



State Board of Equalization (BOE)

About this Presentation

The contents of these slides do not constitute written advice from the Board of Equalization under Revenue and Taxation Code, Section 6596.

The following presentation is to be used only as an aid to illustrate general tax concepts, but it does not address every situation.

The Revenue and Taxation Code, regulations, court decisions and other applicable laws generally control the decision making process.

Please contact the BOE staff for a comprehensive response to your specific questions.

Introduction:

- What does the BOE do?
- What is a sale? What is a sales tax?
- What is use tax? What is subject to use tax?

Introduction:








Who is the BOE?

- State of California Agency established in 1879 by CA Constitutional Amendment
- Administers four general areas of taxes and fees: sales and use taxes (largest tax program), property taxes, special taxes and tax appellate program
- BOE programs generated \$60.4 billion dollars in revenue for 2013-14 – roughly 32.2 of total State Revenues

Sources of 2013-14 State Revenue*

Percentage of total state revenue



Board of Equalization		32.2%
	Sales and use taxes	24.0%
	Fuel Taxes	4.3%
	Other Board revenues	3.9%
Other Agencies		67.8%
	Personal Income tax	47.8%
	Corporation tax	6.2%
	Motor vehicle and trailer taxes	4.4%
	Other revenues	9.4%

* Detail may not compute to totals due to rounding.

The Sales and Use Tax:

What is the sales tax? What is the use tax? Are they different?

SALES



USE

CA RTC
§6051 - 6189

CA RTC
§6201-6249

The Sales and Use Tax:

The Sales Tax	The Use Tax
<ul style="list-style-type: none">• Tax is imposed on the retailer (seller)	<ul style="list-style-type: none">• Tax is imposed on the purchaser (consumer)
<ul style="list-style-type: none">• Seller reports and pays the sales tax due on items sold at retail in California	<ul style="list-style-type: none">• California consumer or purchaser owes and must pay the use tax due on items purchased without payment of sales tax
<ul style="list-style-type: none">• Tax is measured by the gross receipts from the sale	<ul style="list-style-type: none">• Tax measured by the purchase price

Sales Vs. Use Tax

- When does sales tax apply?
- When does use tax apply?
- What is the breakdown of the tax rate for both sales and use tax?
- How often does the tax rate change?
Where can I get the most updated tax rate information?

Example: Sales Tax Transaction



Seven Elements:

1. Must be a sale
2. Sales must be personal property
3. Personal property must be tangible
4. Seller must be a retailer
5. Sale must be at retail
6. Sales must be made in California
7. Transaction not specifically exempt by law

John Taxpayer needs a new TV. He goes into San Francisco Video. He picks out a brand new TV. Jim Retailer rings up the sale. John Taxpayer pays for his purchase. Jim Retailer collects the sales tax and sends it to the State when he files his quarterly sales tax returns.

Example: Use Tax Transaction



John Taxpayer needs a special sound system to go with his new TV. The seller is located in Florida and has no business involvement in California. John purchases the item online. The retailer packs and ships the sound system from Florida to California via a common carrier. The purchase is subject to use tax.

Seven Elements:

1. There must be a purchase
2. The purchase must be personal property
3. The personal property must be tangible
4. The purchase must be made from a retailer
5. The purchase must be made with the intent of storing, using or consuming the goods within CA
6. The goods must actually be stored, used, or consumed in CA
7. The transaction must not otherwise be specifically exempted by law

The Sales and Use Tax: Who is liable?

Sales Tax

The ultimate responsibility for paying the sales tax lies with the retailer.

Use Tax

The ultimate responsibility for paying use tax lies with the purchaser.

If the transaction is not exempt, either the seller or the purchaser is liable for the tax.

