

CHAPTER 2E

SALES AND USE TAX

HIGHLIGHTS

- Tax Base Total retail price of any tangible personal property unless the property is otherwise exempted; also imposed on certain state excise taxes, including those imposed on alcoholic beverages, tobacco products, and gasoline.
 - Tax Rate Total state and local base rate of 7.25%. Generally, the rate may be 7.5% to 8.75% in those cities and counties that impose additional rates.
 - Revenue

2003-04	\$24.0 billion (General Fund)
	\$ 2.4 billion (Local Revenue Fund)
	\$ 2.4 billion (Local Public Safety Fund)
	34.0% of General Fund revenues
2004-05 (est.)	\$24.8 billion (General Fund)
	\$ 2.5 billion (Local Revenue Fund)
	\$ 2.5 billion (Local Public Safety Fund)
2005-06 (est.)	\$25.9 billion (General Fund)
	\$ 2.6 billion (Local Revenue Fund)
	\$ 2.6 billion (Local Public Safety Fund)
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1. OVERVIEW OF THE SALES TAX

The **sales tax** is imposed on retailers for the privilege of selling tangible personal property in California. Note, retailers are authorized to, and generally do, add sales tax to the sales price and collect reimbursement of the tax from the purchaser. The **use tax** is imposed on the use in California of tangible personal property purchased out-of-state. Both the sales tax and the use tax are imposed on nearly identical items of tangible personal property. Tangible personal property is any material asset, such as household goods and business equipment, which is readily movable and not permanently attached to real property. All sales of tangible personal property are taxable, unless specifically

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exempted by law. However, sales of real property, such as land and buildings, are *not* subject to the sales tax. Furthermore, because the sales tax is imposed on *retail* sales, sales for resale and wholesale sales are excluded from the tax.

The measure of both the sales and the use tax are imposed on the retail price of the taxable personal property. The retail price is referred to as the "gross receipts" for sales tax purposes and the "sales price" for use tax purposes. Generally, no part of the retail price may be excluded from the tax base. If there is a manufacturers' or importers' excise tax, such as excise taxes imposed on gasoline, alcoholic beverages, and tobacco, it is included as part of the sales and use tax base. Generally, both state and federal excise taxes are included in the sales and use tax base. For example, an individual who purchases gasoline in the State of California must pay sales tax on the retail price of the gasoline, including the state and federal excise tax.

Services are generally not subject to sales or use tax. However, when services contribute to the production or delivery of a tangible personal property sold at retail, tax *does* apply to the entire sale price, with no deduction for the service component. This tax treatment follows the reasoning that acquisition of the tangible personal property is the true object of the transaction, and the service performed is deemed incidental. For example, in the sale of a custom-designed suit, the buyer's purpose is obtaining the clothing, which is tangible personal property. Although the tailor who designs and sews the suit performs a service of labor, the true object of the transaction is the sale of the suit, not the design and sewing services. Therefore, sales (or use) tax applies to the total price of the custom-tailored suit, including the design and tailoring.

Generally, leases of tangible personal property are considered "continuing" sales or uses and are subject to sales or use tax. Each payment made under the lease is subject to sales or use tax for the entire period that the leased property is located in California. Note: If a lease of tangible personal property covers property substantially in the same for as when acquired by the lessor and the lessor paid sales or use tax on the property when acquired, the rental payments are not subject to tax.

A seller's permit is a permit, furnished without charge by the Board of Equalization (BOE), to sell tangible personal property in California. Generally, all persons or businesses that make retail or wholesale sales are required to hold a seller's permit.

In California, the retailer is liable for paying the sales tax. A retailer is described as anyone who makes more than two retail sales of tangible personal property within a 12-month period. As mentioned above, the retailer has the option of collecting a reimbursement of the tax from the consumer. However, if the retailer does not collect the sales tax reimbursement at the time of purchase, the retailer is still responsible for remitting the tax to the state.

