title 18, Section 1668, *Sales for Resale*

Updated Informative Digest

On May 27, 2009, the Board of Equalization (Board) held a public hearing on and adopted the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1668, *Sales for Resale*, described in the Notice of Proposed Regulatory Action. There have not been any changes to the applicable laws or the effect of the proposed amendments to Regulation 1668 described in the Informative Digest included in the Notice of Proposed Regulatory Action.

Regulation 1668 implements Revenue and Taxation Code sections 6091 and 6241. Section 6091 presumes that all of a retailer's sales of tangible personal property in California are retail sales subject to sales tax. Section 6241 presumes that a person's sales of tangible personal property for delivery in California are retail sales subject to use tax. Both sections also provide that the presumptions may be rebutted by a seller of tangible personal property; however, a seller is relieved of the burden to rebut the presumptions if the seller takes a resale certificate from the purchaser as provided in Regulation 1668.

A document is only regarded as a resale certificate if it contains all the essential elements specified in Regulation 1668, subdivision (b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser.

Regulation 1668, subdivision (b)(4), explains that purchasers can designate the items that they are purchasing for resale on a purchase-order-by-purchase-order basis. Subdivision (b)(4) explains that when a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased "for resale" or subject to tax. If each purchase order does not so specify, or is not issued timely, the Board will presume that the property covered by that purchase order was not purchased for resale, and that the sale or purchase of the property is subject to tax. If a purchase order is issued for property which is to be resold and property that is not going to be resold, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. Furthermore, a seller must retain each designated purchase order, in conjunction with the original qualified resale certificate, in order to support a sale for resale. However, subdivision (b)(4) does not specify the type of terminology purchasers should use to make an acceptable "resale" designation on a purchase order.

The purpose of the proposed amendments to Regulation 1668, subdivision (b), is to interpret, implement, and make specific Revenue and Taxation Code sections 6091 and 6241 by clarifying that:

- An acceptable resale designation is not limited to the phrase “for resale” and may include comparable terminology, such as “resale = yes,” “nontaxable,” “taxable = no,” or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice;
- A purchase order does not contain an acceptable resale designation if the applicable amount of tax is shown as \$0 or is left blank, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale; and
- Only the combination of an acceptably designated purchase order and a qualified resale certificate containing all the essential elements required by Regulation 1668, subdivision (b)(1), will constitute a valid resale certificate.

The proposed amendments are necessary to provide guidance to taxpayers affected by Revenue and Taxation Code sections 6091 and 6241. The proposed amendments will prevent confusion over the validity of resale certificates that incorporate designations on purchase orders and help avoid disputes between sellers and purchasers regarding the application of sales and use tax, without unnecessarily limiting the types of acceptable “resale” designations purchasers can make on purchase orders. In addition, the proposed amendments will help prevent purchasers from using unacceptable designations to purchase tangible personal property for use in California without paying tax or tax reimbursement to the sellers, and later claiming that the sellers are liable for the tax on their transactions because the purchasers’ resale designations were unacceptable.

In addition, the proposed amendments make minor grammatical changes to Regulation 1668, subdivisions (b) and (c). The proposed amendments replace “paragraph” with “subdivision (b)” in and delete “above” from subdivision (b)(2), add titles to subdivisions (b)(3) and (b)(4), and insert the word “subdivision” into subdivision (c).



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: FEBRUARY 3, 2009, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title: Proposed Regulatory Revisions to Regulation 1668, *Sales for Resale*,
Regarding Qualified Resale Certificates****Issue/Topic:**

Should Regulation 1668 be revised to clarify the documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale?

Committee Discussion:

Staff described the proposed changes to the regulation, and an interested party addressed the Committee supporting staff's recommendation. There was no further discussion of this item.

Committee Action/Recommendation/Direction:

Upon motion by Mr. Leonard, seconded by Doctor Chu, the Committee unanimously approved and authorized for publication the proposed amendments to Regulation 1668, *Sales for Resale*, contained in Alternative 1. Committee members requested that taxpayers and staff be promptly informed of this action. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed amendments to Regulation 1668 is attached.

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Ramon J. Hirsig

Ramon J. Hirsig, Executive Director

BOARD APPROVED

at the February 3, 2009 Board Meeting

/s/ Diane Olson

Diane Olson, Chief
Board Proceedings Division

(a) RESALE CERTIFICATE.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) FORM OF CERTIFICATE.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate: If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

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(4) Qualified Resale Certificate: If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. ~~or whether tax applies to the order.~~ The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ ~~assumed~~ that the property covered by that purchase order was not purchased for use, and not for resale and that sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials produced parts for resale and also for tooling used to ~~produce the parts~~ process the raw materials should specify that the raw materials parts are purchased for resale and that the sale of the tooling is subject to tax.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) **GOOD FAITH.** In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) **IMPROPER USE OF CERTIFICATE.** Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) **OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY.** A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale

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Proposed Amendments to Regulation 1668, *Sales for Resale*

certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) USE OF XYZ LETTERS. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

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1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;
2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;
3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.
4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) PURCHASER'S LIABILITY FOR TAX. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the

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Proposed Amendments to Regulation 1668, *Sales for Resale*

purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(i) **MOBILE TRANSPORTATION EQUIPMENT.** Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

APPENDIX A

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: _____.
2. I am engaged in the business of selling the following type of tangible personal property:
_____.
3. This certificate is for the purchase from _____ of the item(s) I have listed in paragraph 5 below.
[Vendor's name]
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:

_____.
6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

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APPENDIX B
California Resale Certificate
for the Auto Body Repair and Painting Industry

I HEREBY CERTIFY:

