

University of California

Sales & Use Tax Manual

July 2019

University of California

Sales and Use Tax Manual

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I. INTRODUCTION

The University of California ("UC") is subject to the sales and use taxes imposed by the State of California upon retailers and purchasers conducting business in the state. Federal Law states that no person will be relieved from the payment, collection or accounting for any sales or use tax levied by any state or duly constituted taxing authority having jurisdiction to levy the tax (4 U.S.C. Section 105). Although 4 U.S.C. Section 107 prohibits the levy of the tax on the United States and its instrumentalities, all other "persons" are subject to the sales and use tax. The University of California is defined as a person under the sales and use tax law [see Los Angeles City High School District v. The State Board of Equalization]. Accordingly, it is subject to the sales and use taxes imposed by California. The taxes are imposed for the privilege of retailing or consuming tangible personal property in California.

California's sales and use tax laws are administered by the California Department of Tax and Fee Administration ("CDTFA") as of July 1, 2017. The previous administrator was the State Board of Equalization ("BOE"). The sales and use tax laws are found in the California Revenue and Taxation Code, sections 6001 et. seq. The laws are interpreted by regulations, court cases, hearing reports, opinion letters and annotations.

In California, the base rate for sales and use tax purposes are the same. City, county and other local taxes may add to the base rate, and vary from location to location. In general, sellers must determine whether they must collect or accrue sales or use tax on the sale or lease of tangible personal property in California. Whether such tax is technically a sales tax or a use tax, the practical result is the same--the seller will report the same amount of tax with respect to the transaction. (See Section 4 for definitions of various terms used throughout this manual)

From a purchaser's standpoint, similar determinations must be made upon the acquisition of property and subsequent sale or self-consumption of such property.

The key issues for a seller in determining applicability of tax are:

- Is the transaction subject to sales or use tax, or otherwise exempt from such taxes?
- Does the purchaser have a valid resale certificate?
- If the tax must be collected, at what rate must it be collected?

A purchaser faces similar issues:

- Is the transaction subject to sales or use tax, or otherwise exempt from such taxes?
- Is tax being collected by the seller, and is the seller able to provide a Receipt to Relieve Liability?
- If sales or use tax must be collected or accrued, at what rate?

II. WHAT IS SALES TAX

A. Imposition of Sales tax

The California sales tax is generally imposed upon a retailer for the privilege of selling tangible personal property in California at retail (Section 6051). The retailer may be a California retailer or an out-of-state retailer engaged in business in California. The retailer may pass the liability for the sales tax on to the consumer pursuant to an agreement of sale between the retailer and consumer (e.g., via contract, purchase order, invoice terms and conditions) (Civil Code Section 1656.1).¹

Certain “qualified” property with a useful life of more than one year may receive a partial exemption from state sales tax if used for research and development and a partial exemption certificate is provided to the retailer. Please see Appendix – 1 for more information on the partial sales and use tax exemption when purchasing qualified property used for research and development.

B. California Retailer

A "California retailer" is a seller of tangible personal property who has a business location in California and engages in selling tangible personal property in the state at retail.

C. Out-of-State Retailer Engaged in Business in California²

An "out-of-state retailer engaged in business in California" is an out-of-state retailer who, historically, had a physical presence (i.e., business operations or "nexus") in the state and sells tangible personal property or taxable services to a California consumer. Nexus for California sales and use tax purposes is defined in Cal. Rev. & Tax. Cd. Section 6203(c). Generally, an out-of-state retailer with nexus in California is responsible for remitting sales tax to the CDTFA when selling tangible personal property in California.

In addition to the physical presence test to determine if nexus exists, California adopted Assembly Bill No. 147 (AB 147), which modifies California’s sales and use tax economic nexus provisions for remote sellers without a physical presence in the state and establishes marketplace collection requirements. It has a \$500,000 threshold for sales of tangible personal property, regardless of the number of sales transactions within California by amending Cal. Rev. & Tax. Cd. Section 6203. Under the new law, out-of-state retailers and related parties making more than \$500,000 of total combined sales from tangible personal property for delivery into California will be required to collect and remit sales and use tax based on a retroactive effective date of April 1, 2019 (Section 6203(c)(4)(A)).

In addition, effective Oct. 1, 2019 under Cal. Rev. & Tax. Cd. Section 6049.5, marketplace facilitators³ are required to collect and remit California sales and use tax on

¹ All section references are to the California Revenue and Taxation Code unless otherwise indicated.

² All the \$500,000 minimum sales of “tangible personal property” thresholds in California include nontaxable sales. See Section 8.I.EE for definition of "tangible personal property".

³ See Section 8.I.K for definition of "marketplace facilitator".

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California sales made by their third-party marketplace sellers⁴ if the marketplace facilitator has California sales and use tax nexus based on a physical presence within California or meets the new \$500,000 tangible personal property sales threshold based on a combination of its own sales and the sales of its third-party marketplace sellers.

These changes stem from a Supreme Court Decision decided in June of 2018 in *South Dakota vs. Wayfair, Inc.* In that case, the Supreme Court held that an out of state retailer could be required to collect sales/use tax on sales into the State even without a physical presence in the State. Accordingly, nexus could be established merely by a minimum amount of sales or transactions in the State. Retailers will be required to collect local district tax based on the tax rate in the destination district rather than requiring nexus with each district as provided under prior law.

As a result, there will most likely be an increase in out of state vendors charging tax to customers that could lead to more errors in items being taxed or exempted from tax. Accordingly, the UC should continue to review current vendor tax billings and also billings from new vendors who start to charge tax on or after April 1, 2019.

Here is a link to California Department of Tax and Fee Administration Tax Guide for [Out of State Retailers](#).

D. UC Transaction/District Tax Responsibility For Sales Outside Its District⁵

AB 147 applies to an instate seller's responsibility to collect transaction/district taxes in jurisdictions without a physical presence. Effective April 1, 2019, AB 147 amended Cal. Rev. & Tax. Cd. Section 7262 to adopt an economic nexus standard of \$500,000 or more in sales of tangible personal property within California by **the retailer** and **all persons related to the retailer** to determine whether an out-of-district retailer is required to collect district tax.⁶ Since the UC system as one legal entity has annual tangible personal property sales of over \$500,000 in California to non-UC purchasers, every campus with sales to non-UC purchasers outside their districts must report and collect transaction/district taxes in any district they make sales in.

The "sales" of tangible personal property between one UC campus and another UC campus is not treated as taxable sales of tangible personal property because UC campuses comprise one single legal entity (Annotation 415.0300).⁷ Therefore, "sales" between UC campuses are not subject to sales and use taxes, as well as district tax reporting and any minimum economic nexus standards.

⁴ See Section 8.I.L for definition of "marketplace seller".

⁵ All the \$500,000 minimum sales of "tangible personal property" thresholds in California include nontaxable sales. See Section 8.I.EE for definition of "tangible personal property".

⁶ See Example 2 of Section 2.III.A.2, Rate of Tax & Point of Sales to see how the new out-of-district retailer responsibility for transaction/district taxes applies when UC Irvine bookstore sells tangible personal property in San Francisco. See the Example in Section 4.I.A.4, Transaction Taxes to see how the UC as a purchaser is responsible for paying out-of-district taxes if the out-of-district retailer selling to UC has less than \$500,000 of sales of taxable tangible personal property in California. See the Example in Section 7.I.B.2, Point of Sale for an example of UCLA selling taxable items to a customer in the City of Sacramento.

⁷ See Section 9.IV, Annotation 415.0300.

III. SALES FOR RESALE

The sales tax *does not apply* to a sale of tangible personal property made in California if it is a sale for resale. A sale for resale is a sale of tangible personal property that is not sold at retail, i.e., the item is being purchased from a seller to be resold by the purchaser to a consumer or another reseller. The sale by the seller to the purchaser is *exempt* from tax. The purchaser will charge sales tax when the item is ultimately sold to the consumer. However, the burden of proof is upon the seller to establish a sale for resale, and may be satisfied by obtaining a valid resale certificate from the purchaser (Section 6091).

Example: A local stationery store temporarily runs out of notebook paper. The stationery store decides to purchase thirty reams of notebook paper from the UC bookstore to restock its supply. The stationery store is purchasing the notebook paper for resale to be resold to its customers. The customer should issue a resale certificate to the UC bookstore in order to purchase the items without the addition of tax. Absent such resale certificate, the UC bookstore would be responsible for collecting the sales tax at the time the sale is made.

A. Good Faith

The resale certificate relieves UC from liability for sales tax only if taken in good faith from a person who is engaged in the business of selling tangible personal property (Section 6092). UC will be presumed to have taken a resale certificate in good faith in the absence of evidence to the contrary. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business (Regulation 1668).

B. Form of Certificate (Regulation 1668)⁸

Any document, such as a letter or purchase order, timely provided by the purchaser to UC will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following:

- The signature of the purchaser, the purchaser's authorized representative, or employee of the purchaser.
- The name and address of the purchaser.
- The number of the permit held by the purchaser, or if the purchaser is not required to hold a permit because the purchaser sells only property which is not taxable or because the seller makes no sales in this state, an appropriate notation to that effect in lieu of a permit number.
- The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

⁸ Regulation 1668; effective 5/17/02. See Section 7-Resale Certificate.

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- A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable.
- Date of execution of the document.

C. Timeliness of Certificate

A resale certificate which is not received timely may not be applied retroactively and will not relieve the seller of the liability for the tax. A certificate is considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or at any time at or prior to delivery of the property to the purchaser. If the seller does not timely obtain a resale certificate, the seller may be relieved of the liability for the tax only if the seller presents satisfactory evidence that the specific property sold was for resale, e.g., a customer confirmation letter.

D. Length of Validity

A resale certificate describing the property to be purchased is valid until revoked in writing. Therefore, a purchaser (other than a UC department) who frequently purchases items described under a resale certificate need only issue one certificate at the time he commences to purchase items from the seller. However, a purchase order from a customer which reflects that the transaction is taxable will override a blanket resale certificate. Subsequent resale purchases will still be exempt under the blanket exemption certificate.

The description of the property to be purchased can be tailored to the specifications of the purchaser. Commonly used specifications include "blanket" resale certificates, which allow the purchaser to purchase items tax free; or "restricted" certificates that refer the seller to the purchase order as the governing document for the taxable nature of a purchase. These forms maintain the validity of the certificate and support the exempt status of the sale to the extent described by the certificate.

E. Exemptions from Resale Certificate

Nontaxable Sales of Food Products

Sales of food for human consumption are exempt from sales tax. Sales of food served as meals, consumed on premises, or sold at places where admission is charged are generally taxable.

Sales to the United States Government

Your sales and leases made to the United States Government and its instrumentalities are generally exempt from California sales and use tax.

The following documentation must be retained to support the tax exempt sale:

- Purchase orders

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- Copy of U.S. government credit card or credit card number
- Documents showing direct payment by the U.S. government
- Shipping and related documents to substantiate that the merchandise was sold to the U.S. government and not an individual in the armed service

Note that only the United States government is exempt from CA sales tax. State of California agencies as well as city, and county government agencies are not exempt from sales tax. For more information, see [CDTFA Publication 102, Sales to the United States Government](#).

Nonprofit Organizations

Nonprofit and religious organizations are exempt from federal and state income tax; however, they are generally not exempt from sales tax. For exceptions to this general rule, see [CDTFA Tax Guide for Nonprofit Organizations](#) and [CDTFA Publication 18, Nonprofit Organizations](#).

Manufacturing

Beginning July 1, 2014, purchases of manufacturing and research and development equipment may be partially exempt from sales and use tax. The purchaser must meet certain conditions and provide a partial exemption certificate to the retailer. For more information on this exemption see [CDTFA Tax Guide for Manufacturing and Research & Development Equipment Exemption](#).

Other Partial Exemptions

Partial exemptions are transactions exempt from the state portion of the sales and use tax rate. To claim a partial exemption on your return, you must obtain a valid and timely partial exemption certificate from your customer. Below is a list of the most common partial exemptions:

- Teleproduction or Other Postproduction Service Equipment
- Farm Equipment and Machinery
- Diesel Fuel Used in Farming and Food Processing
- Timber Harvesting Equipment and Machinery
- Racehorse Breeding Stock

Exemptions can vary between states. For complete information on California exemptions see [CDTFA Publication 61, Sales and Use Taxes: Exemptions and Exclusions](#).

IV. OCCASIONAL SALES

Sales tax applies to all retail sales of tangible personal property including capital assets whether sold in one transaction or in a series of sales, and held or used by the seller in the course of an

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activity or activities for which a seller's permit or permits is required or would be required if the activity or activities were conducted in this state. Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller's permit regardless of whether the sales are at retail or are for resale. A person who makes a substantial number of sales for relatively small amounts is also required to hold a seller's permit.

A person engaged in an activity or activities requiring the holding of a seller's permit or permits may also be engaged in entirely separate endeavors that do not require the holding of a seller's permit or permits. ***Sales tax does not apply*** to the sale of property held or used by the seller in the non-selling endeavors that do not require the holding of a permit. Therefore, a seller who sells all of the assets associated with an activity for which a permit is not required may avoid ***sales tax*** under the "occasional sale" rule (i.e., fewer than three such sales in 12 months). For example, a person may own a hardware store at one location and a real estate brokerage business at another location, with no relationship between the two activities except that of common ownership. Under these circumstances, a sale of furniture used in the brokerage business would not be a sale of property held or used in an activity requiring the holding of a seller's permit unless it was one of a series of sales of the property of the brokerage business. A sale of tangible personal property held or used in the hardware business would be a sale of property held or used in an activity requiring the holding of a seller's permit (Regulation 1595).

With respect to the University of California, all campuses are required to hold a seller's permit. Therefore, all sales made by the University of California with respect to activities for which a permit is required will be subject to tax regardless of the department or division that made the sale. However, the occasional sale exemption may be available with respect to a campus' sale of assets associated with an activity for which it is not required to hold a permit in California (e.g., a service activity not engaged in the sale of tangible personal property).

V. WHAT IS USE TAX

A. Imposition of Use Tax

The use tax is imposed upon a *consumer*⁹ for the storage, use or other consumption in this state of tangible personal property (Section 6201). The use tax is generally imposed:

1. Upon UC's purchase of consumables or capital assets from out-of-state vendors not doing business in California.
2. Upon UC's purchase of consumables or capital assets shipped from out-of-state directly in-state to a UC campus by an out-of-state vendor doing business in or having nexus in California. In this case, the use tax is imposed upon the vendor, who generally collects the tax.
3. Upon self-consumption by UC of items originally purchased for resale.
4. Some property with a useful life of more than one year may receive a partial exemption from state use tax if they are used for research and development and a partial exemption certificate is provided to the vendor. Such property refers to qualified property. Please see the Addendum: UC Guidelines – California Partial

⁹ Depending upon the context, the words "consumer" and "purchaser" may be used to denote a person who purchases property from a seller.

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Sales and Use Tax Exemption for more information on the partial sales and use tax exemption when purchasing qualified property used for research and development.

UC is responsible for self-accruing the use tax in situations 1 and 3. UC is responsible for self-accruing the use tax that did not receive a partial exemption in situation 4. If under situation 2, no tax is collected, then UC is responsible for self-accruing the use tax, whether or not the out-of-state vendor has nexus in California (please refer to Section 1.V.D. and E. below for more information about the UC's and out-of-state vendor's responsibilities for sales tax or use tax).

The total use tax rate varies by county and city because local governments impose their own use tax rates. For a list of use tax rates per location, it is best to refer to the California Department of Tax and Fee Administration web site.

B. Leases - Use Tax

A lease of tangible personal property may be subject to the *use tax* measured by the rentals payable. The lessor must collect the use tax from the lessee at the time rentals are paid by the lessee and furnish a receipt relieving the lessee of the responsibility for the payment of the tax. (See "Receipt to Relieve Liability," below). If the lessor fails to collect the tax, the lessee may be held responsible for the tax payment. If the lessor paid sales tax upon acquiring the property, however, use tax need not be collected upon a subsequent lease of the property by the lessor (Regulation 1660).

If the invoice does not include tax, it should state the reason why no tax was charged to the lessee. The phrase "Purchase Tax Paid at Source" may be used to indicate that the lessor paid sales tax upon acquiring the property.

C. Obligation of California Retailer & Purchaser Who Self-Consumes; Sales Tax vs. Use Tax

A purchase from a California retailer is subject to the sales tax, not the use tax. A California retailer who does not collect the sales tax from the purchaser is simply electing not to reimburse itself for the sales tax. The obligation remains with the retailer and cannot be transferred to the purchaser in the event the sales tax remains unpaid to the state. Only the issuance of a resale certificate by the purchaser to the retailer will transfer the liability of the sales tax to the purchaser. The purchaser then becomes responsible for collecting the sales tax at the time of resale. If the purchaser subsequently decides to self-consume the item originally purchased for resale, the purchaser would be liable for use tax on the item.

D. Out-of-State Retailer Engaged in Business in California; Sales Tax vs. Use Tax

An out-of-state retailer who has "nexus" in California (see earlier discussion) is required to register with the State of California. The registration requirement generally arises from an out-of-state company's physical presence (nexus), or, effective 4/1/19, economic

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presence in the state.¹⁰ Sales of tangible personal property from inventory located in California by an out-of-state retailer engaged in business in California are subject to the California *sales tax*.

An out-of-state retailer engaged in business in California who ships property from outside the state to a California consumer is responsible for collecting the *use tax* from the purchaser. However, as the transaction is subject to *use tax* the purchaser remains liable for payment of the tax to the State unless a receipt from the retailer is received relieving the purchaser of the responsibility for the payment of the tax. The receipt must be in a form prescribed by the CDTFA (See "Receipt to Relieve Liability," below).

E. Out-of-State Retailer Without Nexus in California

An out-of-state retailer who does not have a physical presence in California (i.e., lacks nexus) is *not* required to collect use tax on behalf of California. However, any person purchasing an item from such out-of-state retailer is responsible for remitting the *use tax* upon the storage, use or other consumption of the tangible personal property in this state.

F. Drop Shipments (Section 6007; Regulations 1706)¹¹

A drop shipment generally involves two separate sales. The true retailer [i.e., a retailer who is not a retailer engaged in business in this state and who makes a sale of tangible personal property to a consumer in California] contracts to sell tangible personal property to a consumer. The true retailer then contracts to purchase that property from a supplier and instructs that supplier to ship the property directly to the consumer. The supplier is a drop shipper.