The Sales and Use Rate

- The Sales and Use tax rate is not one uniform rate across the entire State
- There are several components that make up the Sales and Use rate, each of which is authorized under different State Statutes and Municipal Ordinances
- The Sales and Use Tax rate is made up of:
 - ➔ State Tax
 - ➔ County Tax
 - ➔ Local Tax
 - ➔ District Tax(es)

The Sales and Use Rate

- The SLC (State, Local, County) make up the current base rate of 7.50%
- Local jurisdictions (districts) may impose transactions (sales) and use taxes within it's borders – these district taxes may be levied on a countywide or citywide basis
- Local jurisdictions contract with the BOE to administer the district tax



SF Tax Rate = 8.75%



State, Local, County
Portion = 7.50%



SF District Taxes
Portion = 1.25%

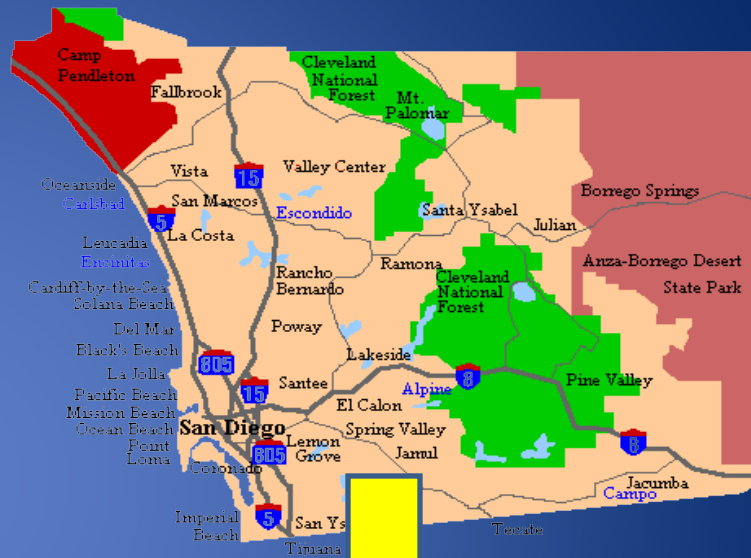


Additional Considerations: Delivered Inter-District Sales and Use Taxes

Q: What about inter-district sales in California? If I buy something from San Diego (8.0% rate) to be delivered via common carrier to San Francisco (8.75% rate), what rate applies and what do I do about the difference?

A: Which tax applies?

1. The State sales tax and district sales tax applies
2. The State sales tax of 7.5% applies to the San Diego Seller
3. The district tax of 1.25% must be reported by the purchaser



The Sales and Use Rate

- The most current tax rates can be found online at the BOE's website:
- <http://www.boe.ca.gov/sutax/pam71.htm>
- A detailed breakdown of the Sales and Use Tax Rate:
- <http://www.boe.ca.gov/news/sp111500att.htm>
- A lookup of rates for specific addresses can be done at:
- <https://maps.gis.ca.gov/boe/TaxRates/>

Purchases from Out-Of-State Sellers subject to use tax

- Purchases of tangible personal property from out of state vendors
- Sales or use tax?
- No tax on invoice
- Verification of Permit Number
- What information and records do I keep?

Purchases From Out-of-State Sellers

Q: Why do I see sales tax on an invoice from an out-of-state seller?

A: Some out-of-state retailers have facilities in the State or may otherwise be engaged in business in CA, making them liable for the sales or use taxes.

A: Some out-of-state retailers have a Certificate of Registration - Use Tax that allows them to voluntarily collect use tax on behalf of CA customers



Purchases From Out-of-State Sellers

Q: If I see tax on the invoice from an out-of-state seller, do I go ahead and pay?

A: Generally, a purchaser's use tax liability is not extinguished until the tax has been paid to the state, or a receipt is received from a registered retailer authorized to collect and pay the tax to the State. So its always a good idea to verify the vendor is registered with the BOE.



Purchaser

Purchases From Out-of-State Sellers

Q: If I don't see tax on the invoice from an out-of-state vendor, do I go ahead and add tax on the invoice and pay the vendor?

A: No. There is no guarantee the vendor is permitized with the BOE. If you believe the transaction may be subject to either the sales or use tax, question the vendor about whether they are registered with the BOE. If the vendor is not permitized, report the purchase on your quarterly returns and pay the use tax.



