



Laws, Regulations and Annotations

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Business Taxes Law Guide – Revision 2022

Sales And Use Tax Regulations

Title 18. Public Revenues
Division 2. California Department of Tax and Fee Administration — Business Taxes (State Board of Equalization — Business Taxes — See Chapters 6 and 9.9)
Chapter 4. Sales and Use Tax

Article 10. Matters Involving the Federal Government

Regulation 1616

Regulation 1616. Federal Areas.

Reference: Sections 6017, 6021, and 6352, Revenue and Taxation Code.

Public Law No. 817-76th Congress (Buck Act).

Vending machines sales generally, see Regulation 1574.

(a) In General. Tax applies to the sale or use of tangible personal property upon Federal areas to the same extent that it applies with respect to sale or use elsewhere within this state.

(b) Alcoholic Beverages. Manufacturers, wholesalers and rectifiers who deliver or cause to be delivered alcoholic beverages to persons on Federal reservations, shall pay the state retailer sales tax on the selling price of such alcoholic beverages so delivered, except when such deliveries are made to persons or organizations which are instrumentalities of the Federal Government or persons or organizations which purchase for resale.

Sales to officers' and non-commissioned officers' clubs and messes may be made without sales tax when the purchasing organizations have been authorized, under appropriate regulations and control instructions, duly prescribed and issued, to sell alcoholic beverages to authorized purchasers.¹

(c) Sales Through Vending Machines. Sales through vending machines located on Army, Navy, or Air Force installations are taxable unless the sales are made by operators who lease the machines to exchanges of the Army, Air Force, Navy, or Marine Corps, or other instrumentalities of the United States, including Post Restaurants and Navy Civilian Cafeteria Associations, which acquire title to and sell the merchandise through the machines to authorized purchasers.

For the exemption to apply, the contracts between the operators and the United States instrumentalities and the conduct of the parties must make it clear that the instrumentalities acquire title to the merchandise and sell it through machines leased from the operators to authorized purchasers.

(d) Indian Reservations.

(1) In General. Except as provided in this regulation, tax applies to the sale or use of tangible personal property upon Indian reservations to the same extent that it applies with respect to sale or use elsewhere within this state.

(2) Definitions. For purposes of this regulation "Indian" means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior.



Indian organizations are entitled to the same exemption as an Indian. "Indian organization" includes Indian tribes and tribal organizations and also includes partnerships all of whose members are Indians. The term includes corporations organized under tribal authority and wholly owned by Indians. The term excludes other corporations, including other corporations wholly owned by Indians. "Reservation" means Indian country as defined in section 1151 of title 18 of the United States Code. The term includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian. "On a reservation" and "on an Indian reservation" mean within the boundaries of a reservation.

(3) Sales by On-Reservation Retailers.

(A) Sales by Indians.

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, Indian retailers are required to collect use tax from such purchasers and must register with the Department for that purpose.

3. Use tax does not apply to meals, food, and beverages purchased from an Indian retailer at an eating or drinking establishment, such as a restaurant or bar, on an Indian reservation when the meals, food, and beverages that are purchased for consumption on the Indian reservation.

(B) Sales by non-Indians.

1. Sales by non-Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians who reside on a reservation by retailers when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on a reservation. The sale is exempt whether the retailer is a federally licensed Indian trader or is not so licensed. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by non-Indians to non-Indians and Indians who do not reside on a reservation. Either sales tax or use tax applies to sales of tangible personal property by non-Indian retailers to non-Indians and Indians who do not reside on a reservation, except as provided in subdivision (d)(3)(B)3.

3. Sales tax does not apply to sales of meals, food, and beverages to a non-Indian or an Indian who does not reside on a reservation by a non-Indian operating an eating or drinking establishment, such as a restaurant or bar, on an Indian reservation, pursuant to a lease or sublease, when the sales are subject to an Indian tribe's sales tax and the meals, food, and beverages are sold for consumption on the Indian reservation. Sales tax does not apply to sales of meals, food, and beverages to an Indian who resides on a reservation by a non-Indian operating an eating or drinking establishment on an Indian reservation, as provided in subdivision (d)(3)(B)1. Use tax does not apply to meals, food, and beverages purchased by a non-Indian or an Indian who does not reside on a reservation from a non-Indian operating an eating or drinking establishment, such as a restaurant or bar, on an Indian reservation, pursuant to a lease or sublease, when the purchase is subject to an Indian tribe's sales or use tax and the meals, food, and beverages are purchased for consumption on the Indian reservation. Use tax does not apply to meals, food, and beverages purchased by an Indian who resides on a reservation from a non-Indian operating an eating or drinking establishment on an Indian reservation, when the meals, food, and beverages are purchased for consumption on the Indian reservation, as provided in subdivision (d)(3)(B)1.

