

TAXES: SALES AND USE TAX

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TAXES: SALES AND USE TAX

I. INTRODUCTION

The University, like other state agencies and local governmental agencies, is subject to state-administered sales and use tax laws to the same extent as private individuals or businesses (6005)¹. This chapter provides a summary of these laws and an interpretation of how they affect the University.

In California, sales and use tax has both a statewide component and a local component, as described in sections III and IV below. In addition to state, local, and county taxes, transaction taxes may be imposed at the district level, as described in section V.

The California State Board of Equalization (Board) is charged with administering the sales and use tax law, including the collection of all amounts of tax required to be paid to the state.

The University may also be subject to sales and use taxes in other states. The campus Controller may need to consult the laws and regulations of other states if a campus has out-of-state transactions, since these laws are not covered in this chapter.

The University of California Sales and Use Tax Manual provides additional information about the application of sales and use tax law to transactions made by the University. The Sales and Use Tax Manual may be accessed via the internet at <http://www.ucop.edu/ucophome/policies/sutm/welcome.html>.

Sales and use tax policies for the Laboratories are governed by the Laboratory Procurement Standard Practices Manual, which may be found at <http://labs.ucop.edu/sp-labs/>.

¹Parenthetical numbers in the series 6XXX and 7XXX refer to sections of the California Revenue and Taxation Code (Sales and Use Tax Law). Numbers in the series 1XXX refer to sections of the California Administrative Code, Title 18, Chapter 2 (unless otherwise annotated).

II. DEFINITIONS

The following definitions apply throughout this chapter:

- **California retailer** - a seller of tangible personal property who has a business location in California and who is required to have a Seller's Permit (6015, 6019).
- **Retailer engaged in business in California** - a seller who has business dealings in California but maintains no business location in the state and who is required to have a Certificate of Registration--Use Tax (6203).
- **Out-of-state retailer** - a seller who has no business dealings or business location in California and who is therefore not required to have either a Seller's Permit or a Certificate of Registration--Use Tax. This definition includes sellers whose sole contact in California is by mail or common carrier.
- **Sale** - a transfer of title or possession of tangible personal property for a consideration, as further defined in section 6006.
- **Lease** - includes rental, hire, and license, as defined in section 6006.3.
- **Sales Tax** - a tax imposed upon a retailer for the privilege of selling tangible personal property in California at retail (6051). The retailer may pass liability for the sales tax on to the consumer pursuant to an agreement of sale between the retailer and the consumer.
- **Use Tax** - a tax imposed upon a consumer for the storage, use, or other consumption of tangible personal property in California (6201). Use tax may be accrued by the consumer or imposed on a retailer engaged in business in California, who generally collects the tax from the consumer.

III. STATE SALES AND USE TAX LAW

A. INTRODUCTION

Sales tax is imposed upon a retailer for the privilege of selling tangible personal property in California at retail (6051). The retailer is allowed to pass the tax on to the consumer as provided for in an agreement

III. STATE SALES AND USE TAX LAW (Cont.)A. INTRODUCTION (Cont.)

between the retailer and purchaser (section 1656.1 of the California Civil Code). The parties can agree that the tax will not be passed on or that it will be passed on at a time other than that of the sale. Use tax, which is a complement to the sales tax, is imposed upon any person who stores, uses, or otherwise consumes in California tangible personal property that was not subject to sales tax (6201, 6401). The types of transactions that are subject to sales or use tax are described below.

Except when the sale is by lease, the sale and purchase of vehicles, mobile homes, commercial coaches, and aircraft are not covered in this chapter, since special rules govern the taxability of these items (6275). The basic rule, however, is that if a vehicle, mobile home, commercial coach, vessel, or aircraft is acquired without payment of California sales or use tax, use tax is paid when the registration of title or application for transfer of title registration for the purchase is made (6292). In some cases, the tax is paid to the Department of Motor Vehicles and in others to the Department of Housing and Community Development, as these agencies are acting for, and on behalf of, the Board. Additional information may be found on the Board web site at <http://www.boe.ca.gov/>.

