

## California: New Registration & Reporting Requirements For Use Tax

Under legislation recently enacted, thousands of California businesses will be required to register with the California State Board of Equalization (BOE), and report and pay any use tax owed for purchases made in the preceding year beginning in 2009. The letter advised you to provide contact information. Whether you provided that information or not, the BOE registered your business because they believe you meet the \$100,000 requirement.

The letter also requests that you file returns and pay use tax that you have not paid for 2007 and 2008.

The new use tax registration and reporting law requires "qualified purchasers" to register with the BOE and report and pay use tax. Qualified purchasers are required to file returns by April 15 of each year, reporting all purchases subject to use tax from the previous calendar year, beginning with purchases made during the 2009 calendar year. A "qualified purchaser" is a business that meets all of these tests:

- Is not required to hold a seller's permit with the BOE;
- Is not required to be registered or otherwise register with the BOE;
- Is not a holder of a use tax direct payment permit; and
- Receives at least \$100,000 in gross receipts per year from business operations; both in-state and out-of-state business operations

The BOE has identified nearly 200,000 businesses that meet the definition of a "qualified purchaser" and is notifying them of their registration requirement. Even if a business is not contacted by the BOE, any business that meets the requirement of a "qualified purchaser" must register with the BOE to report and pay use tax. Under existing law, those businesses who do not meet the \$100,000 gross receipts threshold are still required to report and pay use tax; they just do not have the mandatory obligation to register with the BOE for that purpose.

### What is subject to sales and use tax?

What is and is not subject to sales and use tax can be complicated. There are numerous exceptions to the rules, but here are some common ways that people make out-of-state purchases that are subject to use tax:

- Internet purchases;
- Certain foreign purchases;
- Shopping channel purchases;
- Mail-order purchases; and
- Phone-ordered purchases.

These are some common examples of items subject to use tax:

- Machinery and equipment;
- Computers, printers and other electronic equipment;
- Office furniture and supplies;
- Computer programs shipped on a disc; and
- CDs and books.

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Items that are exempt from sales tax are also exempt from use tax. Here are a few examples:

- Software that is transferred over the Internet and nothing is mailed to you;
- Newspapers, magazines, and other periodicals; and
- Purchases where the seller added California sales tax to your purchase.

### What if another state's sales tax was paid?

If you were required to pay, and did pay, another state's sales tax on the purchase, you may take a credit against the California use tax due. So, for example, if you paid 7% sales tax to another state, you are only required to pay the difference between the 7% and your rate.

### When is a return due?

**The return for 2009, along with payment, is due by April 15, 2010.** Registrants are also being asked to report purchases for 2007 and 2008. The provisions of the new legislation impose a due date of April 15 for use tax reported by qualified purchasers.

**However, the provisions of this bill do not change the due date for use tax liabilities from prior years.** Therefore, returns for purchases made in 2007 and 2008 were due January 31, 2008 and January 31, 2009, respectively. *Penalty and interest applies to payments received after the due date of each return period.*

**Can a "qualified purchaser" be relieved from penalty and interest charges?** The BOE may grant relief of penalty charges, but not interest, if it is determined that a person's failure to file a timely return or payment was due to reasonable cause and circumstances beyond the person's control.

### HOW CAN WE HELP YOU?

We can file the use tax return for you or assist your staff in filing the form. We will need a list of purchases you made where no California sales or use tax was paid but where the item was sent to and first used in California during 2009.

In addition, the BOE may contact you if they believe you have an unpaid use tax liability for a prior year. If this happens, please contact our office immediately so we can limit any potential tax liability and penalties.

### BOTTOM LINE:

California has imposed these requirements to get California taxpayers to remit use tax on taxable purchasers where the seller has not charged sales tax. Tax has rarely been remitted to the state voluntarily on these types of purchases due to the difficulty in enforcing compliance.

**Therefore, if you meet the conditions to be a "qualified purchaser," then you need to follow the new registration and reporting requirements or you may be subject to penalties and interest.**

Should you have any questions, please do not hesitate to contact our office.

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