The use tax is imposed on users of tangible personal property purchased out-of-state and brought into or delivered to California for use inside California. For example, an individual who purchases an automobile in the State of Washington and registers it in

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California is required to pay California use tax on his or her purchase; he or she is not subject to any Washington sales tax. Like the sales tax, the measure to the use tax is the sales price of the tangible personal property. The purpose of the use tax is to prevent persons from avoiding the California sales tax by purchasing at retail in states where the sales tax is lower than California or where there is no sales tax.

Unlike the sales tax, which is imposed on retailers, the use tax is imposed on purchasers. In practice, the use tax is more difficult than the sales tax, because purchasers must self-report their California use tax liability. Although some large firms located in California track and report their use tax liabilities, individual consumers and many small firms frequently do not. Furthermore, although some large mail order catalog and Internet retailers located outside of California voluntarily collect use tax from California consumers and remit it to the BOE, this practice is relatively uncommon. Frequently, California use tax goes uncollected.

2. TAX RATES

Currently, the base state and local sales and use tax rate in California is 7.25%. This 7.25% rate is a combination of five different tax rates, as follows:

Imposed State-Wide (Total = 7.25%)

NAME	RATE (%)	2003-04 REVENUE (\$ BILLIONS)	USE OF REVENUE	BASIS OF ALLOCATION
“State” rate*	5.0 0.25	\$24.0	State General Fund purposes Fiscal Recovery Fund	Not applicable
Local Revenue Fund rate	0.5	\$ 2.4	Health and welfare programs shifted to local governments as part of 1991-92 state-local realignment	Allocated to counties based on population, percentage of persons below the poverty line, and changes in spending on health and welfare programs during prior years.
Local Public Safety Fund rate	0.5	\$ 2.4	Local public safety	Allocated primarily to counties based on sales during the prior year; cities receive about 6% of Local Public Safety Fund revenues based on amounts they lost as a result of the property tax shifts of the early to mid-1990s.

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County Transportation rate	0.25	\$ 1.2	County transportation purposes	Allocated to counties based on the location of sale
Bradley-Burns rate*	0.75	\$ 4.8	Local (city/county) general purpose use	Allocated to cities and counties based on the location of sale (to cities if the sale occurs in the city, to counties if the sale occurs in an unincorporated area of the county)

Also, each year a certain amount of the state sales tax revenues attributable to sales of gasoline and diesel fuel must be transferred to the Public Transportation Account (PTA) within the State Transportation Fund. The amount transferred is determined by formula. The 2002-03 transfer was \$204.5 million.

Beginning in 2000-01, some of the sales tax revenue derived from sales of gasoline was also directed to the Traffic Congestion Relief Fund (TCRF). The Budget Act of 2000 appropriated \$1.5 billion from the General Fund to the TCRF and required that four quarterly transfers of \$125 million each be made. Beginning in fiscal year 2001-02, all sales tax revenue from sales of gasoline, net of the amount transferred to the PTA, was to be transferred to the Transportation Investment Fund. From there, \$169.5 million was to be transferred on a quarterly basis to the TCRF, and the remainder was to be split three ways -- 20% to the PTA, 40% to the Department of Transportation, and 40% to local governments for transportation purposes. The 2001-02 budget delayed the transfer of sales tax revenue from gasoline to the Transportation Investment Fund by two years. However, one of the budget trailer bills [ACA 4 (Dutra), Chapter 87, Statutes of 2001], authorized the placement of an initiative constitutional amendment on the March 2002 ballot which was approved by the voters through the passage of Proposition 42. Proposition 42, which has extended to become operative beginning in the 2003-04 fiscal year, would have required all sales tax revenue on gasoline except for the amount required to be transferred to the PTA be transferred to the Transportation Investment Fund for specified transportation purposes. However, Proposition 42 has been suspended by the Legislature in each of the last two fiscal years [AB 1750 (Committee on Budget and Fiscal Review, Chapter 223, Statutes of 2003, and SB 1099 (Committee on Budget and Fiscal Review, Chapter 210, Statutes of 2004)].