B. SALES TAX1. Incidence of Tax Liability

All California retailers are liable for sales tax for the privilege of making retail sales (6051). A retail sale, or sale at retail, is the sale of any tangible personal property, as defined by law, for any purpose other than resale (6007). Sales are deemed to occur at the place where the property is physically located at the time the sale or purchase takes place (6010.5). The intended place of use of the property has no effect on the imposition of the sales tax when the sale and delivery occur in California.

2. Purchase for Resale

A declaration by the purchaser that the purchase is for resale (see section III.D.1.b.) will stop the imposition of the tax (6091, 6092). A

purchaser who has a California Seller's Permit is qualified to make purchases for resale (6066). A purchaser who sells only nontaxable property, such as food products for human consumption, or who makes no sales in California, is also qualified to make purchases for resale (6066, 6014).

3. Passing of Tax to the Purchaser

The obligation for the payment of sales tax lies with the California retailer, not with the purchaser. The California retailer is, however, allowed to pass the tax on to the purchaser in most cases, in accordance with the terms of the agreement and the sales tax reimbursement schedules prepared by the Board (6051, 6012, and Section 1656.1 of the California Civil Code). A retailer who cannot pass the tax on to the purchaser must pay the tax, unless a specific exemption has been granted for the particular type of sale (e.g., sales to the federal government-- see section III.D.1.a).

As a matter of contract law, the retailer must pass on the sales tax to the purchaser at the time of sale, unless the retailer contracts with the purchaser to collect it at another time. A retailer who does not do so has no right to collect the tax from the purchaser and must pay it from the retailer's own funds. If the retailer fails to pay the tax, the Board can assess tax only against the retailer, and not against the purchaser.

If the retailer fails to pass on the sales tax, the University is not legally obligated to pay any tax on the purchase. If this situation occurs, campus Controllers should do the following:

a. Property bought by purchase order

The sales tax should be remitted to the retailer if omitted from the purchase order in error or if the retailer failed to place it on the invoice when the tax was included in the price shown on the purchase order. This procedure should be followed because University purchase orders state that "prices specified include all taxes...." Therefore, if the purchasing office inadvertently omits sales tax from the purchase order when the

III. STATE SALES AND USE TAX LAW (Cont.)

B. SALES TAX (Cont.)

University is in fact liable for the tax; the error should be resolved in favor of the seller. The seller could otherwise reasonably claim that the University had misled the seller into thinking that it was not subject to sales tax.

b. Property bought under other purchasing procedures

As stated above, the University is not legally liable for sales tax if the seller fails to pass on the tax by adding it on the invoice. If the tax is not included, the University has some justification for assuming that the seller means to absorb it. However, if the campus Controller believes that the seller has left off the sales tax in error, perhaps because the seller believes that sales to the University are not subject to tax, the Controller may remit the sales tax to the seller. *It is not proper to report omitted sales tax on the University's quarterly return as use tax and to pay the tax to the Board.*

C. USE TAX

1. Incidence of Tax Liability

Any person who stores, uses, or otherwise consumes tangible personal property in California may be required to pay use tax. The facts of each case determine whether or not the tax will be imposed, but, in general, any purchase that was not subject to California sales tax and that is used or presumed to be used in California generates a use tax obligation (6201, 6401).

The purchaser pays use tax to the retailer if the latter is a "retailer engaged in business in California" (6203); otherwise, the purchaser pays the use tax to the Board. (Retailers engaged in business in California may show "sales tax" on their invoices, but, in fact, they are collecting use tax.)

2. Tax Not Imposed²

a. Retail Purchase

If California sales tax was or could have been collected at the time of the retail purchase (i.e., if the seller was a California retailer), no use tax obligation arises (6401). Equally, if a retail purchase was not made from a retailer, no use tax obligation arises (6201).

b. Purchase for Resale

As long as an item purchased for resale is used for resale (which includes retention, demonstration, and display of the property), no use tax obligation arises (6201, 6008, 6009). (See section III.D.1.b.)

If a purchaser of property for resale uses the property in California for purposes other than resale, a use tax obligation arises at the time of the use change. If the property was originally delivered outside California, the mere bringing of the property into California is not sufficient to invoke the tax; the change of use within the state determines taxability.

3. Tax Imposed

a. In-state Delivery

A use tax obligation arises when a retail purchase is delivered in California to a California purchaser by an out-of-state retailer or a retailer engaged in business in California (but not by a California retailer, where sales tax would apply). Delivery into California is sufficient to invoke the presumption that the property will be used in California.

² "Retail purchase" in this section and in sections 3 and 4 below does not include leases. Leases and applicable taxes are covered in section II.E.

III. STATE SALES AND USE TAX LAW (Cont.)

C. USE TAX (Cont.)

A use tax obligation also arises when a retail purchase is delivered in California to a California purchaser by a California retailer whose sales are exempt from the imposition of sales tax (such as a bank or an insurance company--see section III.D.1.a), unless a specific exemption for the purchase is granted. The intended place of use by the purchaser does not determine taxability. Delivery in California is sufficient to invoke the tax.

b. Out-of-state Delivery (6247)

When a purchaser known to be a California resident takes delivery of a retail purchase outside of California, the seller, if a California retailer or a retailer engaged in business in California, must ordinarily presume that the property will be used in California and collect use tax from the purchaser. However, the purchaser can controvert the presumption by declaring to the seller that the use will be outside of California. The best form of declaration is a written statement signed by the purchaser; however, the seller can rely in good faith on other evidence as to the place of use. Shipment to an out-of-state location does not qualify as other evidence, however.

c. Use in California

Retail purchases that are not initially subject to California use tax but that are subsequently used in California may generate a use tax obligation at the time of such use. Examples of retail purchases not initially subject to California use tax are 1) a retail purchase delivered out of state to a California purchaser by an out-of-state retailer; and 2) a retail purchase delivered out of state to an out-of-state purchaser by a California retailer. If the purchaser intended to use the property in California at the time of purchase and if said purchaser subsequently brings the property into California and uses it for any purpose other

than resale or retains it for any purpose other than resale or use solely outside the state, a use tax obligation arises at the point of use in the state.

4. Payment of the Tax

The liability for the payment of the use tax lies with the purchaser. The purchaser's liability is not fulfilled until the purchaser has either 1) paid the tax to the Board, or 2) paid the tax to an authorized retailer and obtained a receipt (6202). An "authorized retailer" can be either a California retailer or a retailer engaged in business in California. The receipt is not required to be in any particular form, but must include the following:

- The name and place of business of the retailer;
- The serial number of the retailer's permit to engage in business as a seller or the serial number of the retailer's Certificate of Registration--Use Tax;
- The name and address of the purchaser or lessee;
- A description identifying the property sold to the purchaser or leased to the lessee;
- The date on which the property was sold or leased;
- The sale price of the property, or, in the case of rentals, the amount of the rental for the period covered by the invoice; and
- The amount of tax collected from the purchaser or lessee.

For sales transactions, and rental transactions with respect to which use tax applies, an invoice showing the data required above, together with evidence of payment of such invoice, will constitute a receipt (1686).

When the tax is paid to an authorized retailer, the retailer must remit the tax to the Board. The Board, however, may assess the purchaser directly

III. STATE SALES AND USE TAX LAW (Cont.)C. USE TAX (Cont.)

for payment of the tax, and, if the purchaser cannot prove payment, the Board can consider the tax as unpaid and collect it from the purchaser. As a complement to the Board's power to assess the purchaser for the payment of the tax, the purchaser can file for a refund from the Board if the purchaser has proof of erroneous payments of tax to a retailer.