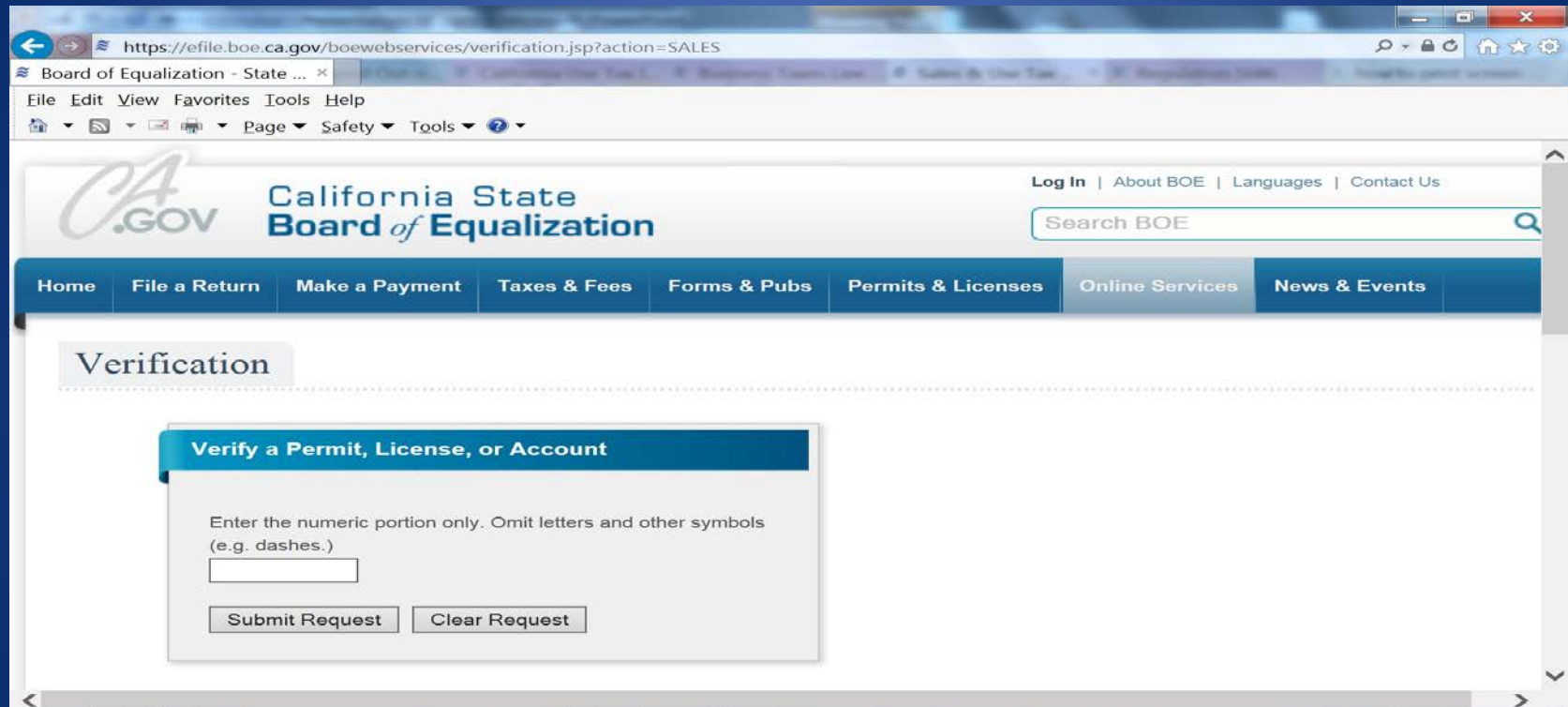
Purchases From Out-of-State Sellers

Q: Where can I find information about whether an out-of-state vendor is permitized?

A: You can look at the invoice/receipt. Retailers required to collect use tax from purchaser must provide you with a receipt. Regulation 1686 details what elements must be listed on the receipt.

A: It also never hurts to ask.

How do I validate the permit or certificate of registration – use tax?



The screenshot shows a web browser window with the URL <https://efile.boe.ca.gov/boeweb/services/verification.jsp?action=SALES>. The page header includes the BOE logo and navigation links such as "Log In", "About BOE", "Languages", and "Contact Us". A search bar labeled "Search BOE" is also present. The main navigation menu includes "Home", "File a Return", "Make a Payment", "Taxes & Fees", "Forms & Pubs", "Permits & Licenses", "Online Services", and "News & Events". The "Permits & Licenses" section is active, and the "Verification" sub-section is highlighted. The verification tool is titled "Verify a Permit, License, or Account" and contains the following text: "Enter the numeric portion only. Omit letters and other symbols (e.g. dashes.)". Below this text is a text input field. At the bottom of the tool are two buttons: "Submit Request" and "Clear Request".

