

Sales and Use Tax Seminar- Questions from attendees

01.26.2016

Questions addressed by speaker during the seminar

- 1. Please define what is “engaged in business in SF” means? (physical location/office SF, permit #?)**

Answer: Engaged in business in a district means a retailer who:

- Maintains, occupies, or uses any type of office, sales room, warehouse, or other place of business in the district, even if it is used temporarily, indirectly, or through an agent or subsidiary.
- Has any kind of representative operating in the district for the purposes of making sales or deliveries, installing or assembling tangible personal property, or taking orders.
- Receives rentals from a lease of tangible personal property located in the district.
- Sells or leases vehicles or undocumented vessels which will be registered in a district.

- 2. Is resale tangible personal property taxable?**

Answer: Tangible personal property purchased for resale is not subject to sales and use taxes provided a valid resale certificate is provided to the seller in good faith and a timely manner. See Publication 103 for additional information regarding sales and purchases for resale: <http://www.boe.ca.gov/formspubs/pub103/index.html>.

- 3. City County of San Francisco (CCSF) purchased an item from a vendor located in Oregon and shipped the goods via a common carrier to San Francisco. The invoice had no tax. If CCSF had to pay use tax, at which rate should it pay, 7.5% or 8.75% which included district taxes?**

Answer: This is a use tax transaction and the purchaser is responsible for the tax. The first use is within San Francisco, therefore, the rate should be 8.75%. On use tax transactions, the purchaser is liable for State, Local, County(S, L, C) at 7.5%, plus any applicable district taxes based on the place of use (1.25% SF).

- 4. If I purchased tangible goods from an out-of-state vendor who didn't charge tax on the invoice which would normally be taxable in California, should I pay the invoice as is?**

Answer: It's common to see invoices from out-of-state vendors without tax because some of them may not be permitized with the BOE to collect use tax for the State of California. If the goods purchased were determined to be taxable, do NOT pay use tax to

vendors who are not permitized, instead, department should accrue the use tax for eventual payment to the State.

5. Who is responsible to remit additional tax to the BOE if a California seller charged an incorrect sales tax amount on the invoice?

Answer: On taxable goods, all California sellers should charge the basic 7.5% sales tax representing the State, Local, County (S, L, C) portion and it's the seller's responsibility to collect and remit it to BOE. For district taxes, the seller may or may not be responsible depends on whether seller is "engaged in business" in the district ("engage in business" is defined above in question #1). If a seller is not engaged in business in San Francisco district, they will likely either to charge the basic 7.5% only or charge 7.5% plus the district tax(es) of the seller's place of business. Take the example of San Diego, the sales tax rate is 8% and a SD seller who is NOT engaged in business in SF may charge 7.5% or 8% tax rate. In such case, purchaser needs to accrue the additional portion of the *district taxes* for use is in SF. It should be noted, in instances where inter-district rates differ, the purchaser may take a credit for taxes paid to a different district. See Publication 44, District Taxes, page 9 of 28 for details: <http://www.boe.ca.gov/pdf/pub44.pdf>.

6. If vendor from San Mateo is charging us 9% sales tax on its invoice, should we pay 9% or adjust it to 8.75% sales tax?

Answer: If the purchase was made in the vendor's store in San Mateo County (assumed question refers to San Mateo County, as the City of San Mateo rate is currently 9.25%) and the purchaser takes possession of the tangible personal property in San Mateo, the correct tax rate would be the 9.0% San Mateo rate. If the SM vendor delivers the goods to SF for use, and the purchaser takes possession of the goods in SF, the correct sales tax rate should be 8.75%.

7. If invoice is billed to SF but commodities to be delivered in San Jose. What is the sales tax rate?

Answer: Generally, the tax rate of the district where the property is first stored, used, or otherwise consumed is the rate that would apply to that transaction. If the commodity were stored, used, or otherwise consumed in San Jose, the current tax rate for San Jose would apply.

8. If a purchaser is responsible for the district portion of the tax when purchasing tangible property in lower tax areas, what would be the case when situation is opposite? For example, paying Alameda City sales tax when you actually use the item in SF city. In such case, are we entitled to refund for the small difference?