Additional Local Rates. The Transactions and Use Tax Law authorizes cities, counties, citywide and countywide authorities, and citywide and countywide special districts to impose additional sales and use taxes (officially 'transactions and use taxes'), subject to a vote of the people. In general, the Transactions and Use Tax Law authorizes taxes to be imposed in 0.25% increments, up to a total of 2%.

An exception to the rule that transactions and use taxes must be imposed in increments of 0.25% authorizes all counties to impose transactions and use taxes for public libraries at a rate of 0.125% or 0.25%. To date, three counties (Nevada, Solano, and Stanislaus) have approved 0.125% transactions and use taxes for library services.

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As noted above, all transactions and use taxes are subject to voter approval. Pursuant to Proposition 218, passed by the voters in November 1996, general-purpose transactions and use taxes require majority voter approval; special-purpose transactions and use taxes require two-thirds voter approval.

As of April 1, 2005, 24 California counties, 29 cities and 1 town will impose the sales tax at rates higher than 7.25% due to voter approval of imposition of additional taxes. In 2003-04, these add-on taxes raised \$3.1 billion for the local governments that imposed them. See Table 7 in this chapter for the list of cities and counties with additional rates.

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TABLE 7

Existing Transactions and Use Taxes (As of 04/01/05)

<u>Jurisdiction</u>	<u>Rate</u>	<u>Purpose</u>
Alameda County	1.0%	Transit
City of Avalon	0.5%	Hospital and Clinic
City of Calexico	0.5%	Hospital
City of Capitola	0.25%	General Fund
City of Clovis	0.3%	Public Safety
City of Davis	0.5%	General Fund
City of El Cajon	0.5%	Public Safety
City of Farmersville	0.5%	General Fund
City of Fort Bragg	0.5%	Road Maintenance
City of Lakeport	0.5%	General Fund
City of Los Banos	0.5%	General Fund
City of Montclair	0.25%	General Fund
City of Placerville	0.25%	Public Safety
City of Point Arena	0.5%	General Fund
City of Richmond	0.5%	General Fund
City of Sand City	0.5%	General Fund
City of San Juan Bautista	0.75%	General Fund
City of Santa Cruz	0.25%	Transit
City of Santa Rosa	0.25%	General Fund
City of Sebastopol	0.25%	General Fund
City of Sonora	0.5%	General Fund
City of South Lake Tahoe	0.5%	General Fund
City of Stockton	0.25%	Public Safety
City of Trinidad	1.0%	General Fund
City of Turlock	0.5%	General Fund
City of Visalia	0.25%	Public Safety
City of West Sacramento	0.50%	General Fund
City of Willits	0.5%	General Fund
City of Woodland	0.5%	General Fund
Contra Costa County	1.0%	Transit
Fresno County	0.625%	Transit/Libraries
Inyo County	0.5%	General Fund
Los Angeles County	1.0%	Transit
Madera County	0.5%	Transit
Marin County	0.5%	Transit
Mariposa County	0.5%	County Healthcare
Napa County	0.5%	Flood Protection
Nevada County	0.125%	Public Libraries
Orange County	0.5%	Transit

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Riverside County	0.5%	Transit
Sacramento County	0.5%	Transit
San Bernardino County	0.5%	Transit
San Diego County	0.5%	Transit
San Francisco City and County	1.25%	Transit/Public Finance
San Joaquin County	0.5%	Transit
San Mateo County	1.0%	Transit
Santa Barbara County	0.5%	Transit
Santa Clara County	1.0%	Transit/General
Santa Cruz County	0.75%	Transit/Public Libraries
Solano County	0.125%	Public Libraries
Sonoma County	0.75%	Open Space
Stanislaus County	0.125%	Public Libraries
Town of Truckee	0.5%	Road Maintenance

3. EXEMPTIONS

All retail sales of tangible personal property are taxable in California unless the property is specifically exempted. Some major categories of sales tax exemptions are described below.