The BOE has a online tool to verify permit numbers:

<https://efile.boe.ca.gov/boeweb/services/verification.jsp?action=SALES>

What records should I keep to support use tax paid in case of an audit?

- The requirements for records retention are detailed in CA Sales & Use Tax Regulation 1698.
- Reg. 1698 establishes that taxpayers will make available for examination upon request, all records necessary to determine the correct tax liability under the Sales & Use Tax law
- Such records include (but aren't limited to):
 - Normal books of account
 - Bills, receipts, invoices, cash register tapes, and other documents or original entry
 - Schedules or work papers used in connection with preparation of tax returns



FOCAL TOPICS

- Additional Charges on Invoices
- Leases
- Software
- Subscriptions
- Medicines and Medical Devices
- Construction Contracts

Additional Charges on Invoices, Items Generally Taxable:

1. Delivery and Handling Charges (by retailer)
2. Assembly and Fabrication Charges
3. Mandatory Maintenance Charges
4. Mandatory consulting, training, testing service charges

1. A retailer delivers a piece of furniture to a purchaser using their own company van.
2. A retailer assembles a customer's new bicycle or manufactures a custom part for the bicycle.
3. A retailer sells a new laptop for \$1,500. The price includes a separate \$200 charge for parts/labor warranty backed by the manufacturer. The purchaser does not have the option of not buying the warranty. The \$200 is taxable.
4. A retailer selling customized manufacturing equipment includes a separate charge for training on the use of the equipment. The charge is not negotiable.

Additional Charges on Invoices, Items Generally Not-Taxable:

Delivery charges using third-party carriers



- A retailer sells a widget and ships the widget to the purchaser via UPS. The invoice clearly lists shipping as a separate charge.

Installation – Repair Charges



- A laptop with a broken screen is shipped back to an out-of-state manufacturer to replace the screen.

Optional Maintenance Charges



- A car dealer ship sells a used car for \$10,500. The customer is offered an optional extended 18 month warranty for \$500. The \$500 is not taxable.

Optional Consulting, Training, Testing Service Charges



- A retailer sells a forklift. An optional training course is available to the purchaser for an additional charge. The purchaser pays for the course. The charge is non-taxable.²⁵

Leases

- CA RTC §6006.3
 - Lease includes rental, hire, license
 - Clarifies contract that binds the lessee for a fixed term and the lessee obtains title at the end of the term upon completion of payments or has a bargain purchase option is a sale under a security agreement from inception and not a lease
- Sales Use Tax Regulation 1660
 - Lease is a contract under which a person secures for consideration temporary use of TPP operated under the direction or control of the lessee



Transactions that could otherwise normally be regarded as leases may be transactions specifically excluded from the definition of a lease by CA sales and use tax laws



Leases

- Sales Use Tax Regulation 1660
 - A lease is “continuing sale” in this State by the lessor
 - The possession of the property by a lessee is a “continuing purchase”
 - The tax is measured by rental payables
 - Generally, the applicable tax is a use tax upon the lessee
 - The lessor is required to collect the tax from the lessee at the time rentals are paid and give the lessee a receipt
 - The lessee is not relieved from liability for the tax until he or she is given a receipt or tax is paid to the State

Leases

- Sales Use Tax Regulation 1660
 - The lessor OR the lessee can be held liable for the use tax

Tax Measurement on Leases

- Depends on what election the lessor made when they acquired property or first leases property

Lessor paid tax on initial purchase of property = no tax due on rental receipts

Lessor did not pay tax on initial purchase = tax due on rental receipts

Leases: What to look for?