1. I hold valid California seller's permit number: _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have *initialed* in paragraph 5 below.
[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (**not** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			

6. I have read and understand the following:

Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may not be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

- | | | | |
|------------------|------------------------|---------------------|-------------------|
| Abrasives | Equipment repair parts | Masks | Reducers |
| Books | Goggles | Metal conditioners | Respirators |
| Cans | Hand cleaners | Paint remover | Rubbing compounds |
| Cleaning solvent | Manuals | Plastic bottles | Rubbing machines |
| Color charts | Masking paper | Polishing compounds | Thinners |
| Equipment | Masking tape | Polishing machines | Touch-up bottles |

7. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

**AGENDA — February 3, 2009 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1668, Sales for Resale**

Action Item	Staff and Interested Parties' Proposed Regulatory Language
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<p>Action 1 — Consent</p> <p>Documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale</p>	<p>Regulation 1668, Sales for Resale</p> <p>...</p> <p>(b) FORM OF CERTIFICATE.</p> <p>...</p> <p>(2) A document containing the essential elements described in paragraph subdivision (b)(1) above is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.</p> <p>(3) <u>Blanket Resale Certificate:</u> If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.</p> <p>(4) <u>Qualified Resale Certificate:</u> If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether <u>or not</u> the property covered by the order is purchased for resale. or whether tax applies to the order. <u>The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be presumed <u>assumed</u> that the property covered by that purchase order was <u>not</u> purchased for use, and not for resale and that sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for <u>raw materials produced parts</u> for resale and also for tooling used to produce the parts <u>process the raw materials</u> should specify that the <u>raw materials parts</u> are purchased for resale and that the sale of the tooling is subject to tax.</u></p> <p><u>The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.</u></p> <p>...</p> <p>(c) GOOD FAITH. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in <u>subdivision (b)(1)</u> and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.</p>
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Issue Paper Number **08-015**



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Revisions to Regulation 1668, *Sales for Resale*, Regarding Qualified Resale Certificates

I. Issue

Should Regulation 1668 be revised to clarify the documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale?

II. Alternative 1 - Staff Recommendation

As agreed upon by staff and interested parties, staff recommends that the Board authorize publication of the proposed amendments to Regulation 1668 as illustrated in Exhibit 2. The amendments would clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase “for resale” and may include comparable terminology such as “not taxable.” The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller’s sale for resale transaction.

III. Alternative 2

Do not revise Regulation 1668.

FORMAL ISSUE PAPER

Issue Paper Number 08-015

IV. Background

This issue was referred to the Business Taxes Committee (BTC) to clarify whether a sale for resale is valid when the instructions on the resale certificate state “see purchase order” and the purchase order identifies the property is being purchased for resale by using terminology such as “not taxable” or “taxable: no” as opposed to “for resale.” If valid and accepted in good faith, the seller accepting the purchase order combined with a qualified resale certificate will be relieved from the liability for tax if the transaction is later found to be taxable and the liability to pay the tax will rest with the purchaser.

In July 2008, Board staff was instructed by memo that the provisions of subdivision (b)(4) of Regulation 1668 require that a purchase order issued in support of a qualified resale certificate is valid and relieves the seller from the liability for tax only if the purchase order includes the phrase “for resale.” In response to such interpretation, a number of taxpayer representatives and consultants (hereafter referred to as “interested parties”) objected to this policy and questioned whether Board staff consistently followed such interpretation in the past. Interested parties organized meetings with representatives from the Board’s Sales and Use Tax Department and Board Members’ offices to discuss this issue. As a result, the BTC Chair referred this matter to the BTC for analysis and recommendation. Staff met with interested parties on November 25, 2008, to discuss proposed revisions to the regulation and agreed to incorporate additional revisions suggested by the interested parties to bring consensus to the proposal.

Current Law

Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller’s permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due.

If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser.

Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states “see purchase order” in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

FORMAL ISSUE PAPER

Issue Paper Number 08-002

V. Alternative 1 - Staff Recommendation**A. Description of Alternative 1**

Staff proposes amending subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase “for resale” and may include comparable terminology, such as “resale = yes,” “nontaxable,” “taxable = no,” or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1).

Staff further recommends that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale. (See Exhibit 2.)

Discussion

Unsupported sales for resale continue to rank second on the Board’s list of most frequent noncompliance errors found in audits, surpassed only by untaxed purchases from out-of-state vendors. The initial questioning of a claimed sale for resale by the Board is usually the result of the seller’s failure to have timely, and in good faith, taken a resale certificate from the purchaser that contains the essential elements required by the regulation, or failure to have other documentation on file to support the resale transaction.

Regulation 1668 provides that a valid resale certificate must contain the signature of the purchaser and the date of execution, the name and address of the purchaser, the number of the seller’s permit, and a statement that the *property described in the document is purchased for resale*. At issue is whether a qualified resale certificate that contains all the essential elements required in the regulation continues to be valid when the description of the property refers to a purchase order and the purchase order describing the property uses terms such as “not taxable” in lieu of “for resale.” At the time subdivision (b)(4) regarding qualified resale certificates was incorporated in the regulation in 1977, the Board interpreted it to mean that when a qualified resale certificate is issued, the purchase order must contain the words “for resale” in order for the sale to qualify as a sale for resale and words such as “not taxable” are not sufficient to relieve the seller from liability for the tax. Since that time, the Sales and Use Tax Department has issued policy memos and revisions to its Audit Manual that have appeared to conflict regarding the requirement for the words “for resale” on purchase orders issued in conjunction with a qualified resale certificate.