Necessities. The following items are granted general sales and use tax exemptions:

- Food (other than hot prepared food) for human consumption;
- Prescription medicines, wheelchairs, crutches, canes, walkers, medical oxygen delivery systems, hemodialysis products, and prosthetic devices;
- Gas, electricity and water delivered through mains, lines, or pipes;
- Food for animals normally raised for human consumption; and
- Fertilizer and seeds applied to land used to grow foods for human consumption.

Interstate Commerce. The Commerce Clause of the U.S. Constitution prohibits states from imposing taxes that place an undue burden on people or businesses engaged in interstate commerce. In order to comply with the U.S. Constitution, California has enacted laws that exempt sales of certain property involved in interstate commerce.

For example, interstate sales of vessels and aircraft, aircraft fuel used during international flights and hot prepared food sold to air carriers for passenger consumption are exempt from the sales tax.

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California has also enacted laws that complement the U.S. Commerce Clause and that even the playing field for businesses that engage in interstate commerce activities in the State. For example:

- In-state sellers are allowed to deliver property for out-of-state use to common carriers in California without any sales tax being imposed.
- Businesses are not taxed on the printed sales messages they commission and have mailed to potential customers.
- Air common carriers are not taxed on the fuel used on international flights.

Without these additional laws, California businesses could be at a disadvantage vis-à-vis competitors based in other states.

Exemptions for Nonprofit and Government Organizations. Pursuant to the U.S. Constitution, all sales of tangible personal property to the federal government are exempt from tax. Museums are also exempted from sales tax on works of art they purchase for public display.

Several nonprofit organizations are allowed a partial sales tax exemption for certain items they sell under specified circumstances. The exemption is considered partial because the tax is computed based on the wholesale price of the organization's products, which presumably is lower than the retail price. For example, when the Girl Scouts make handicrafts they later resell, they remit sales tax based on the wholesale price of the materials used to make the handicrafts. Unlike most retailers, they do not have to collect or remit the sales tax based on the price for which the handicrafts are subsequently sold. Generally, the partial sales tax exemption is limited to sales of food, non-alcoholic beverages, and handcrafted items.

Groups currently eligible for partial sales tax exemptions include but are not limited to: Little League; Bobby Sox; Boy Scouts; Cub Scouts; Girl Scouts; Campfire Girls; YMCA; YWCA; Future Farmers of America; Future Homemakers of America; 4-H Clubs; American Youth Soccer Organization; California Youth Soccer Associations; Pop Warner Football; Special Olympics; and school-sponsored youth groups, such as high school teams. Organizations that provide vocational training services to the developmentally disabled or services to children with severe emotional disturbances are also allowed a partial exemption on the sale of handicrafts that are made by their clients and retail for \$20 or less.

Other Exemptions. A few of the other major items exempted from all or a portion of the sales tax include: manufacturing-related equipment purchased by certain new businesses, farm equipment, timber-harvesting equipment, racehorse breeding stock, motion picture production services, motion picture leases, returnable containers, custom computer programs, subscription periodicals, master records and tapes, property that will be used in space flights, and bulk sales of monetized and nonmonetized bullion. For a complete list

of exemptions see the BOE publication titled *Sales and Use Taxes: Exemptions And Exclusions*. For additional information on these exemptions, contact the BOE.

4. SALES IN CALIFORNIA BY OUT-OF-STATE RETAILERS

California's ability to collect use tax resulting from internet, mail order and catalogue sales is significantly limited for the following two compelling reasons: (a) U.S. Supreme Court decisions in National Bellas Hess v. Illinois Department of Revenue (1967) and Quill Corporation v. North Dakota (1992), which prohibit states from requiring mail order houses to remit use taxes; and (b) the fact that consumers are legally liable for the use tax on these mail order sales but there is no practical means for the State to collect the use tax from individual consumers. At present, California fails to collect approximately \$200 million annually in use tax revenues owed to the California.

The Quill and National Bellas Hess Cases. Two U.S. Supreme Court decisions prohibit states from requiring mail order sellers to collect state use taxes unless the seller has physical nexus in the state.