A drop shipper that is engaged in business in this state (has nexus) is reclassified as the retailer and is *liable for tax* as provided in this regulation. When more than two separate sales are involved, the person liable for the applicable tax as the drop shipper is the first person who is a retailer engaged in business in this state in the series of transactions beginning with the purchase by the true retailer.

Unless the sale to the California consumer and the use by the California consumer are exempt from sales and use tax as otherwise provided in the Sales and Use Tax Law (i.e., sale for resale), a *drop shipper must report and pay tax* measured by the retail selling price of the property paid by the California consumer to the true retailer.

For reporting periods commencing on or after *January 1, 2001*, a drop shipper may calculate the retail selling price of its drop shipments of property based on its selling price of the property to the true retailer plus a mark-up of 10 percent (10%). A drop shipper may use a mark-up percentage lower than 10 percent if the drop shipper can document that the lower mark-up percentage accurately reflects the retail selling price charged by the true retailer to the California consumer. This procedure does not apply to drop shipments of vehicles, vessels and aircraft.

¹⁰ Please refer to Section 1.II.C. above for more information about AB 147's nexus rules for out-of-state retailers and marketplace facilitators.

¹¹ Regulation 1706; effective 12/28/00.

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If a mark-up percentage lower than 10 percent is developed in an audit of the drop shipper, the drop shipper may use that percentage for the subsequent reporting periods provided the drop shipper has not had a significant change in business operations. Provided there is no significant change in business operations, if a later audit develops a higher percentage, the CDTFA would not assess additional tax based on that newly computed mark-up percentage. However, for subsequent reporting periods, the lower mark-up from the previous audit cannot be used, and the drop shipper must instead use the higher percentage developed in the most recent audit or 10 percent, whichever is lower.

G. Receipt to Relieve Liability

The Receipt to Relieve Liability need not be in any particular form but must reflect the following (Regulation 1686):

- 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.

Section 2: Campus Activities – University As Seller

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I. GENERAL ASSUMPTIONS FOR UNIVERSITY OF CALIFORNIA AS A SELLER

A. Overview

In this section of the manual, UC is the retailer. Therefore, the tax application is generally the sales tax to the customer. The use tax applies in situations where UC is the consumer of the items or the sale is a lease or rental.

Occasionally, there are references to UC as the purchaser in this section. References to the purchaser refer to UC's internal purchasing department unless otherwise stated. These references are made to inform UC of what the tax status is on purchases of supplies or materials that they will resell or consume.

Additionally, where the manual references the sale of an item, UC is selling to a customer who is outside of the UC system. Sales do not mean transfers between departments. Transfers between UC departments and campuses are considered intracompany transfers and are not subject to the sales tax.

B. Key Terms

The following are general terms that are used consistently throughout the manual. These are not technical definitions, but reflect the manner in which the terms are used in this manual.

1. CDTFA

The CDTFA refers to the California Department of Tax Fee and Administration. The California CDTFA is the governing authority for the administration of sales and use taxes as of July 1, 2017.

2. Ex-Tax

Ex-tax is the term used to describe purchases of tangible personal property which have been purchased without the addition of sales or use tax.

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3. UC

UC refers to the University of California, including its campuses.

4. Non-UC

Non-UC refers to universities other than those associated with the University of California or its campuses.

5. State

The State refers to the State of California.

II. AUDIO VISUAL

A. Audio Visual: Slides

Sales tax applies to charges imposed by UC for developing prints. Slides are also considered prints and subject to the sales tax. (Regulation 1528)

When slides are produced for UC's own use, UC is deemed the consumer of all materials which are consumed and incorporated into the final product. Therefore, *use tax should be accrued or sales tax paid on the purchase* of all items/tangible personal property consumed for the developing of slides.

B. Audio Visual: Film Processing/Developing

1. Film Processing

Sales Tax applies to all film processing charges (i.e., printing, enlarging and duplicating photos, as distinguished from negative development). These are taxable as the end result is tangible personal property subject to sales tax (Section 6051; Regulation 1528).

2. Negative Development of Customer-Furnished Film

Sales tax does not apply to separately stated charges for the negative development of customer-furnished film. To sustain the exemption, the film development charges must be stated separately from the processing charge. Development of film by the reverse process method is not the negative development of film.

Example: The invoice states: Film negative developing and processing - \$10. The entire charge is subject to sales tax with no deduction for developing.

Example: The invoice states: Film negative developing \$4, processing \$6. Only the processing charges are subject to sales tax. The taxable amount to report is \$6.

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C. Audio Visual: Film

The retail sale of film by UC is subject to sales tax.

When UC offices or departments "purchase" film from UC's audio visual department, the sale is not at retail. Use tax should be accrued on the cost of the film when withdrawn from inventory. This assumes that the film was originally purchased without the addition of tax (ex-tax) by the audio visual department.

III. BOOKSTORE

A. Bookstore: General Rules

1. Sales of Tangible Personal Property

Tangible personal property is defined as personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses (Section 6016).

The following are only some examples and are not meant to be all inclusive:

Tangible Personal Property: Art, bicycle, toys, clothing, tapes, disks or any other storage media, food products, furniture and giftware.

Not Tangible Personal Property: Transfers of artwork by remote telecommunications, real property, securities, sale of a gift certificate by a retailer to one who will redeem it.

The bookstore's sales are generally considered tangible personal property and **subject to sales tax**. However, certain sales of tangible personal property may fall under an exempt category and not be subject to sales tax. For additional information, please see [CDTFA Pub 61](#).

2. Rate of Tax & Point of Sales

The rate of tax will be determined by the rates in effect at the point of sale. The point of sale is generally the location where the sale is made. In situations where the item is shipped by common carrier to a location outside of the county, the point of sale occurs at the location to which the item was shipped via common carrier.

Example 1: The point of sale for school supplies purchased from the UC Irvine Bookstore is Irvine, CA. The current applicable rate is currently 7.75%. The breakdown is 6.0% for the state, 1.25% for the city and county of Irvine, and .5% for the Orange County Transportation Authority.

Example 2: The point of sale for a sweatshirt mail ordered from UC Irvine to be delivered by common carrier to a San Francisco address is San Francisco, CA. The UC system as a retailer has more than \$500,000

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in sales of tangible personal property in California. The applicable rate of tax is currently 8.50%. The breakdown is 6.0% for the state, .25% for county and 1.0% for the city of San Francisco, and 1.25% special (“transaction/district tax”). Although UC Irvine is not otherwise engaged in business in San Francisco County, UC Irvine is responsible for reporting and collecting the 1.25% transaction/district tax because the UC System is one related entity with retail sales of over \$500,000 in California (Section 7262(a)).¹

B. Bookstore: Sales for Resale²

The sales tax does not apply to a sale of tangible personal property made in California if it is a sale for resale. A sale for resale is a sale of tangible personal property that is not sold at retail, i.e., the item is purchased from a seller to be resold by the purchaser to a consumer. The sale by the UC bookstore to a purchaser for resale is exempt from tax. However, the burden of proof is upon UC to establish a sale for resale, and may be satisfied by obtaining a valid resale certificate from the purchaser (Section 6091).

Example: A local stationery store temporarily runs out of notebook paper. The stationery store decides to purchase thirty reams of notebook paper from the UC bookstore to restock its supply. The stationery store is purchasing the notebook paper for resale to resell to its customers. The stationery store should issue a resale certificate to the bookstore in order to purchase the items without the addition of sales tax. Absent such resale certificate, however, UC is responsible for collecting the *sales tax*.

1. Good Faith

The resale certificate relieves UC from liability for sales tax only if taken in good faith from a person who is engaged in the business of selling tangible personal property (Section 6092). A seller is presumed to take a resale certificate in good faith in the absence of evidence to the contrary. If the purchaser insists that the purchase is buying for resale property of a kind not normally resold in the purchaser's business, UC should require a resale certificate containing a statement that the specific property is purchased for resale in the regular course of business. (Regulation 1668).

2. Form of Certificate³

Any document, such as a letter or purchase order, timely provided by the purchaser to the seller (UC) will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following:

- The signature of the purchaser, authorized representative, or employee of the purchaser.

¹ See Section 2.IX, Online Sales in Other States, for more information about AB 147's effect on transaction/district tax.

² Restated in Section 1.III, Sales for Resale.

³ See Section 9-Exhibits for sample Resale Certificate.

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- The name and address of the purchaser.
- The number of the permit held by the purchaser, or if the purchaser is not required to hold a permit because the purchaser sells only property which is not taxable or because the seller makes no sales in this state, an appropriate notation to that effect in lieu of a permit number.
- A description of the property to be purchased under the certificate either in the form of an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.
- Date of execution of the document.

3. Timeliness of Certificate

A resale certificate which is not received timely may not be applied retroactively and will not relieve UC of the liability for the tax. A certificate is considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. If UC does not timely obtain a resale certificate, UC may be relieved of the liability for the tax only if UC presents satisfactory evidence that the specific property sold was for resale, e.g., a customer confirmation letter.

4. Length of Validity

A resale certificate describing the property to be purchased is valid until revoked in writing. Therefore, a customer who frequently purchases items described under a resale certificate need only issue one certificate at the time the customer commences to purchase items from the bookstore. However, a purchase order from a customer which reflects that a specific transaction is taxable will override a blanket resale certificate. Subsequent resale purchases maintain their exempt status under the blanket exemption certificate.

The description of the property to be purchased can be tailored to the specifications of the purchaser. Commonly used specifications include "blanket" resale certificates, which allow the purchaser to purchase all items tax free; or "restrictive" certificates that refer the seller to the purchase order as the governing document for the taxable nature of a purchase. These forms maintain the validity of the certificate and support the exempt status of the sale to the extent described by the certificate.

C. Bookstore: Coupons and Cash Discounts

1. Manufacturer's Coupon

Manufacturer's coupons or coupons for which UC receives reimbursement from a third party are not considered cash discounts. UC is reimbursed by the manufacturer for the face value of the coupon and therefore it is equivalent to cash. Gross receipts include the total amount of the retail sale valued in money

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(Section 6012). Therefore, the value of a manufacturer's coupons is includable in gross receipts and ***subject to the sales tax***.

Example: A student purchases a box of name brand pens. The total cost is \$10.00 (ex-tax). The student has a manufacturer's coupon for \$1.00 off the price of pens. The student pays \$9.00 in cash and gives the cashier the \$1.00 manufacturer's coupon. The taxable sale to be reported is \$10.00.

2. Coupons Issued by the Retailer; Cash Discounts

Coupons issued by UC for which UC does not receive any reimbursement from a third party are considered cash discounts. The retailer may deduct the face value of the coupon from reportable gross receipts. Therefore, the value of the coupon is ***not taxable***. Gross receipts do not include cash discounts credited against the sales price (Section 6012).

Example: A student purchases a sweatshirt from the bookstore. The total cost is \$20.00 (ex-tax). The student has a coupon distributed by the bookstore for \$5.00 off of a sweatshirt at the bookstore. The student pays \$15.00 in cash and gives the bookstore the \$5.00 coupon. The taxable sale is \$15.00.

Example: The bookstore sells a computer to a student on credit for \$1,000. The bookstore offers a 5% discount if the invoice is paid within thirty days. The student makes payment on the thirtieth day. The taxable sale to be reported is \$950.

D. Bookstore: Sales of "Food" Products

Definition of "Food" Products

Food products for human consumption are generally ***exempt*** from sales tax (Section 6359). The following are ***included*** in the definition of food products and are not taxed:

- Cereal products, margarine, meat products, fish products, egg products, vegetable products, fruit products, spices, salt, sugar products, candy gum, confectionery, coffee, coffee substitutes, tea, and cocoa products.
- Milk products, milkshakes, malted milks, and any similar beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.
- Fruit and vegetable juices, and other beverages, whether liquid or frozen, including bottled water, but excluding spirituous, malt, or vinous liquors or carbonated beverages.

The following are ***not included*** as food products and ***are subject to sales tax*** (Section 6359(c)):

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- Over-the-counter medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts. (Prescription medicines are not taxable).
- Carbonated and alcoholic beverages.

E. Bookstore: Film Processing and Negative Development⁴

1. Film Processing

Sales tax applies to all film processing charges (i.e, printing, enlarging and duplicating photos, as distinguished from negative development). These are taxable as the end result is tangible personal property subject to sales tax (Section 6051; Regulation 1528).

2. Negative Development of Customer-Furnished Film

Sales tax does not apply to separately stated charges for the negative development of customer-furnished film. To sustain the exemption, film development charges must be separately stated from processing charges. Development of film by the reverse process method is not the negative development of film.

Example: The invoice states: Film negative developing and processing - \$10. The entire charge is taxable with no deduction for developing.

Example: The invoice states: Film negative developing \$4, processing \$6. Only the processing charges are taxable. The taxable amount to report is \$6.

F. Bookstore: Catalogs and Class Schedules

1. Catalogs

Sales tax does not apply to the sale of catalogs by a public or private school (Section 6361.5). However, schools are the consumers of the catalogs and UC's purchasing department should **pay the tax** when they are purchased.

If the catalogs are manufactured and printed by UC, tax is due on the cost of the materials which are used to produce the catalogs. If the catalogs were manufactured and printed by a third party, sales tax is due on the cost of the catalogs from the manufacturer/printer to UC.

2. Exempt Class Schedules

Over-the-counter sales of class schedules are **subject to the sales tax**. However, class schedules that are **mailed** or **delivered** by UC may be **exempt** as a printed

⁴ See Section 2.II, Audio Visual.

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sales message. The class schedules must include the following information for the exemption to apply (Annotation 432.0120):

- The course offerings must be sufficiently detailed to be considered sales messages (i.e., course name, description, name of instructor, time and place of classes).
- The publication must be substantially comprised of these sales messages.
- An application for registration must be included with the class schedule.
- Fees for the majority of the courses offered must be specified in the schedule of classes. The fact that the fees can be computed from available information will not suffice.

G. Bookstore: Gown Rentals

Use includes the exercise of any right or power over tangible personal property by a lessee under a lease (Section 6009). Therefore, leases are generally subject to use tax. However, UC is required to collect the use tax on behalf of the customer. If the use tax is not collected by UC, the lessee may be held responsible for the payment of the tax.⁵

1. Rentals of Tax Paid Gowns

A gown leased in substantially the same form as acquired by UC as to which UC paid sales tax or timely paid use tax on the purchase price of the property is not considered a "sale" under section 6006. Therefore, the rental receipts derived from renting tax-paid purchases are **exempt** from use tax. In order to qualify for this tax treatment, UC must pay sales tax at the time the property is purchased or use tax must be accrued and paid in the reporting period in which the property was purchased or first placed into rental service.

Example: The UC Santa Barbara bookstore elects to purchase all of its gowns tax- paid at the time of purchase. The gowns are rented to the students for commencement ceremonies. The rental receipts charged to the students are exempt from use tax.

2. Rentals of Gowns Purchased Ex-Tax

The lease of gowns where no tax is paid or accrued on the purchase price is **subject to use tax** measured by the rental receipts. They are subject to use tax as continuing sales. If UC does not pay the sales tax at the time of purchase or does not accrue use tax at the time of the first rental or lease, the tax treatment will automatically default to use tax being due on the rental receipts. Whichever method of sales tax payment is chosen when the tangible personal property is purchased will determine the sales or use tax treatment the property will carry for its life with the purchaser.

⁵ The term lease is interchangeable with rental.

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Example: The UC Santa Barbara bookstore purchases all of its gowns under a resale certificate. The gowns are rented to the students for commencement ceremonies. The rental receipts from the students are subject to use tax. The use tax is required to be collected by the bookstore.

Example: The UC Santa Barbara bookstore purchases all of its gowns ex-tax and does not accrue use tax on the purchases. It rents the gowns to students and charges use tax on the rental receipts. After one year, the bookstore management discovers that the sales tax liability would be less if tax is paid on the purchase price rather than the rental receipts. The bookstore cannot change its method of reporting at this point. The election for the sales tax to be paid up front or on the lease receipts is an irrevocable election which must be made at the time of purchase or first rental, whichever is later.

H. Bookstore: Computer and Software Sales

1. Sales of Computers

Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration is a sale (Section 6006). Sales of tangible personal property by a retailer are ***subject to sales tax***. Computers, printers, and other related hardware are all tangible personal property, the sale of which is ***subject to sales tax***.

2. Installation

Reasonable labor or services charges for installation are excluded from the definition of gross receipts (Section 6012(c)(3)). Therefore, installation charges are ***exempt*** from tax. Although installation charges are always exempt, to avoid complications in an audit the charges should be separately stated. In an audit, the CDTFA will estimate the installation costs if not otherwise stated. Usually, not more than 10% when significant installation services/charges are required. Installation charges must be reasonable or they will be challenged by the CDTFA regardless of whether they are separately stated.

3. Sales of Software

Licensing fees for prewritten (canned) programs transferred by disc or magnetic tape are ***subject to sales tax***. A prewritten program is a program held or existing for general or repeated sale or lease. The term also includes a program developed for in-house use which is subsequently offered for sale or lease as a product. ***Tax applies*** whether or not title to the storage media on which the program transfers passes. If the program is transferred by remote telecommunications or installed on-site by the retailer, it is exempt from sales tax. If a hard copy is provided in conjunction with the remote transfer, however, the exemption will not be available.

If the transfer of a prewritten program is a nontaxable transaction, then the seller is the consumer of tangible personal property used to produce written

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documentation of manuals (including documentation or manuals in machine-readable form) designed to facilitate the use of the program and transferred to the purchaser for no additional charge. If a separate charge is made for the documentation or manuals, then **tax applies** to the separate charge. (Regulation 1502)

To document exempt sales of software delivered electronically or via “load-n-leave”, UC’s vendor agreements should specify the method of delivery and that no tangible personal property (tapes, disks, etc.) will be transferred.

Note: under the exemption for Technology Transfer Agreements (“TTA’s”) (Regulation 1507), software transferred on tape or disk could still be exempt from tax (except for the amount attributable to tangible medium, usually nominal) provided certain criteria are met. The final application of the TTA statutes to software is under review by the CDTFA but should be considered if tax will otherwise apply to the purchase of the software. See discussion of TTA in Section 2.XII.B.