- As a lessee, what do I look for to make sure I'm not exposed to additional use tax liability?
- Review the invoice, if tax reimbursement was collected, it indicates the lessor collected use tax on the transaction
- If no tax reimbursement was collected, be aware use tax may be due on the lease.
- Be especially aware of leases of property from out-of-state lessors, since it is generally more common for the use tax to not be assessed on out-of-state lease transactions

Software



- When canned software is sold and delivered to the purchaser on tangible media – the entire charge is taxable.
- Sales of canned software transferred electronically are not subject to tax when there is no tangible personal property furnished by the seller.
- License Renewals – if the original sale is subject to tax, tax applies to annual software license renewals.

Software

- Software Maintenance for canned programs: support package offered to the customer

Optional Software Maintenance Contracts



- If tangible media is provided during the term of the maintenance contract, 50% of the lump sum charge for maintenance is taxable, 50% is exempt
- If original software was not provided on TPP, optional software maintenance is exempt.

Mandatory Software Maintenance Contracts



1. If original software was provided on TPP originally, entire charge is subject to tax.
2. If original software was provided electronically, charge is exempt.

Software

Records Retention

- Copies of the invoice, purchase order, contract, etc.
- Currently, the Board has taken the position that unless there is affirmative evidence that a copy of the software was furnished on tangible storage media, the auditor should assume the transaction is nontaxable (Audit Manual 0421.05).
- However, the purchaser should still retain as much documentation as possible to ensure proper tax reporting.
- Shipping charges on invoices are generally the key indicators as to determining whether tangible property was involved in the transaction.

Subscriptions



- In general, the sale of newspapers and periodicals, including sales by third party retailers, are subject to tax unless otherwise exempt.
- Tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier.
- Sales or replacement copies of reprints are taxable.

Medicines and medical devices



- In general, sales and uses of tangible property are subject to tax unless otherwise exempted by law.
- CA Sales and Use Tax Regulation 1591 covers exempt medicines and medical devices under certain conditions
- Some sales and uses of medicines and medical devices are specifically exempted by law, other sales of medicines and medical devices may or may not be exempt depending on how they are used

Medicines and medical devices

- Regulation 1591 define medicines as:
 - “Medicines” means and includes any product fully implanted or injected in the human body, or drug or biologic, that has been approved by the U.S. Food and Drug Administration to diagnose, cure, mitigate, treat or prevent any disease, illness or medical condition.
 - Any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for that use.



Medicines and medical devices

- Generally, medicines and medical devices are only exempt when they are prescribed by a licensed physician, surgeon, dentist, podiatrist, or other person authorized under the law to prescribe medicines for the treatment of the patient
- When purchases of medicines will be used in a manner which would make them exempt under Regulation 1591, the purchaser should issue an exemption certificate to the retailer
- A sample exemption certificate can be found in Publication 45: Hospitals and Other Medical Facilities

Sample: Exemption Certificate

TAX EXEMPTION CERTIFICATE

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

That I hold a valid seller's permit number _____

_____ issued pursuant to the Sales and Use Tax Law. I am a Health Facility under provisions of section 6369 of the California Revenue and Taxation Code; I further certify that the property described below purchased from

(Name of Vendor)

will be used for the treatment of human beings as provided by Regulation 1591 of the California State Board of Equalization. Description of property to be purchased:

Date: _____ 20 _____

(Signature of Purchaser or Authorized Agent)

(Title)

Medicines and medical devices

Records Retention

- Copies of the invoice, purchase order, contract, etc.
- Regulation 1591 specifies any pharmacy and other health facility must keep records to support all deductions claimed on account of medicines
- Section 4081 of the Business and Professions Code requires that accurate records be maintained for prescriptions filled/prescribed by pharmacists, physicians, surgeons, podiatrists, etc..
- Many pharmacies and health facilities keep a “prescription register” to record information regarding use or sale that can be matched to claimed exempt sales or use of the medicine



Construction Contracts



- Generally, construction contractors are the consumers of the materials they furnish and install in the performance of construction contracts (they are liable for the tax at cost) and,
- Generally, construction contractors are the retailers of the fixtures and equipment they furnish and install (they are liable for the sales tax on the sale)
- Therefore, generally speaking, if the construction contractor is permitized in California, they will either pay the tax on materials or collect the tax in fixtures and equipment they use or furnish in their construction contracts.
- For materials, fixtures and equipment not furnished by the construction contractor, the purchaser would still be liable for the tax.