Staff’s proposed revisions would end any confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale.” Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser’s ability to claim, later, that the purchase was not intended as a purchase for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

FORMAL ISSUE PAPER

Issue Paper Number 08-002

B. Pros of Alternative 1

- Would provide a bright line test as to who is responsible for the tax due when there is a dispute as to the validity of the qualified resale certificate or related purchase order.
- Would ease a seller's burden to support its sales for resale.
- Would allow purchasers the flexibility to use preformatted purchase order forms to designate that the property is purchased for resale.
- Recognizes that purchase orders are widely used and their style and wording vary considerably as to the language specifying the taxability of a purchase of a specific item.

C. Cons of Alternative 1

- Will require purchasers to be more attentive to their designation of whether an item is purchased for resale (nontaxable) or for their own use.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. This alternative requires the amendment of Regulation 1668.

E. Operational Impact of Alternative 1

Staff will notify taxpayers of the amendments to Regulation 1668 through an article in the Tax Information Bulletin (TIB). Staff will also revise affected publications, manuals, and Board staff and taxpayer training materials affected by this alternative.

F. Administrative Impact of Alternative 1

1. Cost Impact

There will be no additional costs. The workload associated with publishing and distributing the TIB and revising publications, manuals, and training materials is considered routine and any corresponding cost would be within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

This alternative will ease the seller's burden to support sales for resale and provide the purchasers the flexibility to use existing purchase order formats to designate that property is purchased for resale.

H. Critical Time Frames of Alternative 1

None. Implementation will occur 30 days after approval by the Office of Administrative Law.

VI. Alternative 2 – No Revisions

A. Description of Alternative 2

Do not revise Regulation 1668.

B. Pros of Alternative 2

The current provisions of the regulation may be viewed by some as being clear without the need for further amendments.

C. Cons of Alternative 2

- Will not ease the seller's burden to support sales for resale, or provide the purchaser with the flexibility to designate the property that is being purchased for resale.
- Will continue the confusion in some cases as to who is responsible for the taxes due if the resale transaction is later found to be invalid.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

The seller's current burden to support sales for resale will not be eased. The purchaser will not be allowed flexibility in preparation of purchase orders.

H. Critical Time Frames of Alternative 2

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: January 23, 2009

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATIONBOARD OF EQUALIZATION
REVENUE ESTIMATE

**Proposed Revisions to Regulation 1668, *Sales for Resale*,
Regarding Qualified Resale Certificates****Alternative 1 – Staff Recommendation**

As agreed upon by staff and interested parties, staff recommends that the Board authorize publication of the proposed amendments to Regulation 1668 as illustrated in Exhibit 2. The amendments would clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase “for resale” and may include comparable terminology such as “not taxable.” The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller’s sale for resale transaction.

Alternative 2 - Other Alternative Considered

Do not revise Regulation 1668.

Background, Methodology, and Assumptions**Alternative 1 – Staff Recommendation**

There is nothing in the staff recommendation that would impact sales and use tax revenue. Staff’s proposed revisions would clear the confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale.” Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. If valid and accepted in good faith, the seller accepting the purchase order combined with a qualified resale certificate will be relieved from the liability for tax if the transaction is later found to be taxable and the liability to pay the tax will rest with the purchaser.

Alternative 2 - Other Alternative Considered

There is nothing in the alternative 2 that would impact sales and use tax revenue.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Alternative 2 – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Jr., Manager, Research and Statistics Section, Legislative and Research Division, and Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of January 23, 2009.

(a) RESALE CERTIFICATE.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) FORM OF CERTIFICATE.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate: If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) Qualified Resale Certificate: If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must

then specify whether or not the property covered by the order is purchased for resale. ~~or whether tax applies to the order.~~ The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ assumed that the property covered by that purchase order was not ~~not~~ purchased for use, ~~and not for resale and that sale or purchase is subject to tax.~~ If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials produced parts for resale and also for tooling used to ~~produce the parts~~ process the raw materials should specify that the raw materials ~~parts~~ are purchased for resale and that the sale of the tooling is subject to tax.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) GOOD FAITH. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) IMPROPER USE OF CERTIFICATE. Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) USE OF XYZ LETTERS. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) PURCHASER'S LIABILITY FOR TAX. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

REGULATION HISTORY

TYPE OF REGULATION: Sales and Use Tax
REGULATION: 1668
TITLE: Sales for Resale
PREPARATION: Cecilia Watkins/Lynn Whitaker
LEGAL CONTACT: Robert Tucker/ Andrew Kwee

Proposed revisions to Regulation 1668, *Sales for Resale*

HISTORY OF AMENDMENTS:

02-03-09: Business Taxes Committee (BTC) meeting
11-25-08: First interested parties meeting
11-03-08: Topic placed on BTC calendar
Sponsors: Alternative 1 – Board staff
Support: N/A
Oppose: N/A

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

FEBRUARY 3, 2009

BUSINESS TAXES COMMITTEE

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Committee:

Betty Yee
Chair

Judy Chu
Member

Bill Leonard
Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Jeff McGuire
Sales and Use Tax Department

Robert Tucker
Legal Division

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Page

Speaker:

PETER MICHAELS

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Sacramento, California

February 3, 2009

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MS. OLSON: The first item on the agenda this morning is the Business Taxes Committee.

MS. YEE: We have one item on the Business Taxes Committee agenda. It's Sales and Use Tax Regulation 1668 regarding sales for resale.

Good morning.

MR. MCGUIRE: Hi.

MS. YEE: Please introduce yourselves for the record and then Appeals will introduce the issue.

MR. MCGUIRE: Good morning. I'm Jeff McGuire with the Sales and Use Tax Department. And with me today is Robert Tucker of our Legal Department.

As you mentioned, we have one agenda item today for your consideration that involves revisions to Regulation 1668, which is sales for resale.

Alternative 1, which is recommended by staff and supported by interested parties would clarify that when a purchase order is issued under a qualified resale certificate, it is not limited to the use of specific words -- the words "for resale" and may include comparable terminology such as "not taxable."

This change would provide a bright line test as to who is responsible for the tax due when there is a dispute as to the validity of the qualified resale certificate and related purchase order.

1 Alternative 2 would make no changes to the
2 regulation.

3 So, we are respectfully requesting your
4 approval of one of these alternatives and then your
5 authorization to publish any changes to the regulation.

6 I believe we have one speaker and then we're
7 available to answer any questions that you may have.

8 MS. YEE: Very well. Thank you very much. We
9 do have one speaker on this item. Mr. Rivera, you want
10 to come forward.

11 MR. MCGUIRE: I think it was Peter Michaels.

12 MS. YEE: Oh.

13 MR. MCGUIRE: He just signed in, I believe.

14 MS. YEE: Okay. Mr. Michaels.

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1 PETER MICHAELS

2 MR. McGUIRE: Good morning.

3 MR. MICHAELS: Good morning, Members of the
4 Board. For the record, my name is Peter Michaels. And
5 I actually am here to applaud the effort to liberalize,
6 if that's the right word, 1668. And I'm knee deep in a
7 case at the moment where I developed a lot of empathy
8 for the vendor who has thousands and thousands of
9 customers and it's just impossible to vet each and every
10 resale certificate that the vendor receives. And it's
11 an almost impossible circumstance to require a customer
12 to produce before actually doing business.

13 So, I applaud the -- the approach that this
14 revision takes to -- to be I say even more seller
15 friendly than the law already is, which as I interpret
16 it, it is relatively seller friendly in a resale
17 circumstance. So I applaud this.

18 MS. YEE: Great. Thank you very much.

19 Other speakers on this item?

20 Okay, hearing none, questions or comments,
21 Members?

22 Mr. Leonard.

23 MR. LEONARD: I'm -- I would say common sense,
24 and so I want to thank the -- the staff what -- their
25 work on this.

26 I would suggest that we -- that we make sure
27 that our web page search engine and our other ways --
28 I'm thinking of out-of-state retailers who may -- who

1 may want to find out what our rules are or may have
2 limited awareness that we have rules that are different
3 than other states, that they can get to it as easy as
4 possible.

5 So, search terms or something like that to --
6 to help out if -- if somebody has any kind of curiosity
7 they can come up with it quickly, this is what a resale
8 certificate looks like; this is what you need to do.

9 MS. YEE: Okay.

10 MR. LEONARD: Okay.

11 MR. MICHAELS: Could I share one afterthought?
12 I in the last week have done a lot of work in this area.
13 The audit manual has express provisions about sales for
14 resale, a whole section. The annotations, there are a
15 fair number of them --

16 MR. LEONARD: Right.

17 MR. MICHAELS: -- that would be affected by
18 this, for better or for worse.

19 MR. LEONARD: There's a cross-reference in all
20 those areas.

21 MR. MICHAELS: Yeah.

22 MR. LEONARD: It would be a good idea. Thank
23 you.

24 MS. YEE: Thank you. Mr. McGuire, perhaps you
25 can just take a moment to comment on how we plan to do
26 outreach with respect to this change. Either you've
27 covered it in the issue paper.

28 MR. MCGUIRE: Yeah, I think the -- the primary

1 thing that we'll do is we'll be updating all of our
2 publications, anything -- when we talk about sales for
3 resale we'll be updating the audit manual.

4 But primarily the biggest change we'll be
5 making sure that all of our staff is on board because
6 it's really that's where the audits -- kind of the
7 rubber meets the road, and where the issues actually
8 come up so it's making sure that our staff consistently
9 is following the -- the new guidance.

10 MS. YEE: Very well. Thank you. And I do want
11 to applaud our district office staff for working with
12 our taxpayers in this regard in bringing the issue
13 forward. I think this will provide definitely more
14 clarity and a bright line.

15 Other questions or comments?

16 Hearing none is there a motion?

17 MR. LEONARD: Move.

18 MS. YEE: Motion by Mr. Leonard --

19 DR. CHU: Second.

20 MS. YEE: -- second by Dr. Chu to approve the
21 proposed revisions and authorize publication.

22 Without objection, such will be the order.

23 Thank you very much.

24 MR. McGUIRE: Thank you.

25 MR. TUCKER: Thank you.

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REPORTER'S CERTIFICATE.

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State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on February 3, 2009 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 8 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: March 11, 2009.

BEVERLY D. TOMS
Hearing Reporter

**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

Proposed Amendment of Sales and Use Tax Regulation 1668, Sales for Resale

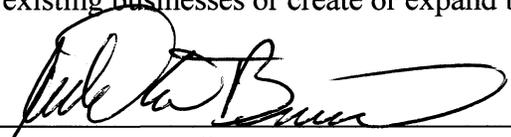
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement Prepared by  Date 2-4-2009
Regulations Coordinator

Approved by  Date 2/4/09
Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1668, Sales for Resale		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts businesses and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance standards
- g. Impacts individuals
- h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____
4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units: _____
5. Are there comparable Federal regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: _____
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: _____
3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- | | | |
|----------------|-------------------|----------------|
| Regulation: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |
3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No
Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ of the _____ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

3. Savings of approximately \$ _____ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

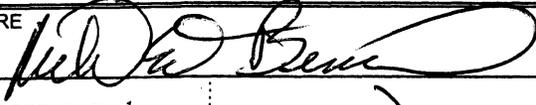
5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the _____ fiscal year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE		TITLE
		Regulations Coordinator
AGENCY SECRETARY ¹		DATE
APPROVAL/CONCURRENCE		3/3/09
DEPARTMENT OF FINANCE ²	PROGRAM BUDGET MANAGER	DATE
APPROVAL/CONCURRENCE	Exempt under SAM section 6660	

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2009-0303-05	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>EMERGENCY REGULATION</p> <p>MAR 03 2009 MAR 13 2009</p> <p>Office of Administrative Law</p> <p>NOTICE</p>	<p>REGULATIONS</p>
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AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (If any)
---	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Sales for Resale		TITLE(S) 18	FIRST SECTION AFFECTED 1668	2. REQUESTED PUBLICATION DATE March 13, 2009	
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
ACTION(S) AFFECTED List all section number(s) individually. Attach additional sheet if needed.	ADOPT
	AMEND
TITLE(S)	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmission of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmission of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL, ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
--------------------------------------	------

TYPED NAME AND TITLE OF SIGNATORY

MAR 03 2009 MAR 13 2009

Title 18. State Board of Equalization

DEPARTMENT OF ADMINISTRATIVE LAW

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposed regulatory changes to Sales and Use Tax Regulation 1668 Sales *for Resale*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, on Wednesday May 27, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by Wednesday, May 27, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CURRENT LAW: Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for

resale, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale.

The proposed revisions will prevent confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale”. Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser’s ability to claim, later, that the purchase was not intended as a purchase for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

Board staff met with interested parties on November 25, 2008, to discuss the proposed revisions to the regulation and, incorporated revisions suggested by the interested parties into the proposed regulations. On February 3, 2009, the Business Taxes Committee of the State Board Equalization voted to approve and authorized for publication the proposed regulatory amendments.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Regulation 1668 Sales *for Resale*, has no comparable federal regulations.

AUTHORITY

Sections 6596 and 7051 Revenue and Taxation Code.

REFERENCE

Sections 6091 and 6241 Revenue and Taxation Code

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Regulation 1668. SALES FOR RESALE.

References: Sections 6012.8, 6012.9, 6072, 6091–6095, 6241–6245, 6484, 6485, and 7153, Revenue and Taxation Code.

(a) RESALE CERTIFICATE.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) FORM OF CERTIFICATE.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate: If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) Qualified Resale Certificate: If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. ~~or whether tax applies to the order.~~ The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase

order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ assumed that the property covered by that purchase order was not purchased for use, and not for resale and that the sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials produced parts for resale and also for tooling used to produce the parts process the raw materials should specify that the raw materials parts are purchased for resale and that the sale of the tooling is subject to tax.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) **GOOD FAITH.** In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) **IMPROPER USE OF CERTIFICATE.** Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) **OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY.** A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) USE OF XYZ LETTERS. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) PURCHASER'S LIABILITY FOR TAX. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who

thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(i) MOBILE TRANSPORTATION EQUIPMENT. Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

APPENDIX A

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: _____.
2. I am engaged in the business of selling the following type of tangible personal property:
_____.
3. This certificate is for the purchase from _____ of the item(s) I have listed in paragraph 5 below.
[Vendor's name]
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:

_____.
6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

APPENDIX B
California Resale Certificate
for the Auto Body Repair and Painting Industry

I HEREBY CERTIFY:

1. I hold valid California seller's permit number: _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have *initialed* in paragraph 5 below.

[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, *I will owe use tax* based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (*not* an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			

6. I have read and understand the following:
Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may not be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

- | | | | |
|------------------|------------------------|---------------------|-------------------|
| Abrasives | Equipment repair parts | Masks | Reducers |
| Books | Goggles | Metal conditioners | Respirators |
| Cans | Hand cleaners | Paint remover | Rubbing compounds |
| Cleaning solvent | Manuals | Plastic bottles | Rubbing machines |
| Color charts | Masking paper | Polishing compounds | Thinners |
| Equipment | Masking tape | Polishing machines | Touch-up bottles |

7. I have read and understand the following:
For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

Bennion, Richard

From: Richmond, Joann [Joann.Richmond@BOE.CA.GOV]
Sent: Friday, March 13, 2009 3:18 PM
To: BOE_REGULATIONS@LISTSERV.CAHWNET.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 1668
Importance: High

The State Board of Equalization will hold a public hearing regarding amendments to Regulation 1668, *Sales for Resale*. The amendment is proposed to be adopted to clarify the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate. The public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Wednesday, May 27, 2009.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:

<http://www.boe.ca.gov/regs/reg1668.htm>

Questions regarding the substance of the proposed amendments to Regulation 1668 should be directed to: Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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Name: Ian K. McGlone
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 E-Mail Address: imcglone@mbc.ca.gov

The backup contact person is:

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 Address: 2005 Evergreen Street,
 Suite 1200
 Sacramento, CA 95816
 Telephone No.: (916) 263-2368
 Fax No.: (916) 263-2387
 E-Mail Address: kschunke@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.medbd.ca.gov/laws/regulations_proposed.html.

TITLE 18. STATE BOARD OF EQUALIZATION

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposed regulatory changes to Sales and Use Tax Regulation 1668 *Sales for Resale*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, on Wednesday May 27, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by Wednesday, May 27, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CURRENT LAW: Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's per-

mit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale.

The proposed revisions will prevent confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase "for resale". Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser's ability to claim, later, that the purchase was not intended as a purchase

for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

Board staff met with interested parties on November 25, 2008, to discuss the proposed revisions to the regulation and, incorporated revisions suggested by the interested parties into the proposed regulations. On February 3, 2009, the Business Taxes Committee of the State Board of Equalization voted to approve and authorize for publication the proposed regulatory amendments.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Regulation 1668 Sales *for Resale*, has no comparable federal regulations.

AUTHORITY

Sections 6596 and 7051, Revenue and Taxation Code.

REFERENCE

Sections 6091 and 6241, Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the

proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Benion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**Department of Fish and Game —
Public Interest Notice
For Publication March 13, 2009
PROPOSED RECOVERY ACTIONS FOR
A FULLY PROTECTED SPECIES
Recovery actions for California Black Rail
in the Sierra Nevada Foothills
(*Laterallus jamaicensis coturniculus*)**

The Department has received a proposal from Kevin Crouch to conduct California Black Rail (CA BLRA)

call-broadcast surveys in Sierra Nevada foothills. Previous records indicate the presence of the CA BLRA in Yuba, Nevada, Butte, and Placer counties, however, its current status and distribution for the rest of the Sierra Nevada foothills is unknown. Within the Sierra foothills, there is a lack of research south of the above listed counties leading to no occurrences in this region. Wetland habitat in the Sierra is continually being removed or altered. Therefore, there is a need to determine whether future project sites could be habitat for the California black rail. In addition to determining whether this species is present at a project site, surveys will provide presence/absence data for areas of the Sierra Nevada that lack black rail occurrences.

Completion of the following survey objectives will enhance the ability of local and statewide wildlife managers to monitor the status of CA BLRA and plan towards achieving recovery goals for the species:

- 1) CA BLRA will be included during biological reconnaissance surveys for special-status species on future project sites in the Sierra Nevada foothills.
- 2) Once a proposed project site is determined to have suitable habitat (cattails, blackberry and/or bulrushes), survey points will be plotted every 250 feet (depending watercourse features) within the survey area.
- 3) Habitat will be characterized using *A Manual of California Vegetation* (Sawyer and Keeler-wolf, 1995) in the location and immediate area where the playbacks were conducted, whether or not a response was heard.
- 4) In addition habitat characterization, vegetation occurring in the area of the playbacks will be listed with their dominance class. Other features of the habitat will be recorded including percent of open water, distance to nearest water, vegetation height, and additional wildlife species in the vicinity.
- 5) Positive CA BLRA responses will be recorded in the California Natural Diversity Database. All data positive or negative collected during surveys will be compiled and provided to CDFG at year end with Scientific Collecting Permit Species Captured or Salvaged Log.

Call-broadcast survey protocols will be conducted using the standard passive call-back/response protocol (Spautz et al., 2005). Playback sequences include: an initial one minute listening period, 30 seconds of "ki-ki-ker" calls, 30 seconds of listening silence, 30 seconds of "grr" calls, 30 seconds of listening silence, 30 seconds of "ki-ki-ker", 30 seconds of listening silence, 30 seconds of "grr" calls, and a final three minutes of listening silence. The total sequence time will be seven minutes long. Calls will be played using an mp3 player



STATE BOARD OF EQUALIZATION

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State Controller

RAMON J. HIRSIG
Executive Director

March 13, 2009

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

Proposed to Adopt Regulation 1668, *Sales for Resale*

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposed regulatory changes to Sales and Use Tax Regulation 1668, *Sales for Resale*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Wednesday May 27, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by Wednesday, May 27, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CURRENT LAW: Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If

March 13, 2009

fax (916) 324-3984 , e-mail Richard.Bennion@boe.ca.gov or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

STATE BOARD OF EQUALIZATION



BOARD APPROVED

at the 5/27/09 Board Meeting

(Diane G. Olson)
Diane G. Olson, Chief

Board Proceedings Division

Sincerely,

Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase “for resale” and may include comparable terminology, such as “resale = yes,” “nontaxable,” “taxable = no,” or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale.

The proposed revisions will prevent confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale”. Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser’s ability to claim, later, that the purchase was not intended as a purchase for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

Board staff met with interested parties on November 25, 2008, to discuss the proposed revisions to the regulation and, incorporated revisions suggested by the interested parties into the proposed regulations. On February 3, 2009, the Business Taxes Committee of the State Board of Equalization voted to approve and authorize for publication the proposed regulatory amendments.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Regulation 1668 Sales *for Resale*, has no comparable federal regulations.

AUTHORITY

Sections 6596 and 7051 Revenue and Taxation Code.

REFERENCE

Sections 6091 and 6241 Revenue and Taxation Code

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130,

**Initial Statement of Reasons
Overview/Non-Controlling Summary**

PROPOSED REGULATION 1668, SALES FOR RESALE

Regulation 1668 is proposed to be revised to clarify the documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale.

Specific Purpose

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. This regulation is necessary to provide guidance to taxpayers affected by this statute.

Factual Basis

Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the purchaser is responsible for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

This issue was referred to the Board's Business Taxes Committee (BTC) to clarify whether a sale for resale is valid when the instructions on the resale certificate state "see purchase order" and the purchase order identifies the property is being purchased for resale by using terminology such as "not taxable" or "taxable: no" as opposed to "for resale." If valid and accepted in good faith, the seller accepting the purchase order combined with a qualified resale certificate will be

relieved from the liability for tax if the transaction is later found to be taxable and the liability to pay the tax will rest with the purchaser. In July 2008, Board staff was instructed by memo that the provisions of subdivision (b)(4) of Regulation 1668 require that a purchase order issued in support of a qualified resale certificate is valid and relieves the seller from the liability for tax only if the purchase order includes the phrase "for resale." In response to such interpretation, a number of taxpayer representatives and consultants (hereafter referred to as "interested parties") objected to this policy and questioned whether Board staff consistently followed such interpretation in the past. Interested parties organized meetings with representatives from the Board's Sales and Use Tax Department and Board Members' offices to discuss this issue. As a result, the BTC Chair referred this matter to the BTC for analysis and recommendation. Staff met with interested parties on November 25, 2008, to discuss proposed revisions to the regulation and agreed to incorporate additional revisions suggested by the interested parties to bring consensus to the proposal.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

Regulation 1668. SALES FOR RESALE.