4. Presumptions.

The following presumptions apply to subdivisions (d)(3)(A)3 and (d)(3)(B)3 of this regulation:

a. It shall be presumed that all meals, food, and beverages sold or purchased from an eating or drinking establishment on an Indian reservation are for consumption on the reservation, except meals, food, and beverages sold or purchased from a drive through counter or window or for delivery off the reservation.

b. It shall be presumed that meals, food, and beverages sold or purchased from an eating or drinking establishment's drive through counter or window are for consumption off the Indian reservation.

5. Subdivisions (d)(3)(A)3 and (d)(3)(B)3 of this regulation do not apply to meals, food, and beverages sold or purchased for delivery off an Indian reservation. When sales of meals, food, and beverages delivered by the retailer from their establishment to a location off the Indian reservation are taxable, the retailer may report the tax using a percentage developed from a test period. This test is subject to audit, and it is the retailer's responsibility to maintain records to support that their percentage accurately reflects the taxable percentage.

6. Regulation 1603, *Taxable Sales of Food Products*, prescribes the application of tax to meals, food, and beverages when they are sold or purchased for consumption off an Indian reservation.

(C) Resale Certificates. Persons making sales for resale of tangible personal property to retailers conducting business on an Indian reservation should obtain resale certificates from their purchasers. If the purchaser does not have a permit and all the purchaser's sales are exempt under paragraph (d)(3)(A) of this regulation, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number (see Regulation 1668, Sales for Resale).

(4) Sales by Off-Reservation Retailers.

(A) Sales Tax—In General. Sales tax does not apply to sales of tangible personal property made to Indians negotiated at places of business located outside Indian reservations if the property is delivered to the purchaser and ownership to the property transfers to the purchaser on the reservation. Generally, ownership to property transfers upon delivery if delivery is made by facilities of the retailer and ownership transfers upon shipment if delivery is made by mail or carrier. Except as otherwise expressly provided herein, the sales tax applies if the property is delivered off the reservation or if the ownership to the property transfers to the purchaser off the reservation.

(B) Sales Tax—Permanent Improvements—In General. Sales tax does not apply to a sale to an Indian of tangible personal property (including a trailer coach) to be permanently attached by the purchaser upon the reservation to realty as an improvement if the property is delivered to the Indian on the reservation. A trailer coach will be regarded as having been permanently attached if it is not registered with the Department of Motor Vehicles. Sellers of property to be permanently attached to realty as an improvement should secure exemption certificates from their purchasers (see Regulation 1667, Exemption Certificates).

(C) Sales Tax—Permanent Improvements—Construction Contractors.

1. Indian contractors. Sales tax does not apply to sales of materials to Indian contractors if the property is delivered to the contractor on a reservation. Sales tax does not apply to sales of fixtures furnished and installed by Indian contractors on Indian reservations. The term "materials" and "fixtures" as used in this paragraph and the following paragraph are as defined in Regulation 1521, Construction Contractors.

2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.

(D) Use Tax—In General. Except as provided in paragraphs (d)(4)(E) and (d)(4)(F) of this regulation, use tax applies to the use in this state by an Indian purchaser of tangible personal property purchased from an off-reservation retailer for use in this state.

(E) Use Tax—Exemption. Use tax does not apply to the use of tangible personal property (including vehicles, vessels, and aircraft) purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation unless, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

(F) Leases. Neither sales nor use tax applies to leases otherwise taxable as continuing sales or continuing purchases as respects any period of time the leased property is situated on an Indian reservation when the lease is to an Indian who resides upon the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs on the reservation if the lessor delivers the property to the lessee on the reservation. Tax applies to the use of leased vehicles registered with the Department of Motor Vehicles to the extent that the vehicles are used off the reservation.

(G) Property Used in Tribal Self-Governance. Sales and use tax does not apply to sales of tangible personal property to and the storage, use, or other consumption of tangible personal property by the tribal government of an Indian tribe that is officially recognized by the United States if:

1. The tribal government's Indian tribe does not have a reservation or the principal place where the tribal government meets to conduct tribal business cannot be its Indian tribe's reservation because the reservation does not have a building in which the tribal government can meet or the reservation lacks one or more essential utility services, such as water, electricity, gas, sewage, or telephone, or mail service from the United States Postal Service;
2. The property is purchased by the tribal government for use in tribal self-governance, including the governance of tribal members, the conduct of inter-governmental relationships, and the acquisition of trust land; and
3. The property is delivered to the tribal government and ownership of the property transfers to the tribal government at the principal place where the tribal government meets to conduct tribal business.

The purchase of tangible personal property is not exempt from use tax under this paragraph if the property is used for purposes other than tribal self-governance more than it is used for tribal self-governance within the first 12 months following delivery.

