

CA State Board of Equalization

Presentation Objectives

To provide a basic understanding of the sales and use tax law

To teach new business owners how to avoid common mistakes

3

TWO QUESTIONS

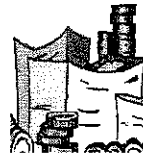
- Retail sales to government entities are generally subject to tax with one exception. The Federal Government and its many instrumentalities. Why?
- Carbonated beverages are taxable. Again, there is one exception. What is the one exception?

What is a Sale?

- ⇒ An exchange of merchandise/goods for something else of value: money, barter or trade.
- ⇒ Any transfer of title or possession, of tangible personal property for consideration, regardless of when payment is received.
- ⇒ And generally excludes deposits and layaways (because property or title has not yet been transferred).

4

What Are Total Gross Receipts?



- ⇒ Total amount received for the sale whether received in money or other consideration, e.g. barter.
- ⇒ Valued in money.
- ⇒ Generally includes charges related to your sales, such as labor, service, etc.

5

What Is Sales Tax?

- ⇒ Tax imposed upon the retailer (seller) for the privilege of selling tangible personal property at retail in the state of California.
- ⇒ Retailer may be reimbursed for the sales tax by their customers.
- ⇒ Tax due is based on the gross receipts from retail sales.
- ⇒ It's the responsibility of the retailer (seller) to pay Sales Tax to the Board of Equalization.

11

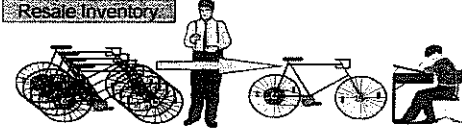
What is Use Tax?

- ⇒ Tax imposed on purchaser.
- ⇒ Out-of-state retailers "engaged in business" in California must collect and pay use tax on items sold to Californians.
- ⇒ Tax is measured by the purchase price.
- ⇒ Remember that use tax items are supplies and/or equipment that you use in your business. Merchandise that you sell (inventory) is not a supply item.

12

When Might Use Tax Be Due? Example 1

Inventory items purchased with a resale certificate without payment \rightarrow Items withdrawn from inventory for use other than resale (including use as gifts and free samples or for personal use) = Use Tax Due

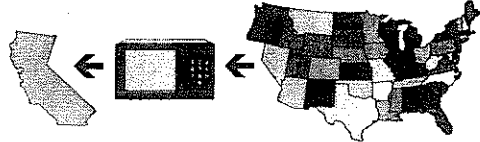


16

When Might Use Tax Be Due? Example 2

Items purchased without payment of California sales or use tax:

- ⇒ From out-of-state businesses and
- ⇒ Purchases for your own use (not inventory).



17

Presumptions of the Tax Code

- ⇒ All sales of tangible personal property are taxable unless otherwise specifically exempted.
- ⇒ Claimed exemptions must be supported by documentation.
- ⇒ Taxpayer is responsible for maintaining and providing documentation for potential examination.

20

Common Exemptions & Deductions

- ⇒ Sales for Resale
- ⇒ Some Food Products
- ⇒ Some Labor
- ⇒ Sales to the U.S. Government
- ⇒ Sales in Interstate/Foreign Commerce
- ⇒ Other Exemptions and Deductions



21

Exempt Food Products

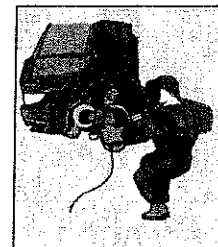
- ⇒ Non-alcoholic and non-carbonated beverages.
- ⇒ Most food items sold in grocery stores.
- ⇒ Snack foods.
- ⇒ Cold prepared food items sold "to go."



24

Non-Taxable Labor

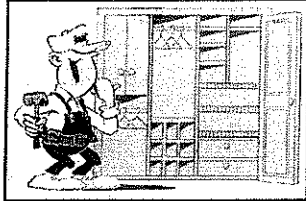
Installation labor and Repair labor are not taxable.



26

Taxable Labor

Fabrication labor and Assembly labor are taxable



37

Sales to the U.S. Government

⇒ Sales to the U.S. (Federal) Government or its instrumentalities (e.g. the Army) are typically not taxable.



⇒ Sales to states, counties and cities are normally subject to tax.

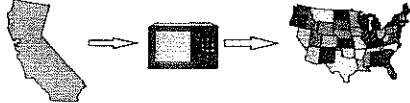


⇒ Government purchase order, remittance advice, or a copy of a United States Government charge card is required for supporting documentation.



38

Interstate and Foreign Commerce

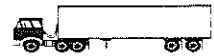


- ⇒ Title or possession must pass outside of California's borders.
- ⇒ Must be shipped out of state by common carrier or retailer's facilities.
- ⇒ If change of possession or title occur in California, the sale is taxable unless otherwise exempt
- ⇒ Must maintain shipping or export documents

41

Other Exemptions & Deductions

DELIVERY CHARGES



- ⇒ If items are delivered by retailer's facilities, delivery charges are generally taxable if the sale is taxable.
- ⇒ If items are delivered by common carrier, delivery charges (sometimes called "shipping charges") are generally not subject to tax as long as they are actual (not marked up) and are separately stated on the invoice, or contract for sale.
- ⇒ "Handling" charges typically are taxable if the sale is taxable.

44

Charitable or Nonprofit Organizations

- No general exemption for nonprofit and religious organizations.
- Tax applies to both sales and purchases unless there is a specific exemption or exclusion.

"Some orgs may not owe tax on any of their sales, whereas some orgs may owe tax on certain types of sales, but not all sales. Other orgs may be responsible for tax just like other CA sellers. It all depends on what type of org you are and what your org practices and activities are."

About California District Taxes

What is a District Tax?

⇒ Voter-approved special taxes in certain California counties & cities or defined districts that increase the total sales and use tax rate.

⇒ Note: Sometimes there are several district taxes in one county.

54

About California District Taxes

Where is it applicable?

⇒ Any place where the sales and use tax rate is over 7.25% has applicable district taxes.

⇒ For a list of counties/cities with district taxes, refer to Publication 71 (see the BOE website).

55

About District Tax

When is it applicable?

⇒ The retailer (seller) physically enters an area with their own truck to deliver an item.

⇒ Salesmen physically enter an area that is subject to district tax to solicit sales.

56

Miscellaneous Types of Transactions

- Internet Sales: We hear proposals to keep the internet free from taxation. These proposals do NOT refer to sales tax. When tangible personal property is purchased on the internet, the transaction is subject to either sales or use tax.

Miscellaneous Types of Transactions

- Software: Tax applies when distributed in the form of storage media. Tax does NOT apply if transferred electronically.
- Software Maintenance: If lump-sum contract is optional and CD/DVDs are received...50% is taxable.
- If no CD/DVDs are transferred...no tax is due.
- If maintenance is NOT optional...the entire amount is taxable.

HOW TAX APPLIES TO LEASES

1. Based on Cost of the Property to the Lessor.
2. Based on Rental Receipts.
3. Based on Fair Rental Value.

CONSTRUCTION CONTRACTORS

- Making improvement to real property
- Generally the consumers of materials that are furnished and installed.

ADDITIONAL INFORMATION

- **BOE Information Center**
(800) 400-7115
- **www.boe.ca.gov**
Law Sections and Regulations
Tax Tip Pamphlets on specific industries
Plus much more...