Answer: No. Generally when a purchase is made in one district for use in another district and the rates differ, a credit is allowed for the tax paid to another district, but only up to the amount of tax due in the district of use. For example, a consumer buys merchandise and pays district tax of 1.00 percent. The consumer then first uses the property in another location where the district tax rate is .50 percent. The consumer is liable for the district use tax at the .50 percent rate, but is eligible for a credit based on the transactions (sales) tax of 1.00 percent paid to the other district. However, no refund is allowed for the additional .50 percent district tax paid on the purchase. See Publication 44 page 9 of 28 for details regarding this issue. Transaction and Use Tax Regulation 1823 also addresses situations of sales and use across district lines: <http://www.boe.ca.gov/pdf/pub44.pdf> and <http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/tutr/1823.html>.

- 9. When the vendor sent the price quote, there were materials and tax applied and included in the quote. Later, when vendor sent the invoice, it did not show the tax as a separate charge. But the total amount of invoice payment is the same as the price quote amount which included tax. Do we have to accrue the tax?**

Answer: It would depend on the circumstances. If the seller is a California vendor, the seller is responsible/liable for the sales tax on the transaction and the purchaser is only potentially liable for any applicable district taxes that may apply. When sales tax applies, use tax does not apply, therefore there would be no need to accrue and pay the use tax (except for applicable district taxes). If the vendor is an out-of-state vendor, then there is the potential for use tax liability on the purchaser. In the event of an out-of-state vendor, it would be good practice to request an invoice/receipt that shows the information required in Regulation 1686, so there is no ambiguity in regards to whether the invoice/billing included use taxes to be paid to the State.

- 10. Our vendor bought materials from a third party vendor. The items were delivered to vendor's office located in Pittsburg, California. The materials were then used to repair our properties. When we pay for the materials on vendor's invoice, are we obligated to pay the sales/use tax at Pittsburg's (9%) or SF (8.75%) rate? If the third party vendor does not charge sales tax to our vendor because vendor is considered a "reseller" to CCSF, who would be liable for sales/use tax and at what rate?**

Answer: Additional information is required to answer this question. If the vendor (primary vendor, not third party vendor) in question is a construction contractor, special rules apply to their sales and uses of tangible personal property consumed in the completion of their contracts. Additional information can be found in Publication 9 (<http://www.boe.ca.gov/pdf/pub9.pdf>) and Regulation 1521 (<http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/1521.html>). Sales and use tax applications to construction contracts can be complicated and questions are encouraged to be either call the Customer Service Center at 1-800-400-7115 or follow the instructions in Publication 8, Get it in Writing (<http://www.boe.ca.gov/pdf/boe8.pdf>) to obtain advice specific to specific circumstances.

11. If you buy a vehicle in a different city or state for use in San Francisco. What state tax rate should be charged?

Answer: For vehicles in particular, the tax rate should be the place of vehicle registration. If you buy a vehicle from a vendor who is located in a different city in *California*, it's a sales tax transaction and vendor is responsible to collect and remit sales tax. If you purchase the vehicle from out-of-state for use in SF, you will owe California use tax and will pay directly to DMV when you register it.

12. Can a company like Ebay be forced by the State government to release records of California sellers and buyers who are not collecting/paying sales/use tax?

Answer: The CA BOE is authorized to issue subpoenas for records of the taxpayer and of persons doing business with the taxpayer under CA Government Code 15613. However, subpoenas are issued only in the limited circumstances when all other methods of obtaining taxpayer cooperation are exhausted and there are no pathways for obtaining that information from alternative sources. If the seller is a California seller, sales tax should be collected on all taxable transactions, even sold via internet portals like Ebay. When a California seller fails to collect sales tax, the buyer will not be held liable. However, if the online seller is from out-of-state and fails to collect California use tax, then the purchaser is liable to self-report the tax. Often times, out-of-state sellers on Ebay are not permitted to collect California use tax so make sure to obtain all the necessary information from the sellers per Regulation 1686- Receipts for Tax Paid to Retailers: <http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/1686.html>.

13. There is a separate line of “shipping and handling” on the invoice. Vendor didn't apply tax on S&H, should purchaser accrue tax on S&H and pay to BOE? In case of discount, is tax based on original price or after discount?