Maintenance Contracts for Software

Maintenance contracts sold in conjunction with software have different tax implications depending on the type of contract involved. A maintenance contract generally provides that a customer will be entitled to receive, during the contract period, storage media on which prewritten program improvements or error corrections have been recorded. It may also provide that the customer will be entitled to receive telephone or on-site services.

Mandatory maintenance contracts are **taxable** regardless of whether they are for consulting services, updates, or a combination of the two.

Since January 1, 2003⁶, with respect to **optional maintenance contracts**—

- If no tangible personal property is transferred to the customer during the period of the maintenance contract, tax does not apply to any portion of the charge.
- If the maintenance contract entitles the customer to receive program improvements or error corrections in the form of tangible storage media, 50% of the charge is taxable as the sale of tangible personal property. The remaining 50% of the lump sum charge is treated as a nontaxable charge for repair. Tax paid initially may be refunded if no tangible storage media is received by the purchaser during the maintenance period.

⁶ Regulation 1502, effective January 1, 2003.

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- Tax does not apply to a separately stated charge for consultation services if the purchaser is not required to purchase those services in order to purchase or lease the tangible personal property.

4. Computer Repairs Not Under Warranty

Generally, repair work that is not covered under a warranty has the following tax implications:

(a) Repairperson as Retailer (Regulation 1546)

If the retail value of the parts and materials furnished in connection with repair work is more than ten percent of the total charge, or if the repairperson (UC) makes a separate charge for such property, the repairperson (UC) is the retailer and ***sales tax applies*** to the fair retail selling price of the property. The invoice must segregate the fair retail selling price of the parts and materials from the charges for labor. If a segregation is not made, the CDTFA will estimate the retail value of the parts and materials during an audit.

Records must be kept by UC to support the ten percent threshold to be considered a consumer of the property. This may be kept in any form along with supporting documentation that will verify the percentage.

(b) Repairperson as Consumer

If the retail value of the parts and materials furnished in connection with the repair work is ten percent or less of the total charge, ***and*** if no separate charge is made for such property, the repairperson (UC) is the consumer of the property. Although the repairperson would not charge tax with respect to the repair work, the repairperson would pay tax on the purchase of the property by him.

5. Computer Repairs Under Warranty

The tax treatment for repairs made under warranties and the replacement parts used in the fulfillment of the warranties varies depending on the nature of the contract.

(a) Mandatory Warranty

Warranties that are required to be purchased as a condition of the sale are mandatory warranties. Services that are a part of a sale are included within the definition of "sales price" (Section 6011). As a result, mandatory warranties when sold in connection with computer hardware are subject to sales tax.

(b) Optional Warranty

Optional warranties are ***not subject to sales tax***. The person obligated to provide services under an optional warranty contract is the consumer of

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parts furnished in conjunction with the contract. (The service provider will have paid or accrued sales tax on the purchase of parts used in connection with the optional warranty). The charges for the optional warranty should be separately stated on the sales invoice along with a clear indication that the warranty is optional.

Example: A student purchases a computer. The salesperson asks whether the student would like to purchase a one-year warranty in conjunction with the purchase of the computer. The student purchases the warranty and 90 days later, the screen burns out. The initial sale of the warranty is exempt from tax. Additionally, the student does not owe sales tax on the replacement of the screen. The bookstore is the consumer of the screen and is required to pay use tax on its cost of the screen.

I. Bookstore: Other Sales

1. Gift Certificate Sales

The sales tax is imposed for the privilege of selling at retail tangible personal property (Section 6051). Gift certificates are *not* considered tangible personal property. They are unearned revenues and are *not taxed*. When redeemed, the item being purchased is taxed when applicable, and the gift certificate may be used to offset the purchase price and any related taxes.

2. Magazines

Magazines sold over-the-counter are tangible personal property *subject to sales tax*. They do not qualify for any periodical exemptions.

3. Sales of Over-the-Counter Medicines

Sales tax applies to retail sales of over-the-counter medicines (Section 6369, Regulation 1591). Over-the-counter medicines are medicines which are not prescribed by a physician. All medicines sold by the bookstore will fall under the definition of over-the-counter medicines, as the bookstore cannot distribute prescription medicines.

4. Cell phones and pagers

Sales tax applies to retail sales of a “wireless telecommunication device.” (Regulation 1585)⁷. However, if the sales price is less than 50% of the cost, the seller is considered to be the consumer for sales tax purposes and must report and pay use tax measured by the cost to it of the device.

A wireless telecommunication device includes a wireless telephone or pager requiring activation by a wireless telecommunications service provider or seller of utility services in order to send, receive, or send and receive transmissions via a network of wireless transmitters throughout multiple service areas, or

⁷ Regulation 1585, effective 2/12/99.

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otherwise. The term includes devices based on analog technology and devices based on digital technology.

- (a) Unbundled Transactions. ***Tax applies*** to the gross receipts from the retail sale of a wireless telecommunication device sold in a transaction not described in subdivisions 4(b), (4)(d) or (4)(e), below, measured by the actual gross receipts received by the retailer from the end-use customer from the sale of that device.
- (b) Bundled Transactions. ***Tax applies*** to the gross receipts from the retail sale of a wireless telecommunication device sold in a bundled transaction, measured by the unbundled sales price of that device. Tax applies to the unbundled sales price whether the wireless telecommunication device and utility service are sold for a single price or are separately itemized in the context of a sale or on a sales invoice. The retailer of the wireless telecommunication device is required to report and pay tax measured by the unbundled sales price of the device and may collect tax or tax reimbursement from its customer measured by the unbundled sales price. Tax does not apply to the charges in excess of the unbundled sales price made for telecommunication services.
- (c) Activation Fees. Tax does not ***apply*** to a one-time charge for activating a new wireless telecommunication device with, or on behalf of, a wireless telecommunications service provider where the charge is separately stated and is not for the electronic or physical modification of the device in order for it to function within a wireless telecommunications service provider's service network. A one-time charge for activating a wireless telecommunication device is subject to tax if the activation consists of the physical or electronic modification or fabrication of a wireless telecommunication device in order for the device to function within a wireless telecommunications service provider's service network. The person collecting this fee is required to report and pay tax on that amount. Any subsequent charge for the physical or electronic modification or fabrication of that device which changes the customer's telephone number or which allows that customer to utilize a different wireless telecommunications service provider is subject to tax as set forth in Regulation 1546.
- (d) Consignment Transactions and Sale or Return Transactions. In transactions of this type, a service provider furnishes an inventory of wireless telecommunication devices to an independent retailer without charge or at a nominal price. The independent retailer sells the devices to end-use customers, retaining the proceeds of sale. The end-use customer must contract for wireless service for a period greater than one month with the wireless service provider or, if the end-use customer does not enter such an extended service contract, the end-use customer is required to pay additional service consideration for the device to the service provider. Typically, a credit card imprint is taken by the retailer, to the benefit of the service provider, at the time of the sale, to guarantee payment of the additional consideration. This is a bundled transaction in which the measure of tax is the unbundled sales price. The service

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provider may collect sales tax reimbursement from the end-use customer. The nominal amount collected from the end-use customer is in the nature of a commission and is not subject to tax. The person providing the device to the end-use customer may not collect sales tax reimbursement from the end-use customer.

- (e) Sales at Less than 50 Percent of Cost. Any person making any sale, whether at retail or for resale, in a bundled transaction or otherwise, of a wireless telecommunication device at a price, measured by the actual sales price in an unbundled transaction or the unbundled sales price in a bundled transaction, less than 50 percent of cost, must report and pay use tax measured by the cost to it of the device. If the sale at less than 50 percent of cost is a retail sale, sales tax does not apply to that retail sale. The person making the sale of the device is the consumer of the device for sales and use tax purposes and may not collect tax reimbursement from its customer.

Likewise, persons who sell devices for resale at less than 50 percent of cost are consumers. They must report and pay use tax measured by the cost to them of the device. In this case, any subsequent retail sale of the device is subject to sales tax unless that sale is at less than 50 percent of cost. Sales tax reimbursement may be collected from the end-use customer based upon the retail selling price of the device to the end-use customer. This subdivision shall not, however, be applicable in any instance involving the sale of a functionally or economically obsolete wireless telecommunication device.

Definitions:

- (a) Bundled Transaction. The retail sale of a wireless telecommunication device which contractually requires the retailer's customer to activate or contract with a wireless telecommunications service provider for utility service for a period greater than one month as a condition of that sale. A transaction is a bundled transaction within the meaning of this regulation without regard to the method in which the price is stated to the customer. Also, it is immaterial whether the wireless telecommunication device and utility service are sold for a single price or are separately itemized in the context of a sale or on a sales invoice. A transaction is a bundled transaction if goods and services are sold as a single package, whether wireless telecommunication service is supplied to the customer by the retailer or by an independent service supplier. In such transactions, wireless devices may be sold at a "discounted" price, as an inducement for the customer to enter into an extended service contract. The fact that a wireless telecommunication device, such as a PCS (Personal Communication Service) telephone, may, because of its technological specifications, be subject to activation with only one service supplier, does not alone mean that the sale of the device will be treated as a bundled transaction.
- (b) Unbundled Sales Price. The price at which the retailer has sold specific wireless telecommunication devices to customers who are not required to activate or contract for utility service with the retailer or with an

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independent wireless telecommunications service provider for utility service as a condition of that sale. If the retailer cannot establish an unbundled sales price to the satisfaction of the CDTFA based upon its own sales records, the unbundled sales price of the device shall equal the fair retail selling price of that device. If tax is reported and paid on an amount equal to the cost of the device plus a markup on cost of at least 18 percent, such amount shall be regarded as the fair retail selling price of the device. The unbundled sales price of an obsolete wireless telecommunication device shall equal the actual selling price of that device.

J. Bookstore: Consignment Sales (Regulation 1569)

When the CDTFA determines that it is necessary for the efficiency of administration to regard any salesperson or representative as the agent of a dealer, distributor, supervisor, or employer from whom he/she obtains the tangible personal property sold, irrespective of whether they are making sales on their own behalf or on behalf of the owner of the tangible personal property, the CDTFA may so regard them and may regard the dealer, distributor, supervisor, or employer, as retailers (Section 6015).

A retailer who has possession of property owned by another and is holding the property in the regular course of business to be sold, is the retailer of the consigned inventory. *Sales tax applies* to the retailer's gross receipts from the sale of consigned tangible personal property. The owner of the property is not responsible for the collection or remittance of any tax.

Example: The bookstore is holding consigned inventory for sale. A customer purchases the consigned inventory. The bookstore is responsible for the collection and payment of the tax.

K. Bookstore: Concession Sales

1. Outside Concessions on UC Premises

UC is liable for the payment of tax from retail sales made at its place of business by operators of concessions. However, the concessionaires may report their own sales made at that place of business. With respect to concessionaires who are selling property at UC locations, UC should ensure that such concessionaires are collecting sales tax by requesting a copy of the seller's permit. Alternatively, UC should obtain information from the concessionaires necessary to report concession sales on UC's sales tax return. [Regulation 1699⁸]

2. UC Concessions at Off-Campus Locations

If UC organizes off-campus events (e.g., sporting events) and fails to make a return and remit the amount of sales tax due with respect to operations of the concession, the concessionaires are responsible for filing and remitting the taxes. Therefore, for off-site concession activities, UC should report its own off-site

⁸ Regulation 1699, amended effective 6/14/02.

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concession sales. This will assure that timely and accurate tax payments are made.

3. Local and Transit Taxes

A retailer engaging in business in more than one county must properly allocate its sales to local and transit districts. The tax is imposed by the counties and transit authorities for the privilege of selling tangible personal property at retail within their taxing authority.

Example: The UC Riverside bookstore attends a promotional event in Sacramento. Sales of tangible personal property are made at the event. All items are sold directly to the customer on site. Therefore, all sales are considered to be transacted in Sacramento. UC Riverside is required to collect and report the Sacramento local and transaction taxes. These sales are not reported for the local and transaction taxes in Riverside.

4. Concessionaire

The term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer's own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is not operating as a concessionaire are that he or she:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.
- Establishes his or her own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is not liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime

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retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the CDTFA. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

- The permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location).
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Appendix A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owned by the lessee or grantee.

(i) Certificate of Permit – Concessionaires⁹

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the CDTFA:

Name of retailer on whose premises I operate my business:

⁹ Reprinted in Section 9.III.E, Concessionaire Certificate of Permit.

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Location of premises:

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier's Signature

Date

Certifier's Printed Name

Certifier's Seller's Permit Number:

Certifier's Business Name and Address*

Certifier's Telephone Number

*Please Note: The certifier must be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.

L. Bookstore: Sales to the U.S. Government

Sales to the United States Government, its incorporated and unincorporated agencies or instrumentalities, and the American National Red Cross are ***exempt from sales tax*** (Section 6381). Examples of United States Government instrumentalities include the Army, Navy, Air Force, Marines, National Parks, Department of Health and Human Services, etc.

A government purchase order or a government remittance advice must be obtained from the purchaser in order to support the exemption for tangible personal property sold to the United States Government and its instrumentalities.

Sales to United States construction contractors are not exempt from the sales tax (Section 6384). A United States construction contractor is a construction contractor who performs construction contracts for the United States Government (Regulation 1521).¹⁰

Example: A construction contractor purchases a computer from the bookstore which will be used to fulfill a U.S. Government contract. The construction contractor takes title to the computer. The purchases are not exempt as sales to the United States Government.

M. Bookstore: Sales in Interstate Commerce

1. Interstate Commerce

California is constitutionally ***prohibited from taxing*** sales in interstate commerce.

A sale is ***exempt*** as a sale in interstate commerce if the tangible personal property sold is shipped to a point outside this State by means of facilities operated by the retailer (UC), or delivered by the retailer (UC) to a common carrier, customs

¹⁰ See Section 2.XIII.C, U.S. Government Transactions-U.S. Government Construction Contractors.

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broker or forwarding agent to be shipped to a point outside this State (Sections 6387, 6396). The delivering agent may be hired by either party. Sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction.

Example: A customer located in New York calls and orders a sweatshirt from the UC Berkeley bookstore. The UC Berkeley bookstore employee takes the order and has the item shipped via UPS to the customer's address in New York. This would be considered a sale in interstate commerce and therefore, exempt from the California sales tax.

However, tangible personal property delivered outside this State to a purchaser known by the retailer to be a resident of this State is presumed to be a purchase for storage, use or other consumption in this State and therefore subject to use tax, unless a statement in writing, signed by the purchaser or the purchaser's authorized representative, that the property was purchased for use at a designated point or points outside this state is retained by the vendor. (Section 6247; Regulation 1620).

Notwithstanding the filing of such a statement, property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. For purposes of this regulation, "functional use" means use for the purposes for which the property was designed. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California. An example is when a buyer takes delivery in no-sales tax states such as Oregon and keeps the artwork in the "no-sales tax state" for the minimum amount of time before bringing the artwork back to a state such as California. Special rules apply to vehicles, vessels and aircraft.

A sale is *not* considered a sale in interstate commerce and the *sales tax will apply* if the tangible personal property is delivered to the customer in this State. It is immaterial that the disclosed or undisclosed intention of the customer is to transport the property to a point outside this State, and whether or not the property is actually so transported. Further, it will remain taxable regardless of whether the contract of sale may have called for the retailer to ship the property to a point outside this State. The key point is that the purchaser took delivery in state.

Example: An individual residing in Florida orders a sweatshirt from the UC San Diego bookstore over the telephone and requests that the

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bookstore deliver the item to her Florida address. The bookstore informs her that it will take 10 to 15 working days. The individual decides to take a trip to San Diego the next day and picks the sweatshirt up at the San Diego bookstore. The California sales tax applies because the customer took delivery in California.

Example: An individual residing in Nevada goes to visit UC Davis and purchases accessories from the bookstore and tells the cashier that the purchases are a gift that will be delivered by the United States Postal Service (a common carrier) to a Nevada address. However, the customer insists on mailing the items herself. The California sales tax applies because the customer took delivery in California.

Shipments originating from out-of-state delivered directly to a California customer of UC do not qualify as sales in interstate commerce. Participation in the transaction in any way by the bookstore is sufficient to sustain the tax.

Example: An item may be required to be special ordered and delivered directly to the customer by the bookstore's vendor. In this situation, even if the item is delivered by common carrier from a point outside of the state to the in-state customer, the *sales tax will apply*.

2. Exports

A sale is considered an export and **exempt** from the sales tax if the tangible personal property is sold to a customer for shipment abroad and is shipped or delivered by the retailer (UC) to the foreign country. To be exempt as an export, the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property.

The retailer has the burden of proving facts establishing the right to the exemption. Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer as supporting documentation. The invoice and purchase order stating the shipping address should also be maintained as additional support.¹¹

N. Bookstore: Sales to Foreign Diplomats

California is constitutionally **prohibited from taxing** sales to Foreign Diplomats holding a Tax Exemption Card issued by the United States Department of State when certain conditions are met (Section 6352; Regulation 1619).

Foreign consular officers, employees, and members of their families identified by the United States Department of State are **exempt** from the sales and use tax. The United States Department of State issues a Tax Exemption Card to all who are entitled to this

¹¹ “Common carrier” or “carrier” means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons. “Forwarding agent” means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment.

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exemption. Additionally, the Tax Exemption Card specifies the minimum amount required to be purchased in a single transaction for the exemption to apply. Any foreign diplomat who does not bear this card is ***not exempt*** from the sales or use tax. Also, any foreign diplomat who bears the card and does not meet the minimum purchase threshold will be ***subject to the sales tax***.

Form of Certificate

Documentary evidence which will satisfactorily support the exemption will be an invoice with the following information:

- Name of purchaser
- Name of the mission
- Tax exemption number
- Expiration date of the Tax Exemption Card
- Minimum level of exemption specified on the Tax Exemption Card

A photocopy of the exemption card may be taken and attached to the invoice as an alternative method of supporting the exemption.

O. Bookstore: Shipping/Transportation Charges

1. Shipping & Transportation Charges

Shipping and transportation charges that are incurred in connection with the sale of tangible personal property are ***excluded*** from the computation of ***sales tax*** when separately stated, by common carrier and the shipment is made directly to the purchaser (Section 6011). Note that transportation by retailer's own vehicles generally is taxable when sale of tangible personal property is taxable.¹²

2. Handling Charges

Handling charges are ***not exempt*** from tax. Taxable handling charges include any excessive delivery charges if related to a taxable sale (Section 6011(c)(7)).

3. Lump Sum Charges for Shipping and Handling

If UC lumps the charges for shipping and handling into one line item, the charges for shipping and handling are ***taxable***. Shipping charges must be separately stated in order for the exemption to apply.

¹² See Section 4.IV.TT.1 (b), Shipment Made by the Retailer and Section 8.I.F, Gross Receipts for the conditions required to be nontaxable.

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However, if the shipping and handling charges pertain to a purchase which is not subject to the sales or use tax, the shipping and handling charges are *exempt* as well.

IV. CUSTOM SOFTWARE

Tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. A custom program is a computer program prepared to the special order of the customer. It may incorporate preexisting routines, utilities or similar program components. A custom program also includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer. (Section 6010.9; Regulation 1502)

Tax does not apply to the transfer of a custom program or custom programming services performed in connection with the sale or lease of computer equipment, whether or not the charges for the custom program or programming are separately stated.

Custom computer programming services ***are always exempt***, even when sold with tangible personal property. Any written documentation or manuals designed to facilitate the use of a custom computer program by the customer ***are nontaxable***, whether or not a separate charge is made for the documentation or manuals.

The transfer by the seller of original information created by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press is ***not subject to tax*** when transferred by computer disk or other electronic storage media and the original information is a custom computer program. Such a process, currently termed "electronic or digital pre-press instruction," creates a new program which shall be considered a custom computer program as defined under Revenue and Taxation Code Section 6010.9 of the Sales and Use Tax Law and is ***not subject to tax*** if the electronic or digital pre-press instruction is prepared to the special order of the customer. The electronic or digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a "canned" or prewritten computer program which is held or existing for general or repeated sale or lease, even if the electronic or digital pre-press instruction was initially developed on a custom basis or for in-house use (Regulation 1502¹³).

Modifications to Prewritten Programs

Tax applies to custom modifications to prewritten programs if the charges are not separately stated unless the modifications are so significant that the new program qualifies as a custom program. Custom programs are ***not subject to sales tax***.

To evaluate whether modifications are significant enough to qualify as a custom program, the following guidelines are used by the State:

If the prewritten program was previously marketed, the new program will qualify as a custom program, if the price of the prewritten program was 50% or less of the price of the new program.

¹³ Regulation 1502, effective 12/3/99.

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Example: Canned program A written by UC is sold at retail in the bookstore for \$20. Anyone can purchase the program and run it in any personal computer without customization. A customer requests that modifications be made to Canned program A. UC charges \$40 for the work involved to customize the program. The program costs the customer \$60. The new program is exempt from tax as a custom program.

If the prewritten program was not previously marketed, the new program will qualify as a custom program, if UC's charge to the customer for custom programming services was more than 50% of the contract price to the customer. UC must keep records evidencing the customization of the software.

Example: Canned program A is a new product which has not been previously marketed. A customer contracts to purchase the product for \$80. Customized programming is necessary for his utilization and included within the purchase price. The programming services are charged at \$45. The program is exempt as a custom program.

V. EQUIPMENT

A. Equipment Sales: Sales Within the State

Sales of equipment are generally considered retail sales of tangible personal property unless the sale involved is for resale or in interstate commerce as described below. ***Sales tax applies*** to the retail selling price of equipment made by UC.

1. Retail Sales

Sales tax applies to all retail sales of tangible personal property including capital assets whether sold in one transaction or in a series of sales, held or used by the seller in the course of an activity or activities for which a seller's permit is required. Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller's permit. A person who makes a substantial number of sales for relatively small amounts is also required to hold a seller's permit.

2. Sales for Resale

Sales of equipment by UC may be made to persons in the business of reselling such equipment. Sales for resale are ***exempt from tax*** when made to such persons when a valid resale certificate is given by the purchaser.

UC must acquire and retain a valid resale certificate from the purchaser to support the sale for resale. The resale certificate has the effect of relieving the seller of the sales tax burden involved in the sale and placing such burden on the purchaser. If a valid resale certificate is not given by the purchaser, UC should ***charge sales tax*** to the purchaser on the selling price of the equipment (Regulation 1668).

B. Equipment Sales: Sales in Interstate Commerce

Sales tax does not apply to sales of equipment made by UC to purchasers when such equipment is required by the contract of sale to be delivered by UC to a point outside the

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State of California either by vehicles owned by UC or to a common carrier, customs broker, or forwarding agent, hired by UC or the purchaser of the equipment, for such delivery outside the State of California.

If the equipment is delivered to the purchaser in the State of California for subsequent delivery to a point outside the State of California, the sale of equipment will be deemed to be a sale of tangible personal property in this State and ***subject to tax*** on the selling price. Property sold “as is” may still qualify for the interstate exemption even though the buyer may inspect or even package the material, provided the property is required to be and is ultimately shipped outside the State pursuant to the terms of the contract of sale. Therefore, the contract of sale must specify that the property will be shipped outside California.

UC must retain shipping documentation or records that show the shipping destination related to the shipment of equipment outside this State to support the exempt sale in interstate commerce (Regulation 1620).

C. **Equipment Sales: Fleet Services**

1. Vehicles

Sales of vehicles by UC in its capacity as a registered dealer are considered taxable sales unless sold for resale or in interstate commerce. ***Sales tax applies*** to all of the following charges in relation to the sale of vehicles:

- Selling price of the vehicle including accessories installed such as radios or air conditioning.
- License fees in excess of the Department of Motor Vehicles (DMV) required fees.
- Charges made for documentary fees such as transfer papers required by the DMV.
- Brokers' fees or commissions paid to brokers for services related to finding customers.
- Financing and insurance charges not separately stated from the selling price on sales records.
- Smog certificate fees in excess of the certificate fees imposed by the Department of Consumer Affairs.

The sales tax rate used will be a total of the state, local and district taxes imposed on the selling price. State and local taxes are applicable on a state-wide basis. The applicable district taxes are based on the address at which the purchaser registers or licenses the vehicle or vehicles.

UC prepares a Dealer's Report of Sale and a copy of the report is sent to the DMV for all vehicle sales. The sales tax is collected and reported by UC on the sale of the vehicle.

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2. Resales

If vehicles are sold to dealers for resale exempt from tax, UC should obtain and retain a resale certificate from the purchasing dealer. If a dealer sells a vehicle for resale to a retailer not regularly engaged in the business of selling or leasing vehicles, a resale certificate should only be accepted if it contains a statement that the specific vehicle is being purchased for resale in the regular course of business. Unless the person named on the Dealer's Report of Sale and application for registration is also named on the resale certificate, the resale certificate will not be honored and the sale will be considered a retail sale and *subject to sales tax*.

3. Interstate Commerce (Regulation 1620)

Vehicles claimed as exempt sales in interstate commerce must meet the following conditions to qualify for the exemption:

- Title to the vehicle must transfer to the purchaser outside the State of California. The purchaser may not take possession of the vehicle in this State.
- The vehicle must **not** be sold for use in this State. If the dealer is aware of the purchaser's intent to use the vehicle in this State, the dealer **must collect the use tax**. If the purchaser intends to use the vehicle outside this State for more than one year before using it in this State, or if it is used, stored, or both used and stored more outside this State than in this State during the first six months after it is brought back into this State, it will not be considered to have been purchased for use in this State.
- Supporting documentation must be retained in support of the interstate commerce exemption. This documentation should include, for each vehicle sold, documents supporting the delivery of the vehicle to an out-of-state location, evidence of the purchaser's out-of-state address, and evidence that the vehicle was purchased for use outside the State of California.

4. Farm Equipment (Section 6356.5; Regulation 1533.1¹⁴)

Sales of farm equipment are generally considered retail sales of tangible personal property unless the sale involved is for resale or in interstate commerce.¹⁵ *Sales tax generally applies* to the retail selling price of farm equipment made by UC.

However, for the period commencing on January 1, 2002, there is a *partial exemption* from sales and use tax for the sale of, and the storage, use, or other consumption in this state, of farm equipment and machinery, and parts of farm equipment and machinery purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products. [CDTFA-230-D, PARTIAL EXEMPTION CERTIFICATE QUALIFIED SALES AND](#)

¹⁴ Statute effective 9/1/01; Regulation 1533.1; effective 9/1/01.

¹⁵ Restated in Section 1.III, Sale for Resale, Section 2.III.M.1, Interstate Commerce, Section 2.V.B, Equipment Sales: Sales in Interstate Commerce.

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[PURCHASES OF FARM EQUIPMENT AND MACHINERY](#) must be provided by the purchaser to obtain the partial exemption.

A “qualified person” means any person engaged in a line of business described in Codes 0111 to 0291, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition, and any other person that uses farm equipment and machinery to assist this person in the lines of business described in this paragraph in producing and harvesting agricultural products (Section 6356.6).

For the period commencing on January 1, 2016, and ending on December 31, 2016, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2017, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

5. Vessels

A vessel is defined as any boat, ship, barge, craft, or floating thing designed for navigation in the water. Exceptions to the definition of vessel are sea planes, watercraft designed to operate on a permanently fixed course, a type designed to be propelled solely by oars or paddles, or a type eight feet or less designed to be propelled by sail (Section 6273; Regulation 1610).

Sales tax applies to the sale or lease of any vessel (30 feet and under), unless specifically exempt. The lease of the vessel will be exempt if UC paid or accrued use tax on the purchase price of the vessel before its first consumptive use. Otherwise, the sales tax is due and reportable on the stream of payments when received from the lessee. UC is responsible for the collection and remittance of the sales tax on the sale and lease of any vessel.¹⁶

Leases of MTE - Vessels Exceeding 30 Feet in Length

Vessels exceeding 30 feet in length are mobile transportation equipment (MTE). The sale of MTE is subject to sales and use tax.

The tax application for MTE differs with respect to the lease of the vessel. The original sale to UC of the vessel is a retail sale and UC is the consumer of the

¹⁶ Restated in Section 2.III.G, Bookstore Gown Rentals.

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equipment. Accordingly, either the sale of the equipment to UC or its use in the state is subject to the sales tax. The lease receipts derived from the lease of MTE is not subject to sales or use tax.

UC may make an election to report tax on the stream of lease payments rather than pay tax on its purchase price of vessels over 30 feet. In order to qualify for this election, the use of the vessel must be limited to leasing activities and a resale card given to the vendor (Regulation 1661)

D. Trade-In, Exchange, or Barter vs. Cash Discount

In general, trade-ins are taxable while cash discounts are excludable from reportable gross receipts. However, it should be noted that the retailer may not receive any benefit in exchange for a cash discount or it will be construed as a trade-in, exchange or barter and subject to the sales tax.

1. Trade-Ins, Exchanges and Barters

Trade-ins, exchanges and barters are included within the definition of "sale" and "purchase" (Section 6011, 6012). Therefore, the value attributable to trade-ins, exchanges or barters are part of the sales price and subject to sales tax.

When merchandise is traded-in, exchanged or bartered for the purchase price of other merchandise, UC must include the value attributable to the trade-in as part of the gross receipt. Generally, the agreed upon price between the seller and buyer is the value of the trade-in, exchange or barter. However, they should reflect fair market value.

2. Cash Discounts

The retailer may deduct cash discounts from reportable gross receipts. Therefore, the value of the discount is **not taxable**. Gross receipts do not include cash discounts credited against the sales price (Section 6012).

Example: UC sells equipment to a consumer. The consumer is key customer and therefore, UC gives a cash discount to the consumer on the purchase of the computer. No value is given to UC by the consumer in exchange for the discount. The discount is excludable from reportable gross receipts.

VI. FOOD SERVICES/STUDENT CAFETERIA

A. Food Services: General Application of Tax for Food Providers

In general, on the University campus, most sales of food and meals will be exempt from tax as sales to students. The application of CA sales and use tax to the University's food services considers the following: the type of food product (hot prepared or cold), the premises where the food products are to be consumed, and the status of the customer as a student or non-student. California provides a broad exemption for food products

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furnished to “students”, whether the products are sold or provided at no charge. Accordingly, most sales of food and meals to students will be exempt from tax.

While the sale of food products by the bookstore or other stores are generally *exempt* from the sales and use tax, the *exemption does not apply* in the following situations unless the customer is an exempt student:

- When the food products are served as meals, including a hot-prepared component, whether consumed on or off the premises of the retailer.
- When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.
- When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though those products are sold on a “take out” or “to go” order and are actually packaged or wrapped and taken from the premises of the retailer.
- When the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, marinas, campgrounds, and recreational vehicle parks.
- When the food products are sold through a vending machine.
- When the food products sold are furnished in a form suitable for consumption on the sellers’ premises and the “80-80” rule applies.
- When the food products are sold as hot prepared food products (Section 6359(d)).

However, an important exemption from tax exists for sales of food products and meals in dining facilities to students. There is also an exemption for sale of meals and food products to and the use of meals and food products by hospitals when furnished or served to and consumed by their residents and patients (Regulation 1503)

Taxability Chart

Description	Students	Non-Students
Food - Cold food to go	NO	NO
Food Products - Cold and hot food products for consumption on the premises (at any time of day)	NO	YES
Food Products - Hot Food to go or on the premises	NO	YES

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Description	Students	Non-Students
Meals - Served on the premises at any time other than designated meal times	YES	YES
Meals - Served on the premises at designated meal times	NO	YES
Food - Served where an admission is charged	YES	YES

B. Food Services: Meals to Students

1. Exemption for Meals to Students

California *exempts* meals and food products served to public or private school students when furnished by schools, student or parent-teacher organizations, or any qualified blind person operating a restaurant or vending stand in an educational institution (Section 6363). The *exemption applies* to both sales taxes on the sales of meals and food products and use tax on the purchase of items to be sold.

A “qualified blind person” is any blind person as defined in Section 19153 of the Welfare and Institutions Code operating a restaurant or vending stand in an educational institution under Article 5 of Chapter 6 of Part 2 of Division 10 of the Welfare and Institutions Code (Regulation 1603(j)(2)(C)).

It is important to note the distinction between a meal and food product for purposes of charging the sales tax. Food products when served at any time of the day to a student are exempt. "Meals" meet the exemption if served at a time set aside for meals. Meals and food products are defined below.

*** USER NOTE ***

Observation: The University may also claim the Meal to Student exemption for food and meals furnished to students when purchased from third party caterers, restaurants, and other providers (not just when supplied through food services). The exemption applies whether any direct charge or reimbursement is collected from the student.

Certain campuses offer Executive or Fully-Employed MBA programs that include food and/or meals as part of the program/tuition cost, or as a separate fee, as an accommodation during evening and weekend classes. When food or “qualified meals” are purchased from outside suppliers, the University should issue an exemption certificate to avoid the payment of sales tax. No tax is due on the purchase or any charge to the student.

Exemption Keys: The food or meals may be served by the outside vendor, but the University must purchase the food or meal directly from the vendor. Charges by outside vendors directly to students would not be considered furnished by the University. See special rule below for Caterers.

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Example: All meals sold by a residence hall or dormitory to students will be exempt from tax, if the food service area is only open for "meals."

Example: Meals sold by a campus cafeteria which is open continuously from 7:00 a.m. until 7:00 p.m. may qualify for the exemption for meals served during designated meal periods for a meal for which a single established price is set.

The *exemption* provided by this section *does not apply* when meals are sold for consumption within a place to which admission is charged, except state and national parks and monuments. The taxability of these types of sales is discussed in detail below.¹⁷

The *exemption* also *does not apply* to:

- Sales of nonfood products, such as soft drinks or alcoholic beverages when not sold as a part of an exempt meal (see definition of meal).
- Meals sold to employees.
- Caterer's meals sold directly to students (a caterer's sale to a student should not be confused with food or meals purchased from a caterer by the University and then sold or furnished to students). However, tax does not apply to the sale by caterers of meals or food products for human consumption to students of a school, if all of the following criteria are met:
 - The premises used by the caterer to serve lunches to the students are used by the school for other purposes, such as sporting events and other school activities, during the remainder of the day;
 - The fixtures and equipment used by the caterer are owned and maintained by the school; and
 - The students purchasing the meals cannot distinguish the caterer from the employees of the school.¹⁸

Example 1: Hot meals are sold by a student organization to students or to both students and nonstudents within a place the entrance to which is subject to an admission charge, such as a place where school athletic events are held. The sales to both students and nonstudents are *taxable*.

¹⁷ See Section 2.V.D, Food Service: Places Where Admission is Charged.

¹⁸ Regulation 1603, effective 6/13/02.

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Example 2: UC contracts with an outside food service to operate a restaurant on campus. UC pays the operator a management fee. The contract also calls for the operator to turn over to UC any amount by which the operator's gross receipts exceed its cost of business. If the gross receipts do not total its cost, UC reimburses the operator for the shortfall in addition to the management fee. Under the terms of the contract, the food service operator and not UC is selling food to the students. Accordingly, the sales are *not exempt* as sales to students by UC (Regulation 1603(j), Annotation 550.1330).

2. Students

Persons formally enrolled in regularly scheduled courses, specialized short courses and special youth programs at UC qualify as "students" (Annotations 550.1435 through 550.1460). Persons attending lecture series that are open to the general public without any requirement of enrollment do not qualify as "students" (Annotation 550.1440). The exemption does not extend to faculty, university staff (UC's or any other), or visitors. However, the definition of "student" extends to guests of students when any charge is to or paid for by the enrolled students (Annotation 550.1280).

3. Food Products

"Food products" include food furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish prepare or serve food to others (Regulation 1603(j)(1)).

4. Meals

The term "meals" includes both food and nonfood products that are sold to students for an established single price at a time set aside for meals. The time set aside for meals should be clearly stated on the premises. If a single price for the combination of a nonfood product and a food product is listed on a menu or on a sign, a single price has been established. The term "meals" does not include nonfood products such as carbonated beverages and beer that are sold to students for a separate price. Products sold at a time designated as a "nutrition break," "recess," or similar break will not be considered "meals" (Regulation 1603(j)(1)).

5. Meals Eaten on the Premises and Cold Food to Go

The gross receipts from meals sold to students are *exempt* from sales and use taxes as discussed above. As long as the meals are sold to students, no distinction is made for hot meals, meals eaten on the premises, or items sold as cold food to go. These are *exempt* in the same manner (Section 6363).

C. Food Services: Meals to Non-Students

1. Sales Tax on Meals to Non-Students

Sales tax applies to all sales of hot prepared food products unless otherwise exempt such as sales to students as discussed above. When a single price has

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been established for a combination of hot and cold food items, such as a meal or dinner which includes cold components or side items, ***sales tax applies*** to the entire established price regardless of itemization on the sales check (Section 6359; Regulation 1603).

"Hot prepared food products" means those products, items, or components prepared for sale in a heated condition and sold at any temperature that is higher than the air temperature of the room or place where they are sold.¹⁹ If the sale is intended to be of a hot food product, the sale is of a hot food product regardless of cooling which incidentally occurs.

Example 1: The sale of a toasted sandwich intended to be in a heated condition when sold is a sale of a hot prepared food product even though it cooled due to delay.

Example 2: The sale of a toasted sandwich that is not intended to be in a heated condition when sold, such as a cold tuna sandwich on toast, is not a sale of a hot prepared food product.

The inclusion of any hot food product in an otherwise cold combination of food products sold for a single established price ***results in the sales tax applying*** to the entire established price, e.g., a hot sandwich served in a meal consisting of the sandwich and cold food products, when the sandwich is included in the established price of the meal. If a single price for the combination of hot and cold food items is listed on a menu, wall sign or is otherwise advertised, a single price has been established.

Sales tax does not apply to a sale for a separate price of bakery goods or beverages. However, ***sales tax applies*** if a hot beverage and a bakery product or cold food product are sold as a combination for a single price. Hot soup, bouillon, or similar items are hot prepared food products which are not beverages (Regulation 1603(e)(1)).

2. Meals Eaten on the Premises

Sales tax applies to sales of sandwiches, ice cream, and other foods sold in a form for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the seller or by a person with whom the seller contracts to furnish, prepare, or serve food products to others (Regulation 1603(f)).

3. 80-80 Rule

Though the UC mainly has food sales to students that are exempt from tax and therefore would have no reason to elect this 80-80 rule to tax all of its foods, this 80-80 rule will be explained. The 80-80 rule provides a retailer of food, like fast food establishments, (as an election) the option to collect tax on all sales of food, rather than to maintain separate accounting for non-taxable sales such as sales to students or cold food to-go. It is unlikely that any of the UC food establishments

¹⁹ See Section 8.I.G, Hot Prepared Food Products.

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would be eligible for this election based on the volume of exempt sales of food and meals to students.

Food Service operators fall under the 80-80 rule if the following two criteria are met:

- More than 80 percent of the seller's (UC's) gross receipts are from the sale of food products, and
- More than 80 percent of the seller's (UC's) retail sales of food products are taxable under the rules pertaining to the explanations below for *Hot Meals* and *Meals Eaten on the Premises* (Regulation 1603(c)(3)).

Generally, all sales of a food service operator that fall under the 80-80 rule are **taxable**. The food service operator may still elect to maintain a deduction for the sale of cold food products in a form not suitable for consumption on the seller's premises. In effect, the 80-80 rule gives the operator an election to segregate the sale of cold food products in a form not suitable for consumption on the seller's premises from other taxable sales of food products for tax reporting purposes.

"Suitable for consumption on the seller's premises" means food products furnished:

- In a form which requires no further processing by the purchaser, including but not limited to cooking, heating, thawing, or slicing, and
- In a size that ordinarily may be immediately consumed by one person such as a scoop of ice cream, a pint of milk, or a slice of pie.

Cold food products furnished in containers larger in size than a pint are not considered to be in a form suitable for immediate consumption. Pieces of candy sold in bulk quantities of one pound or greater are also deemed to be sold in a form not suitable for consumption on the seller's premises. The term does not include cold food products that obviously would not be consumed on the premises of the seller such as a cold party tray or a whole cold chicken (Regulation 1603(c)(2)).

The records needed to be retained by a food service operator can become a serious burden depending on the menu items offered. Each sale can create a question as to the taxability of individual items sold versus the combination of items sold. The segregation of taxable and nontaxable items can be made automatically with properly-programmed, multiple-key cash registers or manually by maintaining a well-informed staff of cashiers who know the rules that apply to the taxability of individual items and combinations of items.

Some operators would prefer to charge sales tax on all sales and avoid the segregation of taxable and nontaxable items on every sale. However, this passes the burden of excess sales tax on to the customers.

Example 1: A food service facility on the UCLA campus meets both criteria under the 80-80 rule. The owner decides to report sales according

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to the 80-80 rule. *Sales tax would apply* to all sales for the facility. For sales tax reporting purposes, all sales are reported as taxable sales including sales of cold food in a form not suitable for consumption on the premises. (This example does not take into consideration the exemption for student meals. The exemption is available and sales to students should be segregated from taxable sales in the reporting process).

Other operators prefer to reduce the tax burden by maintaining more detailed records and claiming the deduction for cold food products in a form not suitable for consumption on the seller's premises. This method requires the segregation of taxable and nontaxable items on each sale by the seller. If the seller does not meet the 80-80 rule criteria, this method must be used.

Example 2: A food service facility on the UC San Diego campus satisfies both of the criteria under the 80-80 rule. The operator wishes to minimize the amount of tax charged on sales to customers in order to maintain good will with the customers. Even though the criteria are met, the operator may keep a detailed segregation of taxable and nontaxable items and claim the exempt food deduction.

Example 3: A food services facility on the UC Riverside campus earns more than 80 percent of gross receipts from sales of food products. Only 70 percent of the retail sales of food products are taxable. The operator must segregate taxable and nontaxable items on each sale. Records must be maintained to support the deduction claimed for exempt food sales on sales tax returns. Separate line items for taxable versus exempt sales on the seller's general ledger or income statements will satisfy the recordkeeping requirements as long as the seller can support these amounts with receipts or sales tickets.

4. Cold Food to Go

When a seller (UC) satisfies the criteria of the 80-80 rule, *sales tax applies* to sales of cold food products (including sales for a separate price of hot bakery goods and hot beverages such as coffee) in a form suitable for consumption on the seller's premises even though such food products are sold on a "take-out" or "to go" order (Regulation 1603(c)(1)(A)).

However, UC may elect to maintain detailed records segregating exempt cold food items sold on a "take-out" or "to go" order. When this election is made, *sales tax does not apply* to these sales and a deduction may be claimed for exempt food products on the sales tax returns. The seller must be able to support any deduction claimed with receipts, sales checks or other similar documentation.

Sales of cold food products that are suitable for consumption on the seller's premises are *subject to the sales tax* no matter how great the quantity purchased, e.g., 40 one-half pint containers of milk. Except as provided elsewhere in this section, *sales tax does not apply* to sales of food products that are furnished in a form not suitable for consumption on the seller's premises.

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When a seller does not satisfy both of the criteria under the 80-80 rule, ***sales tax does not apply*** to sales of cold food products (including sales for a separate price of hot bakery goods and hot beverages such as coffee) when sold on a "take-out" or "to go" order (Regulation 1603(c)(1)(B)).

5. Presumption of the Inclusion of Sales Tax

A retailer may elect to be reimbursed for the sales tax due on a taxable sale. For reporting purposes, the posted or marked price will be presumed to be the purchase price without any deduction for "tax included." However, tax will be presumed to be included when:

- A retailer posts a sign on the premises, or
- The price tag or an advertisement includes a notice stating to the effect that all prices of taxable items include sales tax reimbursement (Regulation 1700).

D. Food Services: Places Where Admission is Charged

Sales tax applies to sales of food products when sold within, and for consumption within, a place the entrance to which is subject to an admission charge (e.g., sporting events, art shows), during the period when the sales are made, ***except*** for national and state parks and monuments, marinas, campgrounds, and recreational vehicle parks (Regulation 1603(d)(1)). "National and state parks and monuments" mean those which are part of the National Park System or the State Park System (Regulation 1603(d)(2)(D)). The student exemption does not apply to sales at places where admission is charged.

"Admission charge" means any consideration required to be paid in money or otherwise for admittance to a place such as buildings, fenced enclosures, or areas bordered by posted signs. "Admission charge" does not include the following:

- Membership dues in a club or other organization entitling the member to enter a place maintained by the club or organization. Charges to guests of members for entrance to such a place are not admission charges.
- A charge for a student body card entitling the student to enter a place such as entrance to a school auditorium at which a dance is held.
- A charge for the use of facilities within a place to which no entrance charge is made to spectators. For example, green fees paid for the privilege of playing a golf course, a charge made to swimmers for the use of a pool within a place, or a charge made for the use of lanes in a public bowling alley (Regulation 1603(d)(2)).

When food products are sold within a place the entrance to which is subject to an admission charge, it will be presumed, in the absence of evidence to the contrary, that the food products are sold for consumption within that place. Documentation must be maintained by the seller (UC) to support any claimed deduction for exempt food products. For example, such documentation may consist of proof that the sales were of canned foods, mixes, spices, or other items in a form in which it is unlikely that such

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items would be consumed within a place where such items are sold (Regulation 1603(d)(3)).

E. Food Services: Vending Machines

1. General Rule (Regulation 1574)

As described below, the operation of vending machines may require the possession of a permit. If UC is receiving commissions from vending machines operated by third parties on campus, such commissions will not be subject to sales tax provided that the vending machine operator holds a valid permit and collects any sales tax due. If the operator does not collect the sales tax, UC would be liable for the tax on the gross receipts from the vending machine operations. If UC owns and operates vending machines, it is responsible for collecting sales tax on vending machine sales.

Persons operating vending machines dispensing food products at retail for more than 15 cents must obtain permits to engage in the business of selling tangible personal property. One permit is sufficient for all machines of one operator. A statement in substantially the following form must be affixed upon each vending machine in a conspicuous place.²⁰

"This vending machine is operated by

Name of Operator

Address of Operator

who holds Permit No. _____ issued pursuant to the Sales and Use Tax Law."

Persons operating vending machines dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax must report and pay to the state the tax upon gross receipts from all sales of such property made through such machines. Sales of tangible personal property through vending machines are presumed to be made on a tax-included basis. Gross receipts from retail sales of tangible personal property through the vending machines are total receipts less the amount of sales tax reimbursement included therein. (Regulation 1574)²¹.

2. Food Products

Sales tax applies to the gross receipts from the retail sale of food products, including candy and confectionery, dispensed through a vending machine at

²⁰ This Certificate is duplicated in Section 9 for reproduction purposes.

²¹ Regulation 1574, as amended effective 10/20/01.

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retail for more than 15 cents. Since sales through vending machines are presumed to be made on a tax-included basis, total receipts from the taxable retail sale of food products through vending machines should be adjusted to compensate for the sales tax included therein.

Sales tax does not apply to sales of food products, whether sold through a vending machine or otherwise, to students of a school by public or private schools, student organizations, or to sales made by any blind person operating a restaurant or vending stand in an educational institution (Regulation 1574(b)(2)(D)). As a practical matter, however, UC may wish to develop a percentage (e.g., based on cafeteria usage) of student to non-student sales to apply to gross receipts from vending machine operations. The term “food products” does not include carbonated beverages.

3. Bulk Vending

Sales tax does not apply to the sales of any food products sold through a coin-operated bulk vending machine if the amount of each sale is twenty-five cents or less. A "bulk vending machine" is a vending machine containing unsorted food products, including candy and confectionery, which dispenses those products in approximately equal portions, at random, and without selection by the customer. For the purposes of this section, the term "candy and confectionery" includes candy-coated gum products (Regulation 1574(b)(2)(B)).

4. Partial Exemption of Cold Food and Hot Beverages

A partial exemption from tax is allowed for any retailer who receives gross receipts through vending machines from the sale of cold food products, hot coffee, hot tea and hot chocolate that are subject to sales tax. Thirty-three percent of the gross receipts from the sales of such products are ***subject to sales tax***. This partial exemption does not apply to sales of hot prepared food products (except hot coffee, hot tea and hot chocolate) and receipts from such sales may not be included in the computation of the exemption.

"Gross receipts from the sale of cold food products, hot coffee, hot tea and hot chocolate" represents total receipts after adjusting for sales tax included. Therefore, in order to determine taxable receipts, an adjustment must be made to compensate for sales tax included in total receipts (Regulation 1574(b)(2)(C)). The following is an example of the computation using the 7-1/4 percent rate:

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Total receipts from sales of cold food products, hot coffee, hot tea and hot chocolate through vending	\$10,000
Factor	<u>32.2289%</u>
Taxable receipts	<u>\$3,222.89</u>
Tax rate	<u>7.25%</u>
Tax included	<u>\$233.66</u>
	<u>\$6,543.45</u>

Proof: $\$10,000 - 233.66 = \$9,766.34$ $\$9,766.34 \times 33\% = \$3,222.89$

The calculation may be performed similarly in counties where the tax rates differ using the percentage factors specified in the following table:

Tax Rate	Percentage	Tax Rate	Percentage
6.00%	32.3593%	7.50%	32.2030%
6.50%	32.3070%	7.75%	32.1771%
6.75%	32.2809%	8.00%	32.1512%
7.00%	32.2549%	8.25%	32.1254%
7.25%	32.2289%	8.50%	32.0996%

5. Sales of Water (Regulation 1574(b)(1)(D))

Sales of purified drinking water through vending machines where the water enters the machine through local supply lines and is dispensed into the customer's own containers are exempt from sales tax (Section 6353).

6. Resale and Exemption Certificates

UC's purchasing department, who holds a valid seller's permit and sells the property purchased only through vending machines both at prices of 15 cents or less and at prices of more than 15 cents may give a resale certificate with respect to those purchases. UC may also give resale certificates if such property is sold through vending machines and other than vending machines.

If UC does not wish to segregate the purchases of property which is sold through vending machines for 15 cents or less from purchases of like property which is otherwise sold, they may reimburse this vendor for sales tax measured by the retail selling price of all such property provided the vendor maintains a valid seller's permit (Regulation 1574(b)(4)).

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7. Records

Records must be kept by UC showing the location or locations of each machine operated, the serial number thereof, purchases and inventories of merchandise bought for sale through all such machines, the prices charged by the operator, the gross receipts derived from the operation at each location, the receipts from exempt sales, and the sales price to the operator of all tangible personal property of which the operator is the consumer. Receipts must be kept of the receipts derived from each machine at a location if differing kinds of merchandise are vended through separate machines at that location (Regulation 1574(a)(2)).

8. Allocation by County

If the machines are operated in more than one county, a schedule must be attached to the return showing the tax allocable to each county. If a person purchases property under a resale certificate and dispenses it through a vending machine under circumstances where the person is considered to be the consumer of the property, a schedule must be attached to the return showing the use tax due thereon allocable to each county (Regulation 1574(a)(3)).

F. Food Services: Other Issues

1. Tips and Service Charges

Tips earned by employees ***are not included*** in the taxable gross receipts of sales of food products unless employees are required, in any manner, to give them to the employer or forfeit them in lieu of wages. If employees are required to give up tips to the employer, any amount of such gratuities received by the employer will be considered a part of the gross receipts of the employer and ***subject to sales tax***.

The California Labor Code provides that no employer shall collect, take, or receive any gratuity or a part thereof, paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of such gratuity, or require an employee to credit the amount, or any part thereof, of such gratuity against and as a part of the wages due the employee from the employer (Labor Code Section 351). If this prohibition is violated, any amount of such gratuities received by the employer will be considered a part of the gross receipts of the employer and subject to tax.

Amounts designated as service charges, added to the price of meals are a part of the selling price of the meals and, accordingly, must be included in the seller's gross receipts ***subject to sales tax*** even though such service charges are made in lieu of tips and are paid over by the seller to employees (Regulation 1603(g)).

2. Employee Meals

Sales of meals to employees are included in the gross receipts of food service operators. The ***sales tax applies*** only if a specific charge is made for the meals. ***Sales tax does not apply*** to cash paid an employee in lieu of meals. A specific charge is made for meals if:

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- An employee pays cash for meals consumed.
- The value of meals is deducted from an employee's wages.
- An employee receives meals in lieu of cash to bring compensation up to legal minimum wage.
- An employee has the option to receive cash for meals not consumed.

If no specific charge is made for meals, the employer is the consumer of the food products purchased and the sale of food products to him or her is ***not subject to the sales tax***. If nonfood items are furnished with the meals, such as cigarettes and soft drinks, the ***sales tax applies*** to the sale of such products to the employee. If a separately stated amount for tax reimbursement is not added to the price of meals sold to employees for which a specific charge is made, the specific charge will be regarded as a ***sales tax-included*** charge for the meals (Regulation 1603(k)).

3. “Free” Meals

When a food service operator agrees to furnish a "free" meal to a customer who purchases another meal and presents a coupon or card, which the customer previously purchased directly from the food service operator or through a sales promotional agency having a contract with the operator to redeem the coupons or cards, the operator is regarded as selling two meals for the price of one, plus any additional compensation from the agency or from its own sales of coupons or cards (Regulation 1603(a)(2)(C)).

Any such additional compensation is a part of the operator's taxable gross receipts for the period in which the meals are served. ***Sales tax applies*** only to the price of the paid meals plus any such additional compensation.

G. Food Services: Budget Cards

1. Initial Purchase of Cards

The initial purchase of budget cards by UC may be made for resale. If charges are added to the sale price of the cards by UC to cover the cost to produce the cards, any additional compensation above the redemption value of the cards should be included in the taxable gross receipts of UC depending on whether sales are made to students or non-students.

Example: UC pays a manufacturer \$1 per card made. UC purchases the cards for resale. The cards are sold to non-students for \$7. The card can be used to purchase up to \$5 worth of taxable meals. The extra \$2 is charged to recover the cost of the cards. The additional \$2 is subject to sales tax and should be included in the gross receipts calculation for sales tax. If the \$5 were used to purchase nontaxable food, the entire \$7 would be exempt from tax.

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Example: The example is the same as above with the exception that the cards are sold to students. The student purchases \$5 worth of food products which qualifies as an exempt meal to a student. The tax does not apply on the additional \$2 charged to recover the cost of the card.

The additional compensation represents further compensation for the cost of food products sold. If the sale of food products results in **taxable** gross receipts, such as sales to non-students, the additional compensation should be included in the taxable gross receipts of the meals sold. In contrast, when additional charges are made for cards issued to students, where **sales tax does not apply** to the sale, charges are considered services related to an exempt sale of food.

If budget cards are purchased with a resale certificate, **use tax is due** on the cost of the cards to UC for cards issued to students since UC is considered to be the consumer of such cards. UC is considered to be the retailer of cards that are resold to non-students and any amount charged over the redemption value of the cards should be added to the taxable retail selling price of meals.

2. Sales Tax Implications

The use of budget cards in purchasing meals or food products instead of cash or some other form of payment does not affect the taxability of the various items being sold. The **sales tax will apply** to sales of food products as described in the various sub headings of this section depending on the type of sale, such as hot meals or cold food to go. The main issue that determines the taxability of the sale with regard to budget cards is whether or not the individual using the card is a student or a non-student.

Since the issuance of budget cards may be to both students and non-students, when UC issues the cards, they are **required to charge tax** on all taxable sales of food products, as described under the other subheadings in this section, **unless** a valid student identification card is presented at the time of the sale.

If a valid student identification card is presented at the time of sale, the rules under **Food Services: Meals to Students, Section 2.VI.B** will apply. If a valid student identification card is not presented at the time of sale, the rules under **Food Services: Meals to Non-Students, Section 2.VI.C** will be applicable. UC's taxable gross receipts from items purchased with the card includes the retail selling price of taxable food products plus any additional charges made upon the issuance of the cards when sold to non-students.

H. Food Services: Catering and Related Services

The term "caterer" means a person engaged in the business of serving meals, food and drinks on the premises of the customer, or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer, but does not include employees hired by the customer by the hour or day (Regulation 1603(h)).

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1. Catering and Related Services for University Departments

(a) Food Sales

When a UC operated food service provider provides catering services for departments of UC, the food service provider is considered the consumer of all items provided in the rendering of these services, and not the retailer of those items even though departments are charged for the service. Since "food products" **are exempt** from sales tax, **no sales or use tax applies** on the sale of "food products" to itself (UC Departments).

If a specific charge is made to UC employees for meals served, **sales tax applies** to receipts from sales of meals to employees. If a separately stated amount for tax reimbursement is not added to the price of meals sold to employees for which a specific charge is made, the specific charge will be regarded as a **tax-included** charge for the meals.

If an **outside** food service provides catering services for UC departments, **sales tax applies** to the entire charge made by the caterers.

(b) Non-Food Items

When a UC operated food service provides catering services for UC departments, the food service provider is considered the consumer of all items provided in the rendering of these services, and not the retailer of those items even though departments are charged for the service. Any items used in the rendering of these services that are not considered exempt "food products" will be considered consumed by UC. If purchased for resale with no tax paid, **use tax should be accrued** on the cost of such items and reported on line 2 of the sales tax return. If these items are purchased by UC with tax paid on the purchase, **no additional tax** needs to be accrued or reported on these items.

If a specific charge is made to employees of UC for meals served, **sales tax would apply** to the receipts from the sales of the meals to employees.

If UC purchases disposable non-food items, with **tax paid on cost**, UC may claim a deduction on its sales tax return (as a "tax-paid purchases resold deduction"), for tax paid on the cost of these items since these items were purchased for use by UC and later resold to the employees. Non-food items include paper napkins, cups, plates, or plastic knives and forks. If these items are purchased for resale, without payment of any tax, then **no deduction would be** due to UC. No tax-paid purchase resold credit is available for china, glassware, flatware, or serving pieces since these items are normally retained by the caterer for use in providing services and are not resold as a part of the meal.

If an outside food service provides catering services for departments of UC, **sales tax would apply** to the entire charge made by caterers to UC.

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2. Non-University Groups

(a) Food Sales

Sales tax applies to the entire charge made by caterers for serving meals, food, and drinks. This includes charges for the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving meals, whether performed by the caterer, the caterer's employees or subcontractors.

Sales tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers.

Sales tax applies to charges made by caterers for hot prepared food products, whether or not served by the caterers.

Caterers may sell meals to social clubs, fraternal organizations, or other persons for resale **exempt from tax** if such persons provide a valid resale certificate if the clubs and organizations intend to resell the catered food (Regulation 1603(i)).

(b) Non-Food Items

Sales tax does not apply to charges made by caterers for the rental of dishes, silverware, glasses, etc., purchased by the caterer with tax paid on the purchase price if no food is provided or served by the caterers in connection with such rental. If tax is not paid by the caterer on the purchase price of rental items, **use tax applies** to the amounts charged for such rentals.

(c) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer²²

When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of food or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, **tax applies** to the lease in accordance with Regulation 1660.

(d) Caterers Planning, Designing and Coordinating Events

Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any

²² Regulation 1603, as amended effective 6/13/02.

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staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, e.g., coat-check clerks, parking attendants, security guards, etc.

(e) Tips, Gratuities, or Service Charges

An optional tip or gratuity is ***not subject to tax***. A mandatory tip, gratuity, or service charge ***is included*** in taxable gross receipts. A tip, gratuity, or service charge negotiated in advance of an event between the caterer and the customer is mandatory even though the amount of percentage is negotiated. A tip, gratuity, or service charge itemized on an invoice or billing by a caterer is not optional even if the invoice or billing itemizes with a notation such as "optional gratuity." A gratuity is optional only if it is voluntarily added by the customer.

(f) Premises

Separately stated charges for the lease of premises on which meals, food, or drinks are served, are ***nontaxable leases*** of real property. Where a charge for leased premises is a guarantee against a minimum purchase of meals, food or drinks, the charge for the guarantee is gross receipts ***subject to tax***. Where a person contracts to provide both premises and meals, food or drinks, the charge for the meals, food or drinks must be reasonable in order for the charge for the premises to be nontaxable.

(g) Private Chefs

A private chef is generally not an employee of the customer, but an independent contractor who pays his or her own social security, federal and state income taxes. Such a private chef, who prepares and serves meals, food and drinks in the home of his or her customer is a caterer under this regulation.

(h) Accommodation Charges

Charges for the rental of conference rooms for seminars or meetings are not included in the gross receipts from the sale of meals if the conference rooms are available for rental both with and without catering services and the same rental fees are charged for the rental of the conference room whether or not catering services are provided (Annotation 550.0070).

However, if UC charges an organization a fixed amount per capita for a meal, no part of the charge may be allocated to the conference room rental and regarded as exempt. The entire charge for meals is subject to tax (Annotation 550.0200).

Separately state charges for the rental of facilities are not deductible from the gross receipts from the sale of meals where payment for the use of the facilities is required in order to obtain the meals and is a necessary part of meal service (Annotation 550.0260).

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If the facility is primarily maintained for the sale of meals or other food items such as the cafeteria, a separately state rental charge for the use of these facilities as part of a meal service ***should be included*** in the ***taxable*** gross receipts (Annotation 550.0240).

(i) Tax Paid Purchases Resold

A caterer who resells tangible personal property before making any use thereof (other than retention, demonstration, or display while holding it for sale in the regular course of business) ***may take a deduction*** of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the caterer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(j) Tax Paid Purchases Resold vs. Claim for Refund

The deduction under the caption "Tax-paid purchases resold" must be taken on the return in which his sale of the property is included. If the deduction is not taken in the proper quarter, a claim for refund of tax must be filed. This procedure should be used in any of the following circumstances:

- When the UC purchasing department makes a purchase and intends to use the property rather than resell it, but later resells it before making any use thereof.
- The particular property is of a kind not ordinarily sold or stocked by UC, and not customarily covered by resale certificates given to his vendors and is the subject of an unusual sale, such as a sale for the accommodation of a customer, employee, etc.
- The particular property is generally for UC's own use, but a small portion is incidentally resold.
- Through error, sales tax reimbursement or use tax is paid by UC with respect to the purchase price of property purchased for resale in the regular course of business (Regulation 1701).

VII. LIBRARY SERVICES

A. Library Services: Photocopy Services

1. Contract Copy Services for Non-UC Related Departments

Sales tax applies to UC's sale of photocopies and to charges for making photocopies from customer-furnished materials. ***Sales tax does not apply*** to UC's purchase of materials that become a component part of the copies sold. These items should be purchased for resale by UC's purchasing department and a resale certificate should be provided to the vendors of these items. UC is the consumer

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of other materials and supplies that do not become a component part of the copies sold. ***Sales tax applies*** to the purchase of these materials by UC (Regulation 1528).

2. Self Service Copies

(a) Fifteen Cents or Less

UC is the consumer of photocopies when sold through a coin-operated machine for fifteen cents or less per copy. ***Sales tax does not apply*** to sales of photocopies sold in this manner. UC is the consumer of the paper and other copy machine supplies. ***Sales or use tax applies*** to UC's purchase of these items (Section 6359.45).

(b) More Than Fifteen Cents

UC is the retailer of photocopies when sold through a coin-operated machine for more than fifteen cents per copy. ***Sales tax applies*** to these sales of photocopies. UC's purchasing department should purchase the supplies that become component parts of the copies sold, such as the paper and ink, for resale and provide vendors of these items with a resale certificate upon such purchase. The purchase of these items is ***not subject to sales and use tax***. ***Sales or use tax applies*** to UC's purchase of other supply items that do not become component parts of the copies sold (Regulation 1574(b)).

Persons operating vending machines dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax must report and pay to the state the tax upon gross receipts from all sales of such property made through such machines. Sales of tangible personal property through vending machines are presumed to be made on a tax-included basis. Gross receipts from retail sales of tangible personal property through the vending machines are total receipts less the amount of sales tax reimbursement included therein (Regulation 1574)²³.

B. Library Services: Computer-Assisted Research Using On-Line Databases

1. Purchase of On-Line Databases by UC

Sales tax does not apply to fees charged to UC's library by an on-line service provider for on-line access to a database maintained by the service provider. If, however, a copy of the database is stored on magnetic tape, CD-ROM, or some other similar storage media and sold to UC's library, the transfer of this database on the storage media constitutes a sale of tangible personal property and is subject to tax on the selling price, unless otherwise exempt as a Technology Transfer Agreement (see discussion of TTAs in Section 2.XII.B).

²³ Regulation 1574, as amended effective 10/20/01.

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The method of transfer is the main criteria for determining whether the transfer of a database is **taxable**. A database transfer via remote telecommunication or on-line is **exempt** since no tangible personal property is transferred. If a hard copy is also furnished, the exemption does not apply. When the database is stored on any form or storage media and transferred to the purchaser on that storage media, the transfer entails a sale of tangible personal property and is **subject to tax** (Regulation 1502).

2. Sale of On-Line Time

When UC charges fees to a customer for the use of a computer located on library premises to access on-line services, the fees may be considered leases of computers. If fees charged for the use of computers on the library premises are for less than a continuous twenty-four hour period and for less than twenty dollars, the service provided will not be considered a lease of equipment and will **not be taxable** (Regulation 1660(e)). If fees are charged for access to on-line services, the use of the library facilities is considered an **exempt service**. The library is **subject to tax** on acquisition of the computer in both situations.

If the use of UC library equipment in accessing on-line services is not limited to the use of this equipment on the library premises, or is for a continuous period of twenty-four hours or more, or is for a fee of twenty dollars or more, the use of this equipment is considered a lease of tangible personal property. When use of library equipment qualifies as a lease of equipment that has been purchased with **tax paid on the cost** of the equipment, **no tax is due** on the rental fees. If **tax has not been paid on the cost** of the equipment leased, **tax is due** on the rental receipts charged to customers (Regulation 1660(e)). This may have application where the library leases donated equipment. If the library leases donated equipment, tax is automatically due on the rental receipts.

Example: An accounting student needs to perform research for a project on Thomson Reuters Checkpoint and wants to use the library computer's access to the on-line services. The student is restricted to the use of the computer on the library premises. He uses the service for two hours. The total fee for the use of the service is twenty-five dollars. The use of the service qualifies as a lease of the library computers because the total fee is twenty dollars or more. If the library has not paid tax on the cost of the equipment used or received it as a gift, tax would be due on the twenty-five dollar fee.

3. Accessing UC Databases Remotely

UC library charges to customers at remote locations for remote telecommunication access to the library's own database are exempt services **not subject to tax**. If the library transfers portions of its database on to some form of storage media such as computer disks, the charges related to the transfer are considered sales of tangible personal property and **subject to sales tax**.

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C. Library Services: "Library Plus" Services

1. Research for Commercial and Student Customers

When the UC library contracts with students, individuals, or organizations to perform research services that result in the development of original information, the charges for the production and sale of the original information, whether presented to customers on storage media or in printed format, are for services and not for the sale of tangible personal property. These services are ***not taxable*** and the tangible personal property provided to these customers are considered incidental to the services provided (Regulation 1502(c)(3)).

The UC library is the consumer of any tangible personal property transferred, such as computer disks used for storing information or paper used in printing. In providing these services, the UC purchasing department should pay tax on the cost of such materials upon purchase.

If the UC library prints additional copies of reports for the customer or provides the customer with additional copies of reports on storage media, the charges for the additional copies of original information are considered sales of tangible personal property and are ***subject to sales tax***. The materials used to produce the additional copies (other than carbon copies) may be purchased for resale ***exempt from tax*** (Regulation 1502(d)(5)(F)).

If the UC library sells standard reports or reports produced during prior research projects, these will be considered sales of tangible personal property and will be ***subject to tax***. The materials used to produce the standard reports may be purchased for resale ***exempt from tax***.

2. Research for University of California Departments

The UC library is considered the consumer of all materials used in the production of printed reports or storage media containing information that is the product of research services provided by the UC library to other UC departments. The services including transfers of additional copies or standard reports are ***not subject to sales tax***. The UC library is the consumer of materials used in providing these services and ***sales tax should be paid*** on the cost of such materials when purchased by UC's purchasing department.

3. On-Line Charges

Charges for use of on-line services may be ***exempt from tax unless*** the use of library equipment qualifies as a ***taxable lease***²⁴

4. Print Fees

UC's fees related to sales of printed materials are generally ***subject to sales tax unless*** the printed material is considered incidental to providing exempt services

²⁴ See Section 2.VII.B.2, Sale of On-Line Time for application of tax.

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as explained under *Commercial and Student Research Services* or for exempt services rendered to other UC departments as explained above.

If the sale of printed materials *is exempt*, as described in the above referenced sections, the UC library will be considered the consumer of such materials and *tax is paid on the purchase price* of the materials by UC's purchasing department.

D. Library Services: Library Database Training and Miscellaneous

1. Sale of Training Manuals and Materials

Sales of manuals and materials by the UC library where separate charges are made for training of the class members *are subject to sales tax*. When such materials have been purchased by the UC purchasing department with tax paid on the purchase price, a *tax paid purchases resold credit* in the amount of tax paid on such purchase will be allowed to offset a portion of the tax collected on the sales to training class members.

2. Sale of Materials Consumed in Training Classes

"Material fees", which are charges for consumable supplies and materials used in the classroom, are not subject to tax. UC is the consumer of materials and supplies furnished to students for use in the classroom even though a separate "material fee" is charged to the student (Annotation 515.0015). Training classes offered by UC in the library qualify for this exemption.

3. Purchases of Supplies/Materials for Training Classes

The UC library is the consumer of training manuals purchased for use in training library patrons to use databases provided by the library. *Sales tax applies* to the purchase price of such manuals by UC's purchasing department.

If manuals are provided to the library by the on-line service without a separate charge for the manuals and no other tangible personal property is provided to the library, such as storage media used to transfer software for use in accessing the database, the on-line service is the consumer of the manuals and *tax does not apply* to the transfer of the manuals to the UC library (Regulation 1502(f)(1)(D)). However, if the on-line service provider charges a separate price for the manuals, *sales tax is due* on the retail selling price of the manuals.

The UC library is the consumer of supplies purchased for use in training classes provided by the UC library for users of library services. *Sales or use tax applies* to the purchase price of such supplies by UC's purchasing department.

E. Library Services: Interlibrary Loans

1. Loans To Other UC Campuses

Loans between UC libraries of books and other tangible personal property are not considered leases and are *not subject to tax*. However, if the property was

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acquired ex-tax, the transfer of the copy would subject the library to a use tax liability based on the purchase price of the property. A credit, though, may be applied against the use tax liability based on the amount of tax previously paid to the BOE/CDTFA with respect to rentals of the property. If the credit is less than the tax owed, then the difference must be reported to the SBE. At this point, tax should be paid on the entire purchase price of the property. If subsequent rentals of the property are made, then UC may apply the use tax paid for the use of the property as a credit against any future rentals until the credit is consumed (Regulation 1660(c)(6)).

2. Loans To Other Universities (Non-UC)

Sales tax does not apply to charges for rentals or loans by the UC library for renting books or other tangible personal property to other non-UC libraries, provided that UC has already ***paid either sales or use tax on the cost*** of the books or other tangible personal property.

If the UC library rents or loans any tangible personal property (i.e., books) purchased ex-tax or received by donation to other non-UC libraries in state, charges for such rentals or loans are considered leases of property and ***use tax applies*** to the rental receipts charged.

The use tax applies as leases are subject to use tax.

3. Copies of Articles To Other Universities (UC and Non-UC)

Transfers of copies of articles between UC libraries are not considered sales. They are considered intracompany transfers and are ***not subject to tax***. However, if the property was acquired ex-tax, the transfer of the copy would subject the library to a use tax liability based on the purchase price of the property. A credit, though, may be applied against the use tax liability based on the amount of tax previously paid to the SBE with respect to rentals of the property. If the credit is less than the tax owed, then the difference must be reported to the SBE. At this point, tax should be paid on the entire purchase price of the property. If subsequent rentals of the property are made, then UC may apply the use tax paid for the use of the property as a credit against any future rentals until the credit is consumed (CA Regulation 1660(c)(6)).

When UC libraries sell copies of articles to non-UC libraries, the sales are generally ***taxable*** unless exempt as discussed below.

(a) Sales for Resale

UC libraries may sell copies of articles to other non-UC libraries for resale ***exempt from tax*** when those libraries intend to resell those copies to their patrons. The UC library must acquire and retain a valid resale certificate from the purchaser to support the sale for resale.

The resale certificate has the effect of relieving the seller of the sales tax burden by placing such burden on the purchaser. If a valid resale

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certificate is not given by the purchaser, the UC libraries should **charge tax** to such purchaser on the selling price of copies (Regulation 1668).²⁵

(b) Sales in Interstate Commerce

Sales tax does not apply to sales of copies of articles made by the UC library when such copies are required by the contract of sale to be delivered to a point outside the State of California either by vehicles owned by UC or by common carrier, customs broker, or forwarding agent, for delivery outside of California. The deliverer may be hired by either party, UC or the purchaser, but may not physically be the purchaser himself who delivers the product.

If the copies or articles are delivered to the purchaser in the State of California for subsequent delivery to a point outside the State of California, the sale of copies will be deemed to be a sale of tangible personal property in this state and **subject to sales tax** on the selling price.

UC must retain shipping documentation or records that show the shipping destination related to the shipment of copies of articles outside this state to support the exempt sale in interstate commerce (Regulation 1620).

(c) Transaction Taxes

The tax rate applicable will be a total of the state, local and transaction taxes imposed on the selling price. State and local taxes are applicable on a statewide basis. The transaction taxes are based on those in effect at the destination where the copies are sent.

4. Loans From Other Universities (UC and Non-UC)

Generally, loans between UC libraries are not considered leases and are **not subject to sales or use tax**. Therefore, **tax does not apply** to charges for rentals or loans between other UC libraries for renting books or other tangible personal property. However, if the property was acquired ex-tax, the transfer of the property would subject the UC library to a use tax liability based on the purchase price of the property. A credit, though, may be applied against the use tax liability based on the amount of tax previously paid to the SBE with respect to rentals of the property. If the credit is less than the tax owed, then the difference must be reported to the SBE. At this point, tax should be paid on the entire purchase price of the property. If subsequent rentals of the property are made, then UC may apply the use tax paid for the use of the property as a credit against any future rentals until the credit is consumed (CA Regulation 1660(c)(6)).

²⁵ See Section 1.III, Sales for Resale for a discussion on valid resale certificates.

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Loans of tangible personal property from other non-UC libraries ***are not subject to tax***, provided that the lending library has already paid either sales or use tax on the cost of the books or other tangible personal property.

If a UC library rents or loans books or any other tangible personal property from other non-UC libraries that have not paid either sales or use tax on the cost, charges for such rentals or loans by UC are considered leases of such property and ***use tax applies*** to the rental receipts charged. However, the rental or loan to UC is not subject to tax provided that UC does not use the property for purposes other than leasing or loaning to non-UC libraries. Leasing or loaning to a UC department or other division of UC is considered a use and the use tax applies.

Use tax applies as leases are subject to the use tax, not sales tax. However, the lender is responsible for the collection of the tax. UC must ***accrue and pay use tax*** on its sales and use tax returns for rental or loan charges made by out-of-state non-UC libraries to UC libraries if the use tax was not already collected on the invoice when UC intends to use the property.

5. Copies of Articles From Other Universities (UC and Non-UC)

When UC libraries purchase copies of articles from other non-UC libraries, the sales by those libraries are considered sales of tangible personal property and are ***generally subject to tax***.

Transfers of articles between UC libraries are considered intracompany transfers and ***not subject to tax*** provided that tax was paid on the purchase price by UC or donated to the UC library.

Sales of copies of articles made by other non-UC libraries to UC libraries are ***taxable sales unless*** the UC libraries are purchasing the articles for resale to customers. When making purchases for resale, the UC must issue a resale certificate to the vendors of these products.

If copies of articles are purchased from out-of-state, non-UC libraries and the purchase is not for resale, UC must ***accrue and pay use tax***, measured by the cost of these articles, on its sales and use tax returns provided that the out-of-state non-UC library has not already charged use tax on the sale.

6. Lending of Exhibits

Loans of exhibits between UC libraries are not considered leases, and are ***not subject to tax*** provided that UC paid tax on its acquisition of the property, otherwise, a use tax is due.²⁶

Sales tax does not apply to charges for lending UC exhibits by UC libraries to other non-UC libraries, provided that the library has already paid either sales or use tax on the cost of the tangible personal property that comprises the exhibit.

²⁶ See Section 2.VI.E.1, “Loans to Other UC Campuses” for a discussion the application of the use tax.

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If UC's library lends exhibits of special library collections to other non-UC libraries and has not paid sales or use tax on the cost of the tangible personal property that comprises the exhibit, charges for lending the exhibits are considered leases of such property and ***use tax applies*** to the rental receipts charged. UC's library is responsible for the collection of the ***use tax*** from their borrowers.

The UC library is considered the consumer of books, special library collections, and other tangible personal property used or displayed for library purposes. When making purchases of such items for permanent use in the library, these items should be purchased with ***tax paid on the purchase price*** to vendors of these items.

7. Photograph Duplication

The UC library may duplicate photographs of special library collections to give users a semi-complete appreciation of the special library collection without actually transferring the collection from library to library. These photograph duplications are tangible personal property. Sales or loans of such collections are ***generally subject to sales tax when produced for non-UC libraries unless exempt as sales for resale or sales in interstate commerce.***

(a) Produced for the library

Transfers of such collections to other UC libraries or departments are not considered sales and are ***exempt from sales and use tax***. The purchase of such collections intended to be transferred to other UC libraries or departments must be made with ***tax paid on the purchase price*** since the UC is considered to be the consumer of such items.

When photograph duplications of special library collections are produced by a professional photographer for the UC library and the **library intends to retain title** to the duplications and loan the photographed duplication to other libraries, the purchase of such a collection should be made with ***tax paid on the purchase price***. Any charges for lending or renting the photograph collection to other non-UC and UC libraries, in this case, would be ***exempt from tax*** since UC is considered the consumer of the photographed version of the collection.

When such collections are produced for the library by a professional photographer and the **library intends to resell** the collection to another non-UC library, the purchase may be made **for resale** with a resale certificate given by the library to the photographer. These purchases of photographed collections are ***exempt from tax***. The sale of such a collection by the library to non-UC libraries or other non-UC individuals or organizations are **subject to tax unless** either sold **for resale** or in **interstate commerce**.²⁷

²⁷ See Section 1.III, Sales for Resale for discussion of the exemption.

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(b) Produced by the Library or UC Facilities

Transfers of such collections to other UC libraries or departments are not considered sales and are *exempt from tax*. The purchase of materials and supplies related to collections transferred to other UC libraries or departments must be made with tax paid on the purchase price since UC is considered the consumer of these items.

When photograph duplications of special library collections are produced by UC facilities and the UC library intends to retain title to such collections for lending or renting to other libraries, the purchase of materials and supplies used to produce the collections should be made with tax paid on the purchase price of such materials and supplies. Any charges for renting or lending the collections, in this case, are *exempt from tax* since the UC library is considered the consumer of these collections.

When photograph duplications of special library collections are produced by UC facilities and the library intends to resell the photographed versions to other non-UC libraries, the purchase of materials and supplies used to produce the collections, to the extent such items become component parts of the collection, may be made for resale with a resale certificate issued by the library to the vendors of these items. The purchase of such materials and supplies is *exempt from tax*. UC is the consumer of items used to produce such collections that do not become component parts of the collections and the purchase of these items should be made with tax paid on the purchase price.

The sale of these collections to other non-UC buyers is *subject to tax unless* made for resale or sold to out-of-state buyers.

8. Library Corporate Associates

When individuals or organizations donate tangible personal property to UC libraries in exchange for library borrowing privileges, the exchange is considered barter. Barter is taxable on the fair market value of the tangible personal property or services exchanged.

UC must accrue tax on the fair market value of the books. The library will be considered to be paying "rental or leasing charges" for subsequent borrowing of library property even though a charge is not made. Such leases or rentals will be *exempt* from tax based on the tax paid nature of the "donated" books (Regulation 1654(c)(2)(B)).

VIII. OFFICE OF THE REGISTRAR-STUDENT TRANSCRIPTS

A. Originals

Under the California Education Code, students have the right to access all records relating to them. "Access" includes a personal inspection and review of such records. Providing a student with an original copy of student transcripts does not constitute a sale of tangible personal property, but an act required by law. Therefore, the transfer of such documents is *not subject to sales tax* (Annotation 515.0228).

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B. Photocopies

Providing a student with a photocopy of student transcripts for a fee is taxable if the fee exceeds the cost to make the photocopy. If the photocopy of student transcripts is furnished for a fee **not** exceeding the cost of making the copy, a sale is not involved and such fee is **not taxable** (Annotation 515.0228).

IX. ONLINE SALES IN OTHER STATES

On June 18, 2018, the U.S. Supreme Court overturned the holding of *Quill Corp. v. North Dakota*, a 1992 Supreme Court case that required the remote seller to have physical presence in a state as a prerequisite to sales tax collection.

The U.S. Supreme Court issued a 5-4 decision in *South Dakota v. Wayfair, Inc.*, allowing states to compel remote sellers to collect sales tax from customers even if the sellers do not have physical presence in the customers' state based on a new nexus standard referred to as "Economic Nexus".

The South Dakota statute in question required a remote seller with no physical presence in the state to collect sales tax if it had either of the following: 200 or more South Dakota annual sales orders or more than \$100,000 in revenue from South Dakota.

Based on the new ability to hold retailers responsible for sales and use tax collection without a physical presence, states have begun to adopt their own economic nexus statutes. Each state differs with respect to their effective dates, transaction thresholds (from 100 to 200) and total sales volume (\$10,000 to \$500,000). Remote sellers should examine their activities and registration requirements in states that have enacted similar laws to the *Wayfair* decision. Remote sellers with registration requirements should evaluate proactive courses of action to manage any exposure (ex: prospective registration and voluntary disclosure agreements). This will likely increase use taxes being charged by out of state vendors which could lead to more overpayments of use tax.

California adopted an economic nexus law (AB 147) effective April 1, 2019. The new law applies to the collection of sales and use tax by an out-of-state seller²⁸ and marketplace facilitators²⁹. AB 147 requires out-of-state retailers and related parties making more than \$500,000 of total combined sales of tangible personal property for delivery into California to collect and remit sales and use tax as of April 1, 2019 (Section 6203(c)(4)(A)).

Effective Oct. 1, 2019 under Cal. Rev. & Tax. Cd. Section 6049.5, marketplace facilitators are required to collect and remit California sales and use tax on California sales made by their third-party marketplace sellers if the marketplace facilitator has California sales and use tax nexus based on a physical presence within California or meets the new \$500,000 sales of tangible personal property in California threshold based on a combination of its own sales and the sales of its third-party marketplace sellers.

AB 147 also applies to an instate seller's responsibility to collect transaction/district taxes in jurisdictions without a physical presence. Effective April 1, 2019, AB 147 amended Cal. Rev. & Tax. Cd. Section 7262 to adopt an economic nexus standard of \$500,000 or more in sales of tangible personal property within California by **the retailer** and **all persons related to the retailer**

²⁸ See Section 1.II.C, Out-of-State Retailer Engaged in Business in California.

²⁹ See Section 8.I.K for definition of "marketplace facilitator".

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to determine whether an out-of-district retailer is required to collect district tax.³⁰ Since the UC system as a whole have annual sales of tangible personal property in California exceeding \$500,000, every campus department with taxable sales outside their districts must report and collect transaction/district taxes in any district they make sales in.

X. REPROGRAPHICS

A. Reprographics: Sales of Photos

1. Sales Within UC

Internal transfers of photographs, photocopies and the products of photo finishing services between various departments within UC are not deemed sales. UC is considered the consumer of these items. ***Sales or use tax applies*** to the purchase of materials and supplies used in the production of photographs, photocopies and the products of photo finishing services by UC for transfers within the UC system.

2. Sales to Non-UC Purchasers

(a) Photographers and Photostat Producers

Sales tax applies to sales of photographs and photocopies, whether or not produced to the special order of the customer. ***Sales tax also applies*** to charges for the making of photographs or photocopies with material furnished by customers. No deduction is allowable due to expenses such as travel time, telephone calls, equipment rental or wages paid to assistants or models, whether or not such expenses are itemized in billings to customers.

Sales or use tax does not apply to sales to photographers and persons who make photocopies of tangible personal property that becomes an ingredient or component part of photographs or photocopies sold, such as mounts, frames, and sensitized paper. UC should give a resale certificate to their vendors for these purchases.

However, ***sales tax applies*** to sales to the photographer or producer of materials used in the process of making the photographs or photocopies that do not become an ingredient or component part of such photographs or copies, such as chemicals, trays, films, plates, proof paper and cameras. (Regulation 1528(a)).

(b) Prints and Enlargements

Sales tax applies to charges for printing pictures or making enlargements from negatives or slides provided by the customer.

³⁰ See Example 2 of Section 2.III.A.2, Rate of Tax & Point of Sales to see how the new out-of-district retailer responsibility for transaction/district taxes applies when UC Irvine bookstore sells tangible personal property in San Francisco.

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Sales tax applies to sales to photofinishers of all tangible personal property used by them in printing pictures or making enlargements except property that becomes an ingredient or component part of the prints, enlargements and other items sold by them.

(c) Coloring and Tinting

Sales tax applies to charges for coloring and tinting new pictures. **Sales tax does not apply** to charges for tinting and coloring customer-owned prints.

Sales tax does not apply to sales of colors and tints to photo finishers for their use in coloring and tinting new pictures (Regulation 1528(c)(2)).

(d) Film Processing

Sales tax applies to all film processing charges (i.e., printing, enlarging and duplicating photos, as distinguished from negative development). These are taxable as the true object of the sale is the tangible personal property (Section 6051).

(e) Negative Development of Customer-Furnished Film

Sales tax does not apply to separately stated charges for the negative development of customer-furnished film. To sustain the exemption, the film development charges must be stated separately from the processing charge. Development of film by the reverse process method is not the negative development of film.

Example: The invoice states: Film negative developing and processing - \$10. The entire charge is taxable with no deduction for developing.

Example: The invoice states: Film negative developing \$4, processing \$6. Only the processing charges are taxable. The taxable amount to report is \$6.

B. Reprographics: Sales of Printed Matter

1. Sales Within UC

Internal transfers of printed matter between various departments within the UC are not deemed sales of such items and UC is considered the consumer of these items. **Sales or use tax applies** to the purchase of the materials and supplies used in the production of printed matter by UC for transfers within the UC system.

2. Sales to Non-UC Purchasers

All printed matter sold by printers is **subject to sales or use tax unless** the item is sold for resale or is specifically exempt, such as items qualifying as printed sales messages. The production of printed matter for a consumer is a sale of tangible

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personal property whether the materials incorporated into the printed matter are furnished by the consumer or the printer. Unless that sale is exempt from tax, tax applies to the total gross receipts or sales price of the sale with no deduction on account of:

- the cost of the raw materials or other components;
- labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property; or
- any other expenses or services that are a part of the sale.

Printers may not deduct from the gross receipts or sales price from their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them, nor can they deduct the costs of special printing aids for which they are consumers under Regulation 1541 (c)(1)(A), whether or not a separate charge is made to the customer for the special printing aids. Receipts attributable to such costs are includable in the measure of tax (Regulation 1541(b)³¹).

(a) Services

Sales tax applies to customer charges for services that are a part of the sale of tangible personal property to consumers, such as overtime and set-up charges and charges for die cutting, embossing, folding (except as provided for mailing services below), and other binding operations. ***Sales tax applies*** regardless of whether or not the materials or any parts thereof are furnished by the customer (Regulation 1541(b)).

(b) Mailing

Sales tax does not apply to charges for postage or addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matter, **provided** such charges are **separately stated** on invoices and in the accounting records. If such charges are **not separately stated** on invoices and in the accounting records, ***sales tax applies*** to the charges for these services. ***Sales tax applies*** to charges for envelopes whether or not separately stated (Regulation 1541(h)).

(c) Items Consumed by Printers

Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to, or to the use of the property by, a printer and also to any sale subsequent to its use by the printer. Property ordinarily consumed by a printer includes machinery (e.g., printing presses, cameras, digital pre-press equipment, and plate makers), office equipment, and printing aids. Printers, however, may purchase special

³¹ Regulation 1541, effective 10/03/02.

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printing aids for resale. (See specific rules for special printing aids, below).

If title is transferred to the customer before the materials are used, ***sales tax applies*** on the sale of such items by the printer to the customer. If title to the materials is not transferred from the printer to the customer before use, ***tax applies*** on the purchase of materials by the printer. ***Sales tax also applies*** on the sale of the materials following their use by the printer to the customer (Regulation 1541(b)). Therefore, it is important for the title to pass directly to the customer and not the printer to avoid double taxation.

Example: A student designs a brochure and requests the reprographics department to print 100 copies of the brochure. UC orders the printing plates from a manufacturer of printing plates and creates 100 copies of the brochure. The reprographics department invoices the student for 100 copies of the brochure, set up charges, and printing plates. The entire charge is taxable. In addition, if title to the printing plates does not pass to the student, prior to reprographics use of the plates, reprographics must pay the sales/use tax on their purchase of the plates from the manufacturer.

Example: All facts are the same as above, except reprographics does not charge the student for the printing plates as the plates will be kept by the reprographics department. The entire invoices remain taxable and reprographics must pay sales or use tax to the manufacturer of the printing plates on the cost of the plates.

(d) Conceptual Services (Regulation 1541(d))³²

- (1) When the printer makes a lump sum charge for a taxable sale of printed matter, the full lump sum charge is **subject to tax** with no deduction on account of any conceptual or other services performed to produce that printed matter. When the printer itemizes its charges for a taxable sale of printed matter, tax applies to the printer's entire charge except as provided below.
- (2) As part of its contract to produce and sell printed matter, a printer may also agree to acquire finished art for use in producing the printed matter, and the acquisition of that finished art may involve the providing of services to convey ideas, concepts, looks, or messages to a printer's customer which result in a transfer, enhancement, or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If the printer states a separate charge for such services which are itemized as "design charges," "preliminary art," "concept development," or any other designation that clearly indicates that the charges are for such services and not for

³² Regulation 1541, effective 10/03/02.

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finished art, they are **nontaxable** unless the contract of sale provides that the printer will pass to its customer title or the right to permanent possession of the artwork in tangible form, such as on electronic media or hard copy, or permanent possession of the artwork in tangible form is, in fact, transferred to the client. The remainder of the printer's charge is **subject to tax**.