If a retailer makes a retail sale of tangible personal property on which it has previously paid taxes to the state of California and has made no other use of the property, it is entitled to a refund for tax paid. The retailer gains this refund by deducting the original cost of the property sold from the gross retail sales reported on the quarterly tax return.

a. Payment to the Board

In the following situations, the purchaser pays the use tax directly to the Board:

- Retail purchase that is made from an out-of-state retailer or from a California retailer whose sales are exempt from sales tax, such as the federal government or banks and insurance companies (III.D.1.a), below);
- Retail purchase that is not initially subject to California use tax and that a) is subsequently used in California for other than resale or b) is retained for any purpose other than resale or use solely outside the state; and
- Resale purchase that is subsequently used for purposes other than retention, demonstration, and display.

b. Payment to an Authorized Retailer

Whenever a purchase is subject to use tax and is made from an authorized retailer, the use tax should be paid to the authorized retailer. The purchaser should obtain a receipt from the retailer reflecting:

- The name and place of business of the retailer;
- The serial number of the retailer's permit to engage in business as a seller or the retailer's Certificate of Registration - Use Tax;
- The name and address of the purchaser or lessee;
- A description identifying the property sold to the purchaser or leased to the lessee;
- The date on which the property was sold or leased;
- The sale price of the property, or, in the case of rentals, the amount of the rental for the period covered by the invoice; and
- The amount of tax collected from the purchaser or lessee.³

D. EXEMPT SALES AND PURCHASES

Certain sales and purchases of tangible personal property have been declared exempt from sales and use tax; others are exempt from sales tax only or use tax only. For additional information, see the Sales and Use Tax Manual and State Board of Equalization [Publication 61](#), Sales and Use Taxes: Exemptions and Exclusions.

1. Examples of Sales and Use Tax Exemptions

a. United States Government

The Sales and Use Tax Law specifically declares that tax will not be imposed on the sale and use of property that the state is prohibited from taxing under the Constitution or laws of the United States or under the California Constitution (6352). This exemption relieves the federal government,

³ Regulation 1686

III. STATE SALES AND USE TAX LAW (Cont.)D. EXEMPT SALES AND PURCHASES (Cont.)

including its agencies and instrumentalities, from any sales and use tax obligation on property that it sells or purchases. In addition, section 6381⁴ exempts sales made to the United States or its instrumentalities from sales tax.

A California retailer cannot pass his sales tax liability to the federal government on its purchases, and the federal government does not have a sales tax obligation on sales that it makes. In addition, it is not required to pay use tax on its purchases nor is it required to collect use tax on its sales.

When the University purchases an item under a federal contract or grant, and when at the time of purchase title to the item vests, or is to vest, in the federal government, as in the case of equipment to be fabricated, then no state sales or use tax is due on the purchase. When title to the item vests in the University at the time of purchase, then the purchase becomes subject to state sales or use tax.

As the types of items that vest in the federal government vary from one contract or grant to another, the campus Controller should carefully examine each contract or grant and the regulations of the specific agency to determine which purchases are subject to sales or use tax. To avoid problems or questions on sales or use tax payments involving federal contracts or grants, the liability for payment of or exemption from sales or use tax should be determined at the time a contract or a grant is proposed. This determination should be shared among the cognizant academic department or investigator, the campus contract and grant office, the campus purchasing department, and the campus

⁴ Amended effective 1/1/87

accounting office so that purchase orders and invoices associated with the given contract or grant can be processed expeditiously and correctly.

By agreement with the Board, the University may designate purchases of tangible personal property as purchases for resale if title to the property vests in the federal government; however, this provision does not apply to leases (see section III.E., below).

This exemption also relieves California insurance companies and certain banks from paying use tax on items they purchase or from collecting sales tax on sales they make. However, a California retailer is allowed to pass the retailer's sales tax obligation to them on items purchased from the retailer. In most cases, they are required to collect use tax on sales they make. Insurance companies and banks are granted the exemption because they pay an "in lieu" tax.⁵

b. Exemption for Resale

1) Purchases for Resale

Sales or use tax will not be imposed on the purchase of tangible personal property for resale if the University submits a resale certificate to the seller stating, among other things, the University's Seller's permit number. The certificate must be presented to any seller who is required to collect sales or use tax. (The University's qualification for a resale purchase when the seller is an out-of-state seller and delivery of the goods occurs out of state depends upon the laws of the state of delivery.)

The burden of proving to the Board that a sale of tangible personal property is a sale for resale is upon the seller (6091, 6241). The seller is not relieved

⁵ Regulation [1567](#)

III. STATE SALES AND USE TAX LAW (Cont.)

D. EXEMPT SALES AND PURCHASES (Cont.)

of sales tax liability nor the duty of collecting use tax on the sale until the seller has obtained evidence that the purchase is for resale. The evidence that must be obtained is a resale certificate, to be taken in good faith, issued to the seller by the purchaser (6092, 6242). The certificate must contain specific information and be in substantially the form prescribed by the Board. An exhibit of the certificate may be found in the Sales and Use Tax Manual.

Sellers have varying practices in obtaining or retaining resale certificates. For customers who make recurring purchases, the seller may choose to keep a permanent file of resale certificates indicating a general description of the kind of property to be purchased for resale; each certificate is then considered to apply to all sales to these customers. For customers who make infrequent or one-time purchases, the seller may require a certificate each time the seller makes a sale.

If the University purchases an item for resale and subsequently uses the item in California for another purpose, the University becomes liable for use tax. The tax becomes due at the time of change in use and must be paid directly to the Board.

2) Sales for Resale

University departments selling taxable items must assume that their sales are retail sales until the purchaser establishes the contrary. The University is not relieved of its sales tax liability or duty to collect use tax on a sale until the purchaser submits evidence that the purchaser is making a purchase for resale. Departments should

therefore require all purchasers, regardless of their place of residence, taking delivery of goods in California to submit a resale certificate stating, among other things, the purchaser's Seller's Permit number, if applicable. The requirement also applies to any purchaser known to be a California resident who takes delivery of goods out of state. Since each campus has its own seller's permit number, it is important that appropriate controls be placed on the issuance of resale certificates. For audit purposes, a copy of the resale certificates issued should be retained in a central location. The campus controller's office should establish appropriate control guidelines.

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c. Food Service

Sales of meals to students by the University are exempt from sales tax; meals served to patients by University hospitals are also exempt. Sales of meals to faculty and staff are taxable, however, since no exemption is provided by the law. Campuses must periodically estimate the ratio of student meals to nonstudent meals served and pay sales tax on the estimated nonstudent meals. Each campus should design its own procedures for the proper payment of tax.

Sales of meals to students by food service firms under contract by the University are taxable if the sales transaction is between the student and the firm. However, under some food service contracts, meals are sold to the University for resale to contract boarding students; these are exempt from sales tax as sales for resale. The resale of the meals by the University is then exempt as a sale by a school. To determine whether the sales of meals are taxable or not, each contract must be examined to determine exactly who is selling meals to whom.

III. STATE SALES AND USE TAX LAW (Cont.)

D. EXEMPT SALES AND PURCHASES (Cont.)

d. Medicines

Prescribed medicines issued by University pharmacies under the conditions given in section 6369 of the Sales and Use Tax law are exempt. Each campus having a hospital or student health service should design procedures to insure the proper collection and payment of tax.

e. Periodicals

Periodicals published quarterly or more often than quarterly by University departments or other units are exempt from tax. The University must collect tax on sales of other periodicals, however.

f. Motor Vehicle Fuel

The application of sales and use tax to fuel varies, depending on the type of fuel and the use (highway or off-highway). For details see chapter [T-182-76](#), Taxes: State Fuel Taxes.

g. Other General Exemptions

Other exempted sales and purchases include gas, electricity, and water; certain aircraft fuels; animals and other items for food; food products; original works of art; and printing materials. These general exemptions are specified in the Sales and Use Tax Law and may be found in the Sales and Use Tax Manual.

E. LEASES

Leases of tangible personal property are included in the definition of "sale" and "purchase" and are therefore subject to tax. Leases of the following are specifically exempt, however, by exclusion from the definition of sale and purchase (6009, 6010, 6010.8, 6010.9, 6010.10):

- Motion pictures or animated motion pictures, including television, video discs, and video cassettes;

- Linen supplies and similar articles under a continuing laundry or service contract;
- Household furnishings included in a lease of living quarters;
- Mobile transportation equipment for use in transportation of persons or property defined in section 6023;
- Tangible personal property leased in substantially the same form as acquired by the lessor if the lessor has paid the sales or use tax on the purchase price of the property [This exception does not apply to chemical toilets (6010).]; and
- Certain mobile homes.

A lease is a continuing sale and a continuing purchase for the duration of the lease as long as the leased property is located in the state; tax is not imposed when the leased property is out of state (6006.1, 6010.1).

The manner in which sales tax and use tax are imposed on leases differs from the manner in which these taxes are imposed on regular sales and purchases. Section 6201 of the law imposes use tax "...on the storage, use, or other consumption ... of tangible personal property," including leased property. Section 6401, under exemptions from use tax, then provides that transactions are exempt from use tax if sales tax applies, *except* that this exemption does not apply to leases. Since leases would otherwise be subject to sales tax (under section 6051) as well as use tax, a sales tax exemption (6390) prevents imposition of both taxes by exempting leases from sales tax if they are subject to use tax (or if the leased property is located outside California). As a result, the tax on leases is normally a use tax, whose incidence is on the lessee; the lessor collects this use tax from the lessee and remits it to the Board (6203). However, if the lessee cannot be held liable for use tax, as with the federal government, the lessor is liable for sales tax (6051).

Sales to the federal government are exempt from sales tax under 6381. Leases to the federal government are

III. STATE SALES AND USE TAX LAW (Cont.)

E. LEASE (Cont.)

also exempt, except for leases of tangible personal property under federal government contracts made pursuant to General Services Administration (GSA) supply schedules.⁶ If tax has to be paid and the terms of the contract between the University and the federal government do not allow the tax payment, the University should ask the lessor to assume the tax obligation or it should find a source of funds other than the federal contract funds for payment of the tax.

A lessor who is required to collect use tax must give the lessee a receipt for any tax collected and remit the tax to the Board (6203). Such lessor should hold a Seller's Permit or a Certificate of Registration--Use Tax. The lessee is not relieved of use tax liability until the lessee has a receipt from the lessor or has paid the tax to the Board. For the format of the receipt, see section III.C.4., above.

When tax on leases must be paid, the tax is due when rentals are paid or become payable. The tax is paid to the lessor, regardless of place of residence, unless the lessor is not required to collect use tax; in that case, the tax is paid to the Board.

Leases of tangible personal property located outside California are not subject to California tax. If the University moves property leased in California outside the state, the tax obligation to California ceases at the time the property is moved.

F. BAD DEBTS

When issuing invoices or sundry debtor bills, the University accrues any sales or use tax in a liability account and remits the tax promptly to the Board,

⁶ This exemption results from the decision of the U.S. Ninth Court of Appeals in May 1976 (California State Board of Equalization vs. United States of America, 536 F.2d 294). Then in 1978 the California State Legislature added section 1656.1 to the California Civil Code removing the exemption. However, the U.S. Ninth Court of Appeals held in 1981 that this legislation manifests a strong economic incentive (6012) to collect tax from federal leases, and the legal incidence of the tax is placed on the U.S., thus violating the U.S. Constitutional immunity from State taxation. The U.S. Supreme Court upheld all portions of the decision, except the portions on leases of tangible personal property under federal government cost reimbursement contracts made pursuant to GSA supply schedules.

regardless of when the bill is actually paid by the purchaser. If the bill eventually proves uncollectible, the law allows a deduction for tax previously paid (6055, 6203.5). Therefore, when writing off uncollectible bills, the campus Controller should charge any sales or use tax paid on the original bill back to the tax liability account.

If an amount written off is subsequently recovered, the tax becomes payable to the Board.