Answer: When the seller uses a *third-party carrier* to make delivery of the goods sold and the “shipping and handling” is expressed as a single amount, the handling portion is taxable on taxable goods. As a purchaser, you would not know the true value applied to the handling portion, therefore, it's suggested, based on materiality, to ask the vendor to separately state the handling charges on a separate line. If the seller is in California, it's a sales tax transaction and seller is responsible to charge sales tax on the invoice. If it is a use tax transaction, and the “shipping and handling” portion is unreasonably high, then ask the seller for the handling portion. Refer to Publication 100 on Shipping and Delivery Charges: <https://www.boe.ca.gov/formspubs/pub100/>

14. Does sales tax apply to the gross price or discounted price of an item?

Answer: There are several types of discounts, such as cash discount, and trade-ins. Cash discount is a direct reduction of the selling price that the seller offers and therefore, sales tax should be computed net of the cash discount as the new selling price. In the case of trade-ins, it's not a direct reduction, and rather it's a credit offset. For example, when you buy a new BMW, you decide to trade in your Honda Accord. The dealership's BMW price is \$60K and your Honda Accord trade in value is 15K and your remaining balance is 45K. However, tax is due on \$60k and not 45K because the 15K is not a direct discount that the seller offers. Regulation 1671: Discounts, Coupons, Rebates, and Other Incentives cover the taxability of reductions in required payment amounts:
<http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/1671-1.html>.

15. Is it safe to say that labor charges related to the sale or purchase of the tangible personal property is taxable?

Answer: It depends on the type of labor services provided. Generally speaking, fabrication labor and assembly labor are taxable. An example of fabrication labor may be manufacturing a new piece of machinery. Assembly labor may be putting together a new barbecue grill or bicycle that started out as parts. Generally speaking, installation and repair labor are exempt. An example of installation may be hooking up a new stereo to a used car. An example of repair may be restoring a water damaged painting. Additional information on labor charges can be found in Publication 108:
<http://www.boe.ca.gov/formspubs/pub108/index.html>

16. Is training through third party taxable or not?

Answer: Charges for training services provided by a third party are generally not taxable. The exception is when the training services are provided as part of the purchase of tangible personal property, machinery or equipment.

17. Our department has rental agreements on copiers and the lessor charges sales tax on the rental portion but not on the meter usage because it's complicated to compute. As a result, the vendor sent an email confirmation that they would pay the applicable sales tax on the rental agreement. Will this email confirmation from the lessor be sufficient to avoid tax liabilities?

Answer: Meter usage fees related to rented photocopy machines are taxable. Regulation 1600(c) states that rental receipts subject to tax include any payments required by the lease. Furthermore, in Publication 46: Leasing Tangible Personal Property (<http://www.boe.ca.gov/pdf/pub46.pdf>) page 8 covers photocopier meter usage specifically (under license, royalty, and reproduction rights). The question of whether an email confirmation from the lessor is sufficient to avoid tax liabilities is more difficult to

answer. Under Regulation 1660(c)(1), the tax on applicable leases of tangible personal property are generally a use tax upon the use in this state of the property by the lessee. The lessee is not relieved from the liability for the tax until he/she is provided a receipt of a kind prescribed under Regulation 1686 or the tax is paid to the State. Additional research into leases disclosed an annotation (which does not have the force and effect of the law) related to lease agreement statements such as “rental not taxable”. This annotation is linked here: <http://www.boe.ca.gov/sutax/annotations/pdf/330.2297.pdf>. The annotation indicated that statements made by lessors in regards to the taxability of lease payments do not relieve the lessee of potential use tax liabilities. However, it should be noted that operationally, in the event of an audit, section 0408.17 (<http://www.boe.ca.gov/sutax/manuals/am-04.pdf>) of the audit manual instructs auditors that generally use tax will only be asserted against the lessor since it is difficult to determine from a lessee’s records whether the lease is a “sale” under the sales and use tax law. In this instance, the only way to verify whether the lessor paid the tax on the meter usage charges would be to examine the records of the lessor. This is a complicated question and it is recommended that departments with many of these type of transactions obtain qualified written advice under RTC §6596. See Publication BOE-8.

18. Is storage rental taxable?

Answer: Rental of storage space for a fixed amount due monthly is not taxable. It’s considered land rental and land is not tangible personal property.

19. When a lessor originally purchased the equipment, no tax was paid. When this occurs, the lessor is responsible for collecting use tax on the rental receipts paid by the lessor. How about the maintenance service contract that was part of the lease agreement? How should tax apply to maintenance service and the spare parts?