In the National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois (1967) case, the U.S. Supreme Court held that when a business does no more than communicate with customers by mail or common carrier as part of a general interstate business, requiring that business to collect and pay the use tax violates the Due Process and Commerce Clauses of the U.S. Constitution. In Quill Corporation v. State of North Dakota (1992), the Supreme Court interpreted the Due Process and Commerce Clauses of the U.S. Constitution as prohibiting states from imposing use tax collection obligations on retailers whose only connection with customers in the taxing state is through mail order sales.

Both decisions leave the door open for Congress to establish a framework for uniform state taxation that does not impede interstate commerce. In an effort to simplify various states' sales and use tax systems, California along with 39 other states and the District of Columbia that levy a sales and use tax are participating in the Streamlined Sales Tax Project (SSTP).

The SSTP adopted the "Streamlined Sales and Use Tax Agreement" in November 2002, which creates a blueprint for a simplified tax collection system and attempts to remove the burden and cost of tax collection from sellers. The agreement addresses issues associated with tax collections, definitions of the tax base, uniformity of tax bases, electronic registration of sellers, simplification of tax rates, simplification of returns and remittances, uniform sourcing rules, as well as other issues. The Project is conducting its work through a steering committee with co-chairs, four work groups, and a number of sub-groups. Project participants are generally state revenue department administrators but there are also representatives of state legislatures and local governments. Businesses including national retailers, trade associations, manufacturers, direct marketers, telecommunications companies, leasing companies, technology companies, printers, accounting firms, and others are actively participated in the Project by offering expertise and input, reviewing proposals, suggesting language, and testifying at public hearings.

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Thirty-eight states and the District of Columbia are voting participants, and two states are non-voting participants in the work of the Project because they do not have the formal commitment of the state executive or legislative branches, but are still participating.

Participation in the Project does not change any law or tax reporting/collection responsibilities of remote sellers. However, California legislators could choose to amend California's Sales and Use Tax Laws to conform to the provisions of the Agreement and/or when such conformity is desired.

Nexus and Use Tax Collection. California law requires every retailer "engaged in business in this state" to collect sales or use tax from the consumer at the time of sale. The definition of a "retailer engaged in business in the state" includes any retailer who:

- Maintains, occupies, or uses an office, place of distribution, sales or sample room, warehouse or other storage space, or other place of business in California;
- Has any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in California to sell, deliver, install, assemble, or take orders for any taxable property; and
- Leases property in the state.

Out-of-state retailers who are deemed to be "engaged in business in this state" are required to collect and remit use tax to BOE. Some other out-of-state sellers also voluntarily collect and remit use taxes to BOE, usually when there is some question about whether their business activities in California represent nexus.

Since 1998, certain taxpayers have been allowed to obtain a use tax direct payment permit from BOE. Use tax direct payment permits allow qualifying taxpayers to self-assess and pay state and local use tax directly to BOE, thereby removing sellers of the responsibility to do so. To be eligible, an applicant must purchase or lease at least \$500,000 worth of tangible personal property during the calendar year immediately preceding the application or be a county, city, city and county, or redevelopment agency. Use tax direct payment permits provide local taxing jurisdictions with a mechanism to increase the amount of local use tax revenue they receive and provide large businesses with a mechanism to minimize their chances of being audited for an outstanding use tax liability.

Legislation enacted in 2003 authorized taxpayers to report their use tax liabilities on their California income tax returns.

The use tax also applies to foreign purchases in excess of \$400 that are brought into California. California assesses the use tax due on these purchases using information from U.S. Customs Service declarations completed by returning travelers at California ports of entry.

5. SPECIAL PROVISIONS OF THE SALES TAX

Occasional Sales. Occasional sales of property are generally not subject to the sales tax. A sale is deemed “occasional” when the seller is not required to hold a seller's permit and the sale is not one of a series of sufficient duration to require a seller's permit. For example, an individual holding a garage sale over the course of a weekend would not be required to hold a seller's permit or pay sales tax on the items sold.