G. CREDIT FOR TAX PAID TO ANOTHER JURISDICTION

Payments of sales and use taxes imposed on property by another state, political subdivision thereof, or the District of Columbia prior to the storage, use, or other consumption in this state are allowed as credits against California use tax (6406).

H. PERMITS AND TAX RETURNS

1. Permits

All persons who have a business location in California and sell tangible personal property subject to sales tax must obtain a Seller's Permit from the Board (6066). A permit is required for each place of business where sales occur.

A Seller's permit entitles the holder to purchase tangible personal property for resale without payment of sales tax (when delivery of the purchase occurs in California) or use tax (when delivery occurs out of state).

The resale permit numbers that individual campuses quote to vendors are as follows:

Berkeley	SR-CH-21-135302
Davis	SR-YJHF-29-047481
Irvine	SR-EA-24-141560
Los Angeles	SR-AS-18-083492
Riverside	SEH-23-125433
San Diego	SX-FH-25-610105
San Francisco	SX-BH-19-154365
Santa Barbara	SR-AR-15-036188
Santa Cruz:	
Main campus	SR-GHD-26-117705
Lick Observatory	SR-GH-26-092773
Continuing Education	SR-CH-97-723649
of the Bar	

III. STATE SALES AND USE TAX LAW (Cont.)H. PERMITS AND TAX RETURNS (Cont.)

Santa Cruz holds a separate permit for Lick Observatory so that local sales and use tax applicable to Lick will be credited to the appropriate county.

Local sales and use tax is normally credited by the Board to the city and county in which the seller is located. If a campus collects a significant amount of sales tax on sales made outside its county of location, or if it pays a significant amount of use tax on goods purchased and used outside its county of location, the campus Controller should contact the local Board office for instructions on allocating tax among counties. The Board will supply the campus with supplementary schedules on which to indicate the allocation on the quarterly return.

2. Tax Returns

Sales and use tax returns, accompanied by a remittance for tax due, must be filed with the Board on or before the last day of the month following each quarter (6451, 6452). Sellers show gross receipts on the return; gross receipts include taxable rents received. Purchasers who have incurred a use tax liability show the total purchase price of property subject to tax; total purchase price includes taxable rents on which tax was not paid to the lessor (6453).

Sales and use taxes are reported on the same tax return. The return requires the taxpayer to report figures on taxable sales and use tax transactions, from which the tax liability is calculated. In practice, many taxpayers, including the University, record actual tax collections and accruals and then calculate taxable transactions from these figures. From the gross tax liability, any sales or use tax paid to other states that qualifies as a credit is subtracted to arrive at the net tax payable.

If the Board determines that a taxpayer's estimated taxable transactions average \$17,000 or more per month, it requires prepayment of at least

90 percent⁷ of the tax liability for each of the first two months of each quarter, regardless of the actual liability in any one month (6471). The taxpayer is notified in writing by the Board of the prepayment requirement, which remains in effect until the taxpayer is notified to the contrary by the Board. Prepayments constitute a credit against the tax payable for each quarter, but they do not relieve the taxpayer from filing quarterly returns. Failure to prepay the tax or file a quarterly return results in a penalty, the imposition and the rate of which depends upon the facts of each case.

Campuses accumulate sales and use tax payable in various liability accounts. On the tax return, the gross figures for items sold or purchased are derived from the accumulations in these accounts. Because the University campuses' estimated taxable transactions average \$17,000 or more per month, as explained above, campuses remit tax monthly; monthly payments are credited by the Board against the tax payable for the quarter.

IV. UNIFORM LOCAL SALES AND USE TAX LAW

Under the California Uniform Local Sales and Use Tax Law, counties may impose a local sales and use tax. Such tax is imposed on the same transactions that state sales and use tax is imposed upon, except that certain specified purchases by operators of aircraft that are used or consumed by the operators directly and exclusively in the use of the aircraft as common carriers⁸ are wholly or partially exempt (7202 - 7203.5).

All California counties have passed sales and use tax ordinances. Taxpayers are entitled to a credit against the county tax for the amount of tax due any city within that county. In total, however, the amount of tax imposed by the county and cities therein cannot exceed the county rate. A city sales and use tax ordinance may provide credit for similar taxes due to the redevelopment agency of such city. In general, the Board administers local tax ordinances; any tax payable is, therefore, remitted to the Board and is reported on the regular quarterly return.

⁷ This 90 percent minimum may be raised as a contingency requirement by mandate of law or by Executive Order of the Governor for purposes of meeting the State's contingent reserve requirements for economic uncertainties.

⁸ Section 7202(h)(8)

V. TRANSACTIONS AND USE TAX LAW

The transactions and use taxes are special taxes, similar to the state and local sales and use taxes that have been imposed from time to time for special purposes, such as the funding of urban rapid transit. Tax is imposed upon the same transactions that state sales and use tax is imposed upon, with the following exceptions set forth in section 7261:

- The amount of any state or uniform local sales or use tax;
- Gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of the aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government;
- Sales of property to be used outside the district which are shipped to a point outside the district, pursuant to the contract of sale, by delivery to that point by the retailer or his or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point; and
- A sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to January 1, 1984.

The transactions tax is analogous to the state sales tax and is imposed on retailers within the district for sales of tangible personal property delivered within the district. Sales of property delivered outside the district for use outside the district are exempt (7261a,f).

The district use tax is analogous to the state use tax and is imposed on the purchaser for the storage, use, or other consumption of tangible personal property within the district. Purchases subject to any state-administered transactions tax are exempt from the corresponding use tax.

A retailer engaged in business in the district is required to collect district use tax from a purchaser only if the retailer delivers the property in the district or makes the sale in the district.

The Board administers transactions and use tax ordinances; any tax payable is, therefore, remitted to the Board and is reported on the regular state quarterly return.

****VI. ELECTRONIC WASTE RECYCLING FEE**

A. Introduction

Effective January 1, 2005, retailers in California are required to collect the Electronic Waste Recycling Fee on sales of covered electronic devices ("CED's"). CED's include televisions, computer monitors, and laptop computers. There is no exemption from this fee for the University of California. The fee ranges from \$6 to \$10, depending on the size of the video display device. Only sales of new or refurbished video displays are subject to the tax; used and non-refurbished video displays are not taxable.

B. Incidence

The collection of the fee is imposed on the retailer making the sale, whether over the Internet, by mail order, or at a physical store location. The fee must be separately stated on the invoice, but **the fee itself is not subject to the California sales and use tax.** The retailer remits the fee to the BOE with its quarterly Electronic Waste Recycling Fee Return.

C. Sales for Resale and Shipments Out of State

Sales for resale are exempt from this fee. As with other purchases made on a resale basis, the University will be required to collect the fee if it sells these CEDs to customers. Similarly, any CEDs purchased for resale that are later used by the University will be subject to the fee. Only sales shipped to a destination in California are subject to this fee.

VII. CONTROLLER'S RESPONSIBILITIES

The Controller on each campus is responsible for assuring compliance with all aspects of the sales and use tax laws of California and of other states. The Controller is responsible for determining whether sales and use tax is to be paid on University purchases and for coordination with the campus purchasing office and the accounting office so that the tax is properly paid. Responsibilities also include determining when sales and use taxes are to be collected on University sales and coordinating the

VII. CONTROLLER'S RESPONSIBILITIES (Cont.)

procedures of the accounting office and the campus departments that sell tangible personal property to the public, ensuring that the University's tax obligations and duties are fulfilled.

In carrying out these responsibilities, the Controller may need to consult the references given below for further information. All questions should be referred to the office of the Vice President--Financial Management, which should be notified of any sales and use tax problems that have University-wide implications.

VIII. REFERENCES

Business Taxes Law Guide, California State Board of Equalization.

University of California Sales and Use Tax Manual, rev. March, 2003.

Electronic Waste Recycling Fee Section, California State Board of Equalization website,
www.boe.ca.gov/sptaxprog/ewaste.htm.

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