Answer: Regulation 1660 on leases states that if vendor has paid tax at the time of purchase and leases the equipment in the same form as acquired, no tax should be due on rental receipts. The department may want to review the lease agreement and question the vendor about it. Optional maintenance contract are not taxable and mandatory maintenance contract are subject to tax. The lease agreement should spell out the terms and the spare parts used on the maintenance contract would:

- Mandatory taxable maintenance contract = the lessor should be collecting and reporting tax on charges made for mandatory maintenance contracts
- Optional non-taxable maintenance contract = optional charges for equipment maintenance, warranty, assembly, reassembly are not included in taxable rental receipts made by the lessor
 - generally, the lessor is the consumer of parts used in optional maintenance contracts

- if the lessor makes a separate charge to the lessee for repair parts used to maintain leased property, the lessor is considered the retailer and may choose to make a separate charge w/ sales tax reimbursement collected

20. For software, if the original sale is taxable, subsequent annual software license renewals are taxable. This means we need to keep the original sale invoice to show the delivery method. What if we don't have that information?

Answer: Try contacting the vendor or other records kept internally showing the method of delivery. It would be treated as taxable if no support can be provided.

21. We file on-line use tax with BOE, with SF tax rate of 8.75%. How do we report the 50% software renewal?

Answer: If the annual software maintenance contract contains taxable delivery during the period of service, then 50% of the price would be taxable. For example, if the annual maintenance is \$2,000, then 50% of that, \$1,000 would be taxable. This is the software maintenance and not the renewal. To report it on the returns, you would accrue \$87.5 SF tax on \$1,000 taxable amount for software renewal. The \$1,000 taxable amount would be reported on line 2 of the sales and use tax returns as purchases subject to use tax.

22. If the software is installed via a third party, should sales/use tax be levied?

Answer: If the third-party employee comes to your office and loads the software, and does not provide you a tangible copy (load and leave), then it would not be taxable. However, if you receive the software on any kind of storage device such as a CD, USB, the transaction becomes taxable.

23. Are cadavers taxable?

Answer: Human body parts are not tangible personal property, therefore, not taxable.

24. For hospital pharmacy and other supplies, what's the rule on sales tax?

Answer: Generally, hospitals and other medical service facilities are predominately service enterprises for tax purposes and are generally considered consumers (pays sales tax to retailer or subject to use tax) rather than retailers (is liable for sales taxes on sales) of tangible personal property. Sales of medicines by hospitals and other medical service facilities are exempt from sales tax when sold or furnished under specific conditions. Some of those conditions are: prescribed for treatment of a human being by a person authorized to prescribe the medicines and dispensed on prescriptions filled by a registered pharmacist in accordance with law; furnished by a licensed physician and surgeon,

dentist or podiatrist to his or her own patient for treatment of the patient; and others. Examples of sales by the hospital not qualifying as exempt under the medicine definition include: sales of magazines, flowers and small gifts at the pharmacy and hot meals to guests at the hospital cafeteria. A detailed explanation of tax applications to hospitals and similar medical service facilities can be found in Publication 45: Hospitals and Other Medical Facilities: <http://www.boe.ca.gov/pdf/pub45.pdf>.

25. When does sales tax apply on retention of a procurement contract? Upon possession of the procured goods or upon release of the retention amount?

Answer: Sales tax applies when two conditions exist: 1) title transfer; and 2) possession of the goods. Most of the times, tax is due when you receive the invoice because it's likely the goods already shipped to you and you take the ownership of it.

26. Is used book taxable when purchased online?

Answer: Yes. A used book is taxable just like any other tangible personal property that's subject to sales/use tax. If you buy from an online seller who is not permitted to sell in California, you will need to accrue use tax.

27. Does BOE refund over tax payment? If so, how?

Answer: Yes. BOE handles refund claims and if you believe you've over-paid, please visit BOE's website, Publication 117 for detail instruction on how to file a claim for refund at: <https://www.boe.ca.gov/formspubs/pub117/>.

28. For food and catering charges, what are taxable and what are not taxable?

Answer: Many of the itemized labor charges from caterers are taxable because they are related to the selling of food. For detailed explanation, please visit BOE's website, Publication 22 at: <http://www.boe.ca.gov/pdf/pub22.pdf>.

29. Who audits BOE?

Answer: The California State Controller's Office conducts audits of State Agencies. A link to the SCO-Division of Audits: http://www.sco.ca.gov/controller_audits_main.html.