References: Sections 6012.8, 6012.9, 6072, 6091–6095, 6241–6245, 6484, 6485, and 7153, Revenue and Taxation Code.

(a) RESALE CERTIFICATE.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) FORM OF CERTIFICATE.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate: If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) Qualified Resale Certificate: If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. ~~or whether tax applies to the order.~~ The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ ~~assumed~~ that the property covered by that purchase order was not purchased for use, and not for resale and that the sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials produced parts for resale and also for tooling used to ~~produce the parts~~ process the raw materials should specify that the raw materials parts are purchased for resale and that the sale of the tooling is subject to tax.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) GOOD FAITH. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) IMPROPER USE OF CERTIFICATE. Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(f) USE OF XYZ LETTERS. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) PURCHASER'S LIABILITY FOR TAX. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who

thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(i) MOBILE TRANSPORTATION EQUIPMENT. Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

APPENDIX A

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: _____.
2. I am engaged in the business of selling the following type of tangible personal property:
_____.
3. This certificate is for the purchase from _____ of the item(s) I have listed in paragraph 5 below.
[Vendor's name]
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:

_____.
6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

**APPENDIX B
California Resale Certificate
for the Auto Body Repair and Painting Industry**

I HEREBY CERTIFY:

1. I hold valid California seller's permit number: _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have *initialed* in paragraph 5 below.
[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.

5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (**not** an X or similar mark):

- | | | | |
|-----------------------------------|--------------------------|-----------------------|---------------|
| _____ Automobile parts | _____ Fisheye eliminator | _____ Polishes/Wax | _____ Sealers |
| _____ Clear Coats | _____ Glues / Adhesives | _____ Primers | |
| _____ Electrical Tape | _____ Hardeners | _____ Putties | |
| _____ Fillers | _____ Paints | _____ Rust Protectors | |
| _____ Other (specify items) _____ | | | |

6. I have read and understand the following:

Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may not be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

- | | | | |
|------------------|------------------------|---------------------|-------------------|
| Abrasives | Equipment repair parts | Masks | Reducers |
| Books | Goggles | Metal conditioners | Respirators |
| Cans | Hand cleaners | Paint remover | Rubbing compounds |
| Cleaning solvent | Manuals | Plastic bottles | Rubbing machines |
| Color charts | Masking paper | Polishing compounds | Thinners |
| Equipment | Masking tape | Polishing machines | Touch-up bottles |

7. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1668

Title: 1668, Sales for Resale

Preparation: Cecilia Watkins

Legal Contact: Robert Tucker

Clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase “for resale” and may include comparable terminology such as “not taxable.” The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller’s sale for resale transaction.

History of Proposed Regulation:

March 13, 2009	OAL publication date; 45-day public comment period begins; IP mailing
March 3, 2009	Notice to OAL
February 3, 2009	BTC, Board Authorized Publication (Vote 5-0)
February 3, 2009	Business Taxes Committee
November 25, 2008	First Interested Parties (IP) meeting

Sponsor:	NA
Support:	NA
Oppose:	NA

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulation 1668, Sales for Resale, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on March 3, 2009, 84 days prior to the public hearing.

June 9, 2009

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MAY 27, 2009

ITEM F1

PUBLIC HEARING

SALES AND USE TAX REGULATION 1668

SALES FOR RESALE

PROPOSED AMENDMENTS

Reported by: Juli Price Jackson

No. CSR 5214

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P R E S E N T

For the Board
of Equalization:

Betty T. Yee
Chair

Judy Chu
Vice-Chair

Bill Leonard
Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane G. Olson
Chief, Board
Proceedings Division

---oOo---

450 N STREET
SACRAMENTO, CALIFORNIA
MAY 27, 2009

---oOo---

MS. YEE: Next matter?

MS. OLSON: Our next item is a public hearing, F1, proposed amendments to Sales and Use Tax Regulation 1668, sales for resale.

MS. YEE: Okay.

Good afternoon, Mr. Tucker.

MR. TUCKER: Good afternoon.

Robert Tucker of the Legal Department. The staff requests adoption of the proposed amendments to Regulation 1668. These amendments clarify the acceptable terms that may be used on a purchase order in conjunction with a qualified resale certificate to designate that property is purchased for resale.

MS. YEE: Thank you.

MR. LEONARD: Any speakers?

MS. YEE: None signed in.

MR. LEONARD: I'll move adoption.

MS. YEE: Okay. Motion by Mr. Leonard to --

DR. CHU: Second.

MS. YEE: -- adopt the proposed amendments.

Second by Dr. Chu.

Without objection, that motion carries.

Thank you very much.

---oOo---

2009 MINUTES OF THE STATE BOARD OF EQUALIZATION**Wednesday, May 27, 2009**

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

[D-SEIZED] PETITION FOR RELEASE OF SEIZED PROPERTY

D1 U.S. Business Associates, Inc., 469810 (ET)

July 30, 2008 Notice of Seizure and Forfeiture

For Petitioner:

Satwant Verma, Taxpayer

Richard E. Coombs, Attorney

For Department:

Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

PUBLIC HEARING**F1 Proposed Amendments to Sales and Use Tax Regulation 1668, Sales for Resale**

Robert Tucker, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the proposed amendments to clarify the use of qualified resale certificates (Exhibit 5.2).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

[G1] LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

G1.1 Kanhaiya Naidu and Gangamma Kanhaiya Naidu, 474048 (ET)

October 7, 2008, \$36.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.