Swap Meets and Flea Markets. Operators of a swap meet, flea market, or special event are required to obtain evidence that each seller who leases space from the operator of the swap meet is the holder of a valid seller's permit or is not selling any item that is taxable under the sales and use tax law.

Automobiles. When a licensed automobile dealer sells a new or used vehicle, the sales tax must be collected at the time of purchase. The sales tax rate is based on the jurisdiction in which the purchaser resides. For example, if the purchaser buys a car in a jurisdiction with a 7.25% sales tax rate but registers the car in a local community with a 7.5% rate, the dealer is responsible for collecting tax at the 7.5% rate and remitting it to BOE.

When a private nondealer sells a car, he or she is not required to collect the sales tax. Instead, use tax is collected when the owner registers the automobile with the Department of Motor Vehicles. Here again, the purchaser is required to pay tax at the rate of the local community in which the car is registered, regardless of where the car is purchased.

Mobilehomes and Factory-Built Housing and Schools. A partial sales tax exemption is allowed to mobilehome dealers on sales of new mobilehomes that are sold to customers for occupancy as a residence. In these transactions, the mobilehome dealer is the “retailer-consumer” and is required to declare and pay tax on 75% of the dealer’s purchase price of the mobilehome. No tax is imposed on the sale of such new mobilehomes to customers. Section 2 of Chapter 6G contains more information on application of the sales tax to mobilehomes.

A partial exemption is also allowed on the sales price of certain factory-built housing and schools. For factory-built homes, 60% of the retail sales price is exempt from the sales tax.

6. DEDUCTING THE SALES TAX

Individuals are not allowed either a federal or a state personal income tax deduction for the sales and use tax they pay during the course of each year unless the tangible personal property was purchased for use in a trade or business.

Sales taxes are generally deductible for tangible personal property purchased for use in a trade or business. However, sales taxes incurred in the process of manufacturing or

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constructing property must be capitalized into the value of the property rather than deducted immediately.

7. REMITTANCE OF THE SALES TAX BY RETAILERS

Reimbursement of the Sales Tax. Retailers are legally liable for remitting sales tax to the state. However, retailers are permitted to collect a "reimbursement" of the sales tax from the consumer, which is normally itemized separately as sales tax when an item is sold. The law provides for statutory reimbursement tables to be used by retailers to compute the tax on any sales transaction.

The basic rule for computing the sales tax reimbursement, since taxpayers cannot pay fractions of cents, is to round fractions equal to or larger than ½ cent up to the next cent and round fractions of less than ½ cent down to the next lower cent.

Payments and Prepayments. In general, retailers must remit sales taxes to the state on a quarterly basis. However, retailers with taxable sales of over \$17,000 per month are generally required to remit sales taxes on a monthly basis. Each quarter, two prepayments and one final payment are due, with payments generally required one month following the month in which liability is incurred. Prepayment schedules are intended to help ensure a steady flow of sales and use tax revenue to the state rather than four quarterly spikes of revenue during the course of each year.

The prepayment and final payment schedules for the first, third, and fourth calendar quarters of each year are identical. The second quarter prepayment schedule was changed in order to help the state's cash flow needs during tight budget years and operates to shift more revenue to the months of May and June (the last two months of the fiscal year).

8. ADMINISTRATION

The sales and use tax is administered by the BOE. The BOE drafts regulations to clarify and interpret the sales and use tax laws and handles collections and appeals. The Board also administers all local sales (and transactions) and use taxes under contract with local taxing agencies. These contracts allow BOE to charge local jurisdictions for its costs to administer the local taxes. However, beginning January 1, 1999, BOE is required to cap the costs it charges local entities to administer transactions and use taxes, as follows:

<u>Transactions and Use Tax Imposed By Jurisdiction</u>	<u>Maximum BOE Administrative Cost</u>
0.5% or greater	1.5%
0.25%	3.0%
0.125%	5.0%

9. CODE

California Constitution, Article XIII, Section 29 and Section 35

Revenue and Taxation Code Sections 6001 – 7290