¹ The following is a summary of the pertinent regulations which have been issued:

(a) General. Air Force Regulation 34-57, issued under date of February 9, 1968, Army Regulation 210-65, issued under date of May 4, 1966, and Navy General Order No. 15, issued under date of May 5, 1965, authorize the sale and possession of alcoholic beverages at bases and installations subject to certain enumerated restrictions.

(b) Air Force. Air Force Regulation 34-57, Paragraph 5, permits commissioned officers' and noncommissioned officers' open messes, subject to regulations established by commanders of major air commands to sell alcoholic beverages to authorized purchasers at bars and cocktail lounges, and provides that commanders will issue detailed control instructions. Paragraph 8 and 9 require commanders of major air commands to issue regulations relative to package liquor sales and to procurement of alcoholic beverages, respectively.

(c) Army. Army Regulation 210-65, Paragraph 9, provides that major commanders are authorized to permit at installations or activities within their respective commands the dispensing of alcoholic beverages by the drink or bottle. Paragraph 11 of AR 210-65 provides that when authorized by major commanders as prescribed in Paragraph 9, AR 210-65, officers' and noncommissioned officers' open messes may, subject to regulations prescribed by the commanding officer of the installation or activity concerned, dispense alcoholic beverages by the drink, and operate a package store.

(d) Navy. Navy General Order No. 15 provides that commanding officers may permit, subject to detailed alcoholic beverage control instructions, the sale of packaged alcoholic beverages by officers' and noncommissioned officers' clubs and messes and the sale and consumption of alcoholic beverages by the drink in such clubs and messes.

History—Effective July 1, 1941.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended and renumbered August 5, 1969, effective September 6, 1969.

Amended June 29, 1978, effective August 6, 1978. Added new subsection (d), Indian Reservations.

Amended March 27, 2002, effective March 6, 2003. In subdivision (d)(3)(A)2., added the phrase "Except as exempted below," deleted the word ", however," and added new unnumbered paragraph.

Amended January 11, 2012, effective February 10, 2012. Added new subdivision (d)(4)(G) Property Used in Tribal Self-Governance.

Amendments filed May 26, 2021, and effective May 26, 2021. The amendments replaced "a Indians" with "an Indian" in the first sentence in, added the text between ""Reservation"" in the fifth sentence and "includes" in the sixth sentence in, and added the last sentence to the second paragraph in subdivision (d)(2); replaced "Board" with "Department" in subdivision (d)(3)(A)2; replaced the text of subdivision (d)(3)(A)3, which provided that "Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation"; added "who reside on a reservation" to subdivision (d)(3)(B)1; added ", except as provided in subdivision (d)(3)(B)3" to the end of subdivision (d)(3)(B)2; added subdivisions (d)(3)(B)3, 4, 5, and 6; changed the name of Regulation 1668 from "Resale Certificates" to "Sales for Resale" in subdivision (d)(3)(C); added "and 6352" after "6021" in the regulation's reference note; and deleted "Items dispensed for 10 ¢ or less, see Regulation 1574. Additional reference: Section 6352, Revenue and Taxation Code." from the end of the regulation's reference note.

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December 31, 2021

Dear Restaurant Owner:

If you currently lease space on Indian land, please see the important information below regarding your California sales and use tax obligations. This information addresses recent amendments to Regulation 1616, *Federal Areas*, that clarify when California's sales and use tax applies to sales and purchases of meals, food, and beverages sold on a reservation by non-Indian retailers.

When Tax Does Not Apply

The sale and purchase of meals, food, and beverages sold on a reservation by a non-Indian to a non-Indian or an Indian who does not reside on a reservation are not subject to California sales and use tax, provided all of the following requirements are met:

- A sales or use tax is imposed by an Indian tribe on the sales or purchases of meals, food, and beverages,
- The non-Indian retailer's business is operated on a reservation under a federally authorized lease or sublease,
- The non-Indian retailer's business is an eating or drinking establishment, such as a restaurant or bar, and
- The meals, food, and beverages are sold and purchased for consumption on the Indian reservation.

"On a reservation" means within the boundaries of Indian Country as defined in section 1151 of Title 18 of the United States Code, and includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

When Tax May Apply

The amendments to Regulation 1616 include the presumption that meals, food, and beverages sold or purchased from an eating or drinking establishment's drive through counter or window located on an Indian reservation are for consumption off the reservation. Therefore, California sales or use tax generally applies to the sale or purchase of meals, food, and beverages sold from a drive through counter or window on a reservation. The recent amendments also clarify that sales or use tax applies to the sale or purchase of meals, food, and beverages sold or purchased for delivery off a reservation.

For more information about these changes and other Native American concerns, please see our [Tax Guide for Restaurant Owners](#) and [American Indian Tribal Issues](#) webpage.

If you have any questions, please email us at AmericanIndianPolicyContact@cdtfa.ca.gov.

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION