



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION  
BUSINESS TAXES COMMITTEE  
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GAVIN NEWSOM  
Governor  
AMY TONG  
Secretary, Government Operations Agency  
NICOLAS MADUROS  
Director

September 18, 2024

VIA INTERNET

Dear Interested Party:

Attached is a copy of Current Legal Digest (CLD) Number 1093 for your information and review. The CLD includes the following:

1. Sales and Use Tax: one new proposed annotation, revisions to three annotations, and the deletion of 22 existing annotations
2. California Firearm, Ammunition, and Firearm Precursor Part Excise Tax: two new proposed annotations
3. Cigarette and Tobacco Products Tax: one new proposed annotation

After review, please submit any questions, comments, or suggestions for changes by **October 18, 2024**. You may complete the electronic CLD Comments Form at <http://www.cdtfa.ca.gov/taxes-and-fees/cldmail.aspx> or mail your written comments to:

California Department of Tax and Fee Administration (CDTFA)  
Annotation Coordinator, MIC: 50  
P. O. Box 942879  
Sacramento, CA 94279-0050

CLDs are circulated for 30 days, at which time any questions are addressed, and/or suggested modifications taken into consideration. After review of the final version by the CDTFA's Legal Division, they are published in the Business Taxes Law Guide. At that time, the CLD becomes obsolete.

Sincerely,

Pamela Bergin  
Assistant Chief Counsel

Attachment: Current Legal Digest 1093

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

CURRENT LEGAL DIGEST NO. 1093

September 18, 2024

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**Sales and Use Tax Annotations**

**1. New Annotation – 295.1246 California Firearm, Ammunition, and Firearm Precursor Part Excise Tax**

295.1246 California Firearm, Ammunition, and Firearm Precursor Part Excise Tax. California Firearm, Ammunition, and Firearm Precursor Part Excise Tax (CFET) reimbursement should not be included in gross receipts for purposes of determining the amount of sales tax that the retailer owes.

Amounts that a retailer separately states and collects from its purchaser as reimbursement for CFET pursuant to an agreement of sale should not be included in gross receipts for purposes of determining the sales tax due to the state by the retailer for the transaction. 6/12/2024.

**2. Revise Annotation - 305.0024.250 Indian Reservations—Agua Caliente Reservation**

The annotation does not accurately summarize the legal opinion upon which the annotation is based. CDTFA proposes deleting the entire first paragraph, as well as deleting “Agua Caliente Reservation” from the title. The first paragraph of the annotation pertains uniquely to the establishment of the Agua Caliente Indian Reservation, the details of which are unnecessarily specific for an annotation. See below for proposed changes:

~~305.0024.250 **Indian Reservations—Agua Caliente Reservation.** The Agua Caliente Reservation was established by Executive Order. At the time of the order, portions of the area were in private ownership and thus not part of the reservation. This is contrasted to areas involving treaties in which land in a reservation was later acquired in fee title by both Indian and non-Indian residents due to "allotment" acts authorized by Congress and other means. In this latter case, privately owned lands are considered "Indian Country." Thus, for purposes of Regulation 1616, sales within these areas are sales within the reservation. In the case of the Agua Caliente Reservation, the properties privately owned at the time of the Executive Order within the outer boundaries of the reservation are not "Indian Country." Any sales in such areas are not within the reservation for the purposes of Regulation 1616.~~

Any retailer claiming that his location is within "Indian Country" must establish that the land in question is either reservation land (i.e., included in the land reserved for the tribe), or held in trust by the U.S. for the benefit of an Indian or a tribe, or part of "Dependent Indian Communities," which consist of lands validly set apart for the use of Indians as such under the superintendence of the United States. 8/26/1996.

(Note.—The unnumbered paragraph in Regulation 1616(d)(2) was amended effective May 26, 2021, to clarify the definition of "Reservation" and includes terms used to define what it means to be within the boundaries of a reservation.)

### **3. Revise Annotation - 325.1768 Space Flight Property**

Add additional note to existing annotation regarding the law change about the Vandenberg Air Force Base (VAFB) requirement being deleted.

See below for proposed changes:

**325.1768 Space Flight Property.** Taxpayer will sell a spacecraft for delivery in a foreign country with title passing upon delivery in the foreign country. The spacecraft will be integrated with its payload in the foreign country and will then be returned to the taxpayer in California. The taxpayer will inspect the spacecraft for damage, install batteries, and ship it to Vandenberg Air Force Base (VAFB). At VAFB, the spacecraft will be assembled. The launch vehicle then will be attached to an airplane in "launch ready condition." The airplane will be flown to Florida for "reflecting and final checking out." Then, the airplane will be flown to a point over the Atlantic Ocean for launch.

Section 6380 provides an exemption from the sales and use tax for "qualified property" used in space flight originating at VAFB. In this case, the only flight that will originate from VAFB is not a space flight but, instead, a conventional flight from California to Florida. Thus, the spacecraft does not qualify for the exemption provided under section 6380. There are insufficient facts to determine whether section 6009.1 applies to the transaction. 6/7/1994.

[\(Note.—Section 6380 was amended, operative January 1, 1999, to remove the requirement that the flight originate at VAFB.\)](#)

### **4. Revise Annotation – 330.3470 Operator Services**

The annotation does not have the correct date per the annotation back up. CDTFA proposes changing the annotation date to reflect the annotation back up's date.

See below for proposed changes:

**330.3470 Operator Services.** When a transaction is a true lease, because the lessor will lease the property with or without an operator, the charges for the optional operator are not part of the rentals payable from the lease, for purposes of the sales and use tax. However, if the optional operator performs fabrication for a consumer, the charge for the operator is taxable as a sale of tangible personal property, unless the operator qualifies as a "special employee" of the lessee. 4/8/1994.

### **5. Delete Annotations - 347.0000 Manufacturing Equipment**

Annotations related to Regulation 1525.2 Manufacturing Equipment will be deleted. The statutory authority ended January 1, 2004. Regulation 1525.2 Manufacturing Equipment was

repealed January 1, 2004, effective June 5, 2014. Annotations are outdated and no longer accurate.

The following annotations will be deleted:

347.0150 Business Activity Partially Nonmanufacturing  
347.0200 Commence Business Activity  
347.0250 Corporate Division Opening New Plant  
347.0475 Lease of Manufacturing Equipment  
347.0515 Lessee—Not Pre-Qualified  
347.0535 Manufacturer's Partial Exemption—Transportation Equipment  
347.0540 Manufacturing Activity  
347.0675 New Trade or Business  
347.0676 New Trade or Business  
347.0677 New Trade or Business  
347.0730 Partial Exemption—Leasing Transactions  
347.0750 Pre-Qualified Person  
347.0810 Qualified Person—Subsidiary  
347.0860 Recycling of Property  
347.0865 Refunds for Manufacturing Partial Exemption  
347.0875 Related Company in Similar Business  
347.0878 Related Corporations  
347.0890 Research and Development Activities  
347.1000 Special Purpose Buildings

**6. Delete Annotation – 395.0069 Sale by Franchisee**

Annotation will be deleted because it does not properly reflect the backup and in places misstates what the backup says.

**7. Delete Annotation - 460.0024.200 Consumer Action Against Retailer for Refund of Excess Sales Tax Reimbursement Barred**

Annotation will be deleted because the backup is a California Supreme Court opinion, which is not consistent with Regulation 35101.

**8. Delete Annotation - 460.0171 Consumer Action Against Retailer for Refund of Excess Sales Tax Reimbursement Barred**

Annotation will be deleted because the backup is a California Supreme Court opinion, which is not consistent with Regulation 35101.

**California Firearm, Ammunition, and Firearm Precursor Part Excise Tax Annotations**

**1. New Annotation – May Agree to the Collection and Payment of Tax Reimbursement**

**May Agree to the Collection and Payment of Tax Reimbursement.** A retailer and a purchaser may agree to the collection and payment of California Firearm, Ammunition, and Firearm Precursor Part Excise Tax (CFET) reimbursement.

A retailer and a purchaser, at the time of a retail sale, may make an agreement of sale whereby the purchaser reimburses the retailer for the amount of CFET due to the state by the retailer on the transaction. Because the terms of the agreement of sale determines whether the parties have agreed to the addition of tax reimbursement, the parties should be as clear as possible as to their intentions. The clearest way the parties can indicate to the satisfaction of the CDTFA that the seller has agreed to collect, and the purchaser has agreed to pay, an additional amount for CFET reimbursement is for the sales invoice to state a separate line item for the amount of CFET reimbursement charged. 6/12/2024.

## **2. New Annotation – Amounts for Reimbursement Not Included in Gross Receipts**

**Amounts for Reimbursement Not Included in Gross Receipts.** California Firearm, Ammunition, and Firearm Precursor Part Excise Tax (CFET) reimbursement should not be included in gross receipts for purposes of determining the amount of CFET that the retailer owes.

Gross receipts for purposes of the CFET should be measured in the same manner as gross receipts are measured for purposes of determining the sales tax due to the state by the retailer. Thus, where a retailer collects reimbursement from its purchaser for the amount of CFET due to the state by the retailer on the transaction, and the retailer communicates to the purchaser that the amount charged as reimbursement is for the CFET due to the state by the retailer, such as by separately stating the charge on the receipt or other invoice as “CFET reimbursement,” the amount the retailer collects from its purchaser for CFET should be excluded from the retailer’s gross receipts for purposes of determining the amount of CFET due. 6/12/2024.

## **Cigarette and Tobacco Products Tax**

### **1. New Annotation – Tobacco Products Tax Reimbursement**

**Tobacco Products Tax Reimbursement.** A distributor has collected tobacco tax reimbursement when the distributor collects full payment for invoices stating the tobacco product is sold “tax paid,” “CA tax paid,” “CA tobacco tax paid,” or in some other similar way states the tobacco product is sold for a tax-included price.

Whether the tobacco products are sold at a tax-included price depends on the facts and circumstances surrounding the sale. When the facts are that the sales invoice states the distributor is charging the purchaser a sales price that is inclusive of the tax the distributor owes on the sale, the distributor is selling the product for a tax-included price. In other words, the distributor is charging the purchaser a price for which the distributor is reimbursed by the purchaser for the tax that applies to the sale. When the purchaser pays the full amount of the tax-included price, the purchaser has reimbursed the distributor for the tax it owes. 6/17/2024.