Construction Contracts

Example #1:

- The City and County of San Francisco needs repair/rebuilt work done on one of its' existing libraries. Does this type of realty improvement have sales/use tax issues if the prime contractor specifies materials and labor in the contract? Who is responsible for collecting the tax? What records should the city keep?
 1. The construction contractor would be liable for the tax on the materials at cost since they are the consumers of the materials
 2. The construction contractor would be the retailer of the fixtures and equipment furnished in the contract, and sales tax reimbursement would likely be added to the billed price of the F&E
 3. The construction contractor would be liable for the sales and use taxes on this transaction

Construction Contracts

Example #2:

- Same as example #1, except the materials would be purchased by the city through an out-of-state vendor with no tax on the invoice and shipment of the materials directly to the job site to have the contractor complete the work. Is there a use tax issue? Who is responsible for collecting and paying the tax? What type of records should the city keep?
 1. The contractor is installing customer-furnished property rather than property the contractor is furnishing
 2. As a result, the project is not a construction contract for sales and use tax purposes
 3. The first functional use of the materials occurs at the jobsite
 4. Therefore, this is a straight forward use tax transaction. The city would owe use tax on the cost of the materials from out-of-state

Additional Topics

- BOE website
- Written Advice under 6596
- Q&A

BOE Website (www.boe.ca.gov)

- Sales and Use Taxes Resources
 - Business Taxes Law Guide
 - Regulations Guide
 - Annotations
 - Collections and Audit Manuals
 - Publications
 - Forms
 - Memorandum Opinions
- Sales and Use Tax & Interest Rates
 - Tax Rates for Cities & Counties
 - Tax Allocation/Distribution Information for Local Officials
 - Interest Calculator
- Sales and Use Tax Seminars & Training Schedule



Written Advice

- CA RTC §6596 allows for relief from tax, interest and penalties resulting from a taxpayer's reliance on written advice from the BOE.
- The details of what qualifies as "written advice" for relief from tax, penalties and interest are further detailed in CA Sales and Use Tax Regulation 1705.
- Written advice generally takes three forms:
 1. Responses to request for written advice provided by the BOE in written communication
 2. Written advice provided in a prior audit
 3. Annotations and legal rulings of counsel (taxpayer and fact specific)

Written Advice



Email request @ www.boe.ca.gov/info/email

Mail request to your local district office (SF)

The Sales and Use Tax Law (section 6596) provides that you can obtain relief from tax and any penalty or interest charges if you fail to report tax on a transaction because you relied on erroneous written advice from the BOE.

For this relief to apply, the following conditions must be met:

- You must have written to the BOE for tax advice, and your request must have described the specific facts and circumstances of the activity or transaction (if someone writes on your behalf, you must be identified as the taxpayer to whom the advice applies); and
- The BOE must have responded in writing and stated whether the described activity or transaction was subject to tax or stated the conditions under which tax would apply.

If you have received written advice from the BOE and request tax relief under section 6596, it cannot be granted if, following our letter of advice:

- We wrote to you and modified or rescinded our earlier advice, and your tax liability is for a transaction that occurred after such notification; or
- There has been a change in the law or a final decision of a court, which renders our earlier written advice no longer valid.

Questions and Answers!

Submitted Questions

Q#1: What is the process involved in filing a claim for refund for overpaid sales or use taxes? What kind of documentation is required? In general how long does it take for the BOE to process the claim?

Questions and Answers!

Submitted Questions

Q#2: For catering services, there are many itemized charges on the caterer's invoice related to goods and services such as: hot foods, cold foods, carbonated and non-carbonated drinks, disposable utensils, set up charges, server charges, delivery charges, gratuities, etc. Can you detail the taxable and the non-taxable charges?

Sometimes, grocery items are furnished by the caterer. Items like breads, fruits, bottled waters and cold cuts of meats. When these items are sold by a grocery store, they're usually not subject to tax. Why does the caterer charge sales tax on these items?

For disposable utensils, my understanding is that the caterer should have paid sales tax at the time of purchase. If tax has been paid by the caterer, should the caterer charge sales tax again on its sale to the consumer? Generally speaking, items should be subject to sales tax only once and not twice. Please clarify.

Questions and Answers!

What are yours?