STATE BOARD OF EQUALIZATION
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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

March 13, 2009

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

Proposed to Adopt Regulation 1668, *Sales for Resale*

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposed regulatory changes to Sales and Use Tax Regulation 1668, *Sales for Resale*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Wednesday May 27, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by Wednesday, May 27, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CURRENT LAW: Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If

each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale.

The proposed revisions will prevent confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase "for resale". Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser's ability to claim, later, that the purchase was not intended as a purchase for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

Board staff met with interested parties on November 25, 2008, to discuss the proposed revisions to the regulation and, incorporated revisions suggested by the interested parties into the proposed regulations. On February 3, 2009, the Business Taxes Committee of the State Board of Equalization voted to approve and authorize for publication the proposed regulatory amendments.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Regulation 1668 Sales *for Resale*, has no comparable federal regulations.

AUTHORITY

Sections 6596 and 7051 Revenue and Taxation Code.

REFERENCE

Sections 6091 and 6241 Revenue and Taxation Code

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130,

fax (916) 324-3984 , e-mail Richard.Bennion@boe.ca.gov or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,



Diane G. Olson, Chief
Board Proceedings Division

**Initial Statement of Reasons
Overview/Non-Controlling Summary**

PROPOSED REGULATION 1668, SALES FOR RESALE

Regulation 1668 is proposed to be revised to clarify the documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale.

Specific Purpose

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. This regulation is necessary to provide guidance to taxpayers affected by this statute.

Factual Basis

Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the purchaser is responsible for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

This issue was referred to the Board's Business Taxes Committee (BTC) to clarify whether a sale for resale is valid when the instructions on the resale certificate state "see purchase order" and the purchase order identifies the property is being purchased for resale by using terminology such as "not taxable" or "taxable: no" as opposed to "for resale." If valid and accepted in good faith, the seller accepting the purchase order combined with a qualified resale certificate will be

relieved from the liability for tax if the transaction is later found to be taxable and the liability to pay the tax will rest with the purchaser. In July 2008, Board staff was instructed by memo that the provisions of subdivision (b)(4) of Regulation 1668 require that a purchase order issued in support of a qualified resale certificate is valid and relieves the seller from the liability for tax only if the purchase order includes the phrase "for resale." In response to such interpretation, a number of taxpayer representatives and consultants (hereafter referred to as "interested parties") objected to this policy and questioned whether Board staff consistently followed such interpretation in the past. Interested parties organized meetings with representatives from the Board's Sales and Use Tax Department and Board Members' offices to discuss this issue. As a result, the BTC Chair referred this matter to the BTC for analysis and recommendation. Staff met with interested parties on November 25, 2008, to discuss proposed revisions to the regulation and agreed to incorporate additional revisions suggested by the interested parties to bring consensus to the proposal.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

Regulation 1668. SALES FOR RESALE.

References: Sections 6012.8, 6012.9, 6072, 6091–6095, 6241–6245, 6484, 6485, and 7153, Revenue and Taxation Code.

(a) RESALE CERTIFICATE.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) FORM OF CERTIFICATE.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate: If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) Qualified Resale Certificate: If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. ~~or whether tax applies to the order.~~ The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ assumed that the property covered by that purchase order was not purchased for use, and not for resale and that the sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials produced parts for resale and also for tooling used to ~~produce the parts~~ process the raw materials should specify that the raw materials parts are purchased for resale and that the sale of the tooling is subject to tax.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) **GOOD FAITH.** In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) **IMPROPER USE OF CERTIFICATE.** Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) **OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY.** A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(f) **USE OF XYZ LETTERS.** A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the purchase in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) **PURCHASER'S LIABILITY FOR TAX.** A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who

thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(i) MOBILE TRANSPORTATION EQUIPMENT. Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

APPENDIX A

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number: _____.
2. I am engaged in the business of selling the following type of tangible personal property:
_____.
3. This certificate is for the purchase from _____ of the item(s) I have listed in paragraph 5 below.
[Vendor's name]
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:

_____.
6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

APPENDIX B
California Resale Certificate
for the Auto Body Repair and Painting Industry

I HEREBY CERTIFY:

1. I hold valid California seller's permit number: _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have *initialed* in paragraph 5 below.

[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (**not** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			

6. I have read and understand the following:
Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may not be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

- | | | | |
|------------------|------------------------|---------------------|-------------------|
| Abrasives | Equipment repair parts | Masks | Reducers |
| Books | Goggles | Metal conditioners | Respirators |
| Cans | Hand cleaners | Paint remover | Rubbing compounds |
| Cleaning solvent | Manuals | Plastic bottles | Rubbing machines |
| Color charts | Masking paper | Polishing compounds | Thinners |
| Equipment | Masking tape | Polishing machines | Touch-up bottles |

7. I have read and understand the following:
For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1668

Title: 1668, Sales for Resale

Preparation: Cecilia Watkins

Legal Contact: Robert Tucker

Clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase "for resale" and may include comparable terminology such as "not taxable." The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller's sale for resale transaction.

History of Proposed Regulation:

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March 3, 2009 Notice to OAL
February 3, 2009 BTC, Board Authorized Publication (Vote 5-0)
February 3, 2009 Business Taxes Committee
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Sponsor: NA
Support: NA
Oppose: NA