- (3) *If a printer separately itemizes charges for finished art that also include charges for conceptual services, it will be refutably presumed that 75 percent of the combined charge for the finished art and conceptual services is for the nontaxable services. If, however, the printer acquires the finished art and conceptual services from a commercial artist (rather than producing the finished art itself) and the commercial artist itemizes a separate charge for conceptual services that is less than 75 percent of the commercial artist's combined charge for conceptual services and finished art, that lesser percentage shall be applied to the printer's combined charge for final art and conceptual services to determine the total nontaxable charges for conceptual services. **Tax applies** to the remaining portion of the combined charge for final art and conceptual services unless: 1) the printer passes title to the final art to its customer; and 2) that transfer qualifies a technology transfer agreement under Regulation 1540(b)(2)(D)2 and Cal. Rev. & Tax. Cd. Sections 6011(c)(10) and 6012(c)(10), in which case tax applies to the charge for finished art in accordance with that provision. A separately itemized charge for special printing aids is not a separately itemized charge for finished art and conceptual services, and no portion of that charge is excluded from tax as a charge for nontaxable conceptual services.*

(A) A Technology Transfer Agreement (TTA) is an agreement under which a patent or copyright holder assigns or licenses the right to make and sell a product to use a process subject to the patent or copyright interest (Sections 6011(c)(10) and 6012(c)(10)).³³

(e) Special Printing Aids (Regulation 1541 ((c)(1)))³⁴

Special printing aids are reusable manufacturing aids which are used by a printer during the printing process and are of unique utility to a particular customer. Special printing aids include electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, film, single color or multicolor separation negatives, and flats. For purposes of this regulation, special printing aids includes items defined as intermediate production aids. Intermediate production aids include items such as artwork, illustrations, photographic images, photo engravings, and other similar materials which are used to produce special printing aids or finished art or other intermediate production aids.

³³ See Section 2.XII.B, Technology Transfer Agreements (TTAs).

³⁴ Regulation 1541, effective 10/03/02.

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(1) Printer's Purchase of Special Printing Aids.

- (A) When a printer who uses special printing aids to produce printed matter does not wish to sell those special printing aids in connection with the printer's sale of the printed matter so produced, the printer shall include the following or substantially similar statement in the contract or the sales invoice: "Special printing aids are not being sold to the customer as part of the sale of the printed matter, and the selling price of the printed matter does not include the transfer of title to the special printing aids." When this statement, or a substantially similar statement, is included in the contract or sales invoice, the printer retains title to the special printing aids and is the consumer thereof, without regard to whether the printer separately itemizes a charge for the special printing aids. Accordingly, the printer may not issue a resale certificate to purchase such special printing aids for resale, and tax applies to the cost to the printer of those special printing aids.
- (B) Unless the printer includes a statement in the contract or sales invoice retaining title to the special printing aids, it shall be irrefutably presumed that the printer resold to the customer the special printing aids purchased or produced by the printer for use on the customer's job, prior to any use, along with the printed matter produced with the special printing aids, without regard to whether the printer separately itemizes a charge for the special printing aids. Accordingly, unless the printer includes a statement in the contract or sales invoice retaining title, the printer may issue a resale certificate when purchasing such special printing aids or their components. If the vendor of the special printing aids to the printer does not take a valid and timely resale certificate from the printer stating that the special printing aids are for resale, the vendor has the burden of showing that the printer actually resold the special printing aids prior to use as provided in this subdivision.

(2) Printer's Sale of Special Printing Aids.

When the printer is regarded as purchasing the special printing aids for resale, the following rules apply to determine the application of tax to the printer's sale of those special printing aids along with the printed matter produced with the special printing aids.

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(A) Retail Sales of Special Printing Aids.

1. Sales to the United States Government. When a printer makes a retail sale of special printing aids along with the printed matter produced with those special printing aids to the United States Government, the sale of the printed matter and the special printing aids to the United States Government is ***exempt from tax*** as provided in Regulation 1614.
2. With nontaxable sale of printed matter. When a printer makes a retail sale of special printing aids to anyone other than the United States Government along with a nontaxable sale of printed matter (such as an exempt sale in interstate commerce, an exempt sale of qualifying newspapers, periodicals, or printed sales messages, or a nontaxable sale for resale), the printer's sale of the special printing aids is ***subject to sales tax***. The printer's taxable gross receipts or sales price from the sale of the special printing aids is deemed to be the sale price of the special printing aids, or their components, to the printer without regard to whether the printer separately states a charge for the special printing aids or, if the printer does so, without regard to the amount of that separately stated charge, and tax is due measured by that sale price. If the printer has paid California sales tax reimbursement or use tax on the sale price of the special printing aids or their components to the printer, ***no additional tax is due***.
3. With taxable sale of printed matter. When a printer makes a retail sale of special printing aids along with the taxable retail sale of printed matter, ***tax applies*** to the entire charge for the printed matter and special printing aids, without regard to whether the charge for the special printing aids is separately stated. If the printer does not make a separate charge for the special printing aids, the charge for the printed matter is deemed to include the taxable charge for the special printing aids, and ***no further tax is due*** on account of the sale of those special printing aids.

(B) Nontaxable Sales of Special Printing Aids for Resale
A person purchasing printed matter for resale may also purchase the special printing aids used to produce the

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printed matter for resale if that person will, in fact, resell the special printing aids prior to any use. A printer will not be regarded as selling special printing aids for resale unless: 1) the printer separately states the sale price of the special printing aids in an amount not less than the sale price of the special printing aids, or their components, to the printer; and 2) the printer accepts a timely and valid resale certificate in good faith from the printer's customer stating that the special printing aids are purchased for resale. The term "special printing aids" on a resale certificate shall be sufficient to cover all special printing aids, and a printer accepting such a resale certificate in good faith will be regarded as selling the special printing aids for resale provided the printer includes the required separately stated price for them. Otherwise, the printer will be regarded as selling the special printing aids at retail, and will owe tax on that retail sale accordingly. A printer might sell special printing aids for resale along with printed matter under circumstances where the sale of the printed matter is for resale and also qualifies for exemption, such as a sale in interstate commerce where the purchaser will then resell the printed matter prior to use. However, since a purchaser of special printing aids from a printer would not be regarded as purchasing them for resale unless reselling them as part of the sale of the printed matter produced with those special printing aids, a printer claiming its sale of special printing aids is for resale should take a resale certificate for its sale of the printed matter as well, even if the sale of that printed matter would also qualify for exemption.

1. Sales of printed matter to multiple purchasers. A person is not purchasing special printing aids for resale when title to the special printing aids does not pass to that person's customer prior to any use. If that person's customer does not obtain the right to exercise dominion and control over the special printing aids, the person will not be selling the special printing aids to its customer and cannot purchase the special printing aids for resale. A person does not purchase special printing aids for resale when the printed matter produced with those special printing aids is sold to several purchasers. For example, a person purchasing newspapers for individual sale cannot purchase special printing aids for resale because the individual purchasers of the newspaper are not also purchasing the special printing aids. A person purchasing posters for sale to the general public is not purchasing

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special printing aids for resale to the general public. A person purchasing printed cartons to pack items for individual sale is not purchasing the special printing aids used to produce the cartons for resale to the ultimate purchasers of the contents of the carton. In addition to the fact that the multiple purchasers in each of these cases could not at any time be regarded as purchasing the special printing aids, the retail purchaser of the end product is not known at the time the special printing aids are used, meaning that the special printing aids could not in any event be resold to those purchasers prior to use.

2. Existing obligation to resell special printing aids. A person cannot purchase special printing aids for resale when that person does not have an existing obligation to resell those particular special printing aids since, if the purchaser does not have such an existing obligation to resell the special printing aids, the printer will use them on the purchaser's behalf before they could be resold by the purchaser. An existing obligation may be represented by a purchase order, invoice, or other existing agreement, whether oral or in writing. If the existing obligation is an oral agreement, the person purchasing the special printing aids for resale must have some means to establish that the agreement was in existence no later than the time the special printing aids were used in the printing process.

(C) Split Sales.

A printer may use special printing aids to produce printed matter where a portion of the sale is taxable and a portion of the sale is not taxable, such as the sale of printed sales messages some of which are delivered as required for exemption by Regulation 1541.5 and some of which are delivered directly to the purchaser. If a printer makes a sale of printed matter where a portion of the sale is taxable and a portion is not taxable along with a retail sale of the special printing aids used to produce that printed matter, tax is due on the full sale price of the special printing aids. If the printer separately states a charge for the special printing aids in an amount not less than the sale price of the special printing aids or their components to the printer, tax applies to that separate charge. In the absence of such a separate charge, the taxable portion of the sale of printed matter will be regarded as including the sale of the special printing aids

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provided that the measure of tax on that sale is at least equal to the sale price of the special printing aids or their components to the printer. If so, no further tax is due for the printer's sale of the special printing aids. If the measure of tax on the sale of the printed matter is less than the sale price of the special printing aids or their components to the printer, then the printer owes tax on the difference.

(f) Color Separators (Regulation 1541(e))³⁵

The application of tax to printers as explained in this regulation also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. **Tax applies** to the sale of such property to, or to the use of such property by, the color separator. Examples of such property include filters and screens, trial proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold. Color separator working products are special printing aids for purposes of this regulation, and the provisions of Regulation 1541(c) apply to their purchase and sale. Color separators, and persons such as printers when acting as color separators, may purchase color separator working products for resale when title to such property passes to the customer prior to use by the color separator as described in Regulation 1541(c). The term "color separator working products" or "special printing aids" on a resale certificate shall be sufficient to cover all such products.

Charges for alterations of film work for \$100 or less shall be considered charges for restoring property to its original condition and not subject to tax. Charges greater than \$100 shall be considered charges for fabrication labor and subject to tax.

(g) Composed Type (Regulation 1541(f))³⁶

- (1) In General. **Tax does not apply** to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. Tax applies to charges for transfers of composed type combined with artwork as provided in Regulation 1541(f)(3).

Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys,

³⁵ Regulation 1541, effective 10/03/02.

³⁶ Regulation 1541, effective 10/03/02.

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proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of nontaxable typography or typesetting services, such as clip art that is combined with text on the same page.

Composed type includes type together with lined borders and plain, straight, fancy, or curved lines. Composed type also includes charts, tables, graphs, and similar methods of providing information.

- (2) Photocomposition (Including Phototypesetting and Computer Typesetting). **Tax does not apply** to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, desktop publishing, Varsity or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition) method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting machine ready to be cut and pasted up for reproduction or computer generated type), if that product contains text only or text combined with clip art, whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.

The transfer of camera-ready copy containing text only or text and clip art in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer is **not subject to tax**. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.

Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork other than clip art.

Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing **are subject to tax**. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced

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by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.

- (3) **Artwork.** Artwork, other than clip art combined with composed type on the same page, is not composed type. The term "artwork" includes illustrations (e.g., drawings, diagrams, halftones, or color images), photographic images, drawings, paintings, handlettering, and computer generated artwork. If the basis for billing is on a per page basis, the charge for any page with artwork is subject to sales tax and the charge for any page with only text, or text and clip art, is not subject to tax. If the basis for billing is lump sum, the ratio of pages containing artwork to the total number of pages, applied to the lump sum charge, represents the retail sale price of the artwork and is subject to tax, but in no event shall the retail sale price of the artwork be less than the sale price of the artwork, or its components, to the typographer.

However, if ten percent or fewer of the pages contain artwork, the true object of the sale shall be deemed to be a sale of typography services with an incidental transfer of artwork, and the typographer is the consumer of that artwork. ***Tax applies*** to the sale price of the artwork, or its components, to the typographer. ***Tax does not apply*** to the sale of the typography service as explained in Regulation 1541(f)(1).

- (4) **Reproduction Rights.** Notwithstanding Regulation 1541(f)(3), if the transfer of artwork qualifies as a technology transfer agreement under Regulation 1540(b)(2)(D) 2, tax applies to the transfer of the artwork in accordance with that provision.

- (h) **Digital Pre-Press Instruction (Regulation 1541(g))³⁷**

Digital pre-press instruction is a custom computer program under Section 6010.9 of the Revenue and Taxation Code, the sale of which is not subject to tax, provided the digital pre-press instruction is prepared to the special order of the purchaser. Digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a "canned" or prewritten computer program which is held or existing for general or repeated sale or lease, even if the digital pre-press instruction was initially developed on a custom basis or for in-house use. The sale of such canned or prewritten digital pre-press instruction in tangible form is a sale of tangible personal property, the retail sale of which is subject to tax.

³⁷ Regulation 1541, effective 10/03/02.

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(i) Printed Sales Messages (Regulation 1541.5)

"Printed sales messages" are limited to catalogs³⁸, letters, circulars, brochures, and pamphlets printed for the purpose of advertising and promoting goods or services. Items not qualifying as "printed sales messages" include campaign literature and other fund-raising materials; stationery; sales invoices; containers for sample merchandise; newspapers or periodicals; calendars; notepads; cash register tapes; directories that do not meet the principal purpose of advertising or promoting goods or services.

Reply envelopes, order forms or other printed matter will be considered part of the printed sales message when such property is inserted in, stapled, glued, or otherwise affixed to the printed sales message in such a manner that it becomes a component or integral part of the printed sales message and is sold together with the printed sales message. Accordingly, the total charge in such cases is deemed to be for printed sales messages and not subject to tax.

Sales tax does not apply to the sale or use of printed sales messages that meet **all** of the following conditions:

- They are printed to the special order of the purchaser.
- They are mailed or delivered by the seller, the seller's agent or a mailing house acting as an agent of the purchaser, through the U.S. Postal Service or by common carrier.
- They are distributed at no cost to third parties that become the owners of the printed material.

Sales tax applies to the charges for printed sales messages in the same manner as for other printed matter if all the above conditions are not met. Documentation such as postal receipts, bills of lading and exemption certificates must be acquired and retained to support a claim for exemption of printed sales messages.

In order for the exemption for printed sales messages to apply, the printed material must be delivered by the seller, the seller's agent or a mailing house acting as the agent for the purchaser, to a third party. The purchaser cannot take possession of the printed sales message. An agent or mailing house acting as an agent for the purchaser must be an entity that is independent from the purchaser; it cannot be a division within the purchaser.

³⁸ If the purchase or sale of catalogs by a school falls under the "Printed Sales Message" exemption, the catalog will be exempt from the sales and use tax. Tax will not be due on the cost of the materials to UC. Otherwise, the purchases of the catalog or materials consumed by UC in producing the catalog are subject to the sales or use tax. The retail sale of the catalog is never taxed. See Section 2.III.F, Bookstore: Catalogs and Class Schedules.

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Thus, campus mailing divisions cannot act as UC's agent for purpose of the exemption as they do not meet the definition of "mailing house" for purpose of the regulation. Failure to comply with the regulation in ordering printed sales messages will result in these transactions becoming subject to tax.

C. Reprographics: Sales of Artwork

1. Sales Within UC

Internal transfers of artwork between various departments within UC are not deemed sales of such items and UC is considered the consumer of these items.

2. Third Party Purchases

Sales or use tax applies to the purchase from third parties of the materials and supplies used in the production of artwork by UC for transfers within the UC system.

3. Sales to Non-University Purchasers

(a) Definitions³⁹

- (1) **Digital Pre-Press Instruction.** Digital pre-press instruction is the creation of original information in electronic form by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press, which is then transferred on electronic media such as tape or compact disc.
- (2) **Electronic Artwork.** Electronic artwork is artwork created through the use of computer hardware and software processes which results in artwork in a digital format that can be transmitted to others via electronic means (that is, transmitted through remote telecommunications such as by modem or over the Internet, or by electronic media such as compact or floppy disc). Elements of the process include the creation of original artwork or photographic images, scanning of artwork or photographic images, composition and design of text, insertion and manipulation of scanned and original electronic artwork, photographic images, and text. Electronic artwork does not include artwork that is transferred to clients in a tangible form, other than on electronic media, even where such artwork may have been manufactured or produced in whole or in part by computer hardware and software processes.
- (3) **Finished Art.** Finished art is the final artwork used for actual reproduction by photomechanical or other processes, or used for

³⁹ Regulation 1540, effective 10/3/02.

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display. It includes electronic artwork, illustrations (e.g. drawings, diagrams, halftones, or color images), photographic images, sculptures, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental graphic design services are not finished art.

- (4) **Intermediate Production Aids.** Intermediate production aids include items such as artwork, illustrations, photograph images, photo engravings, and other similar materials which are used to produce special printing aids or finished art.
- (5) **Master Agreement.** A master agreement is a contract, however characterized (such as "agency-client agreement"), entered into between an advertising agency or commercial artist and its client which specifies the obligations of each party to the master agreement with respect to their relationship, whether for a specified time or advertising campaign or until one of the parties terminates the agreement. A master agreement between an advertising agency and its client may specify the obligations of each with respect to the design of an advertising campaign for the client, the placement of the advertising with print and television media, and for the sale and purchase of tangible personal property related to the advertising campaign. There may then be additional terms for the purchase of specific tangible personal property during the advertising campaign, such as in a purchase order, which identifies the specific property that will be purchased and sold and the sales price for that property.
- (6) **Preliminary Art.** Preliminary art is tangible personal property which is prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into, or before approval is given, for preparation of finished art provided neither title to, nor permanent possession of, such tangible personal property passes to the client. Examples of preliminary art include roughs, visualizations, layouts, comprehensives, and instant photos.
- (7) **Special Printing Aids.** Special printing aids are reusable manufacturing aids which are used by a printer during the printing process and are of unique utility to a particular client. Special printing aids include electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, film, single or multi-color separation negatives, and flats.
- (8) **Advertising.** Advertising is commercial communication utilizing one or more forms of communication (such as television, print, bill CDTFAs, or the Internet) from or on behalf of an identified person to an intended target audience.

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- (9) Advertising Agencies. Advertising agencies design and implement advertising campaigns for purposes of advertising the goods, services, or ideas of their clients. As part of that primary function, advertising agencies provide their clients with services (such as consultation, consumer research, media planning and placement, public relations, and other marketing activities), and may also provide tangible personal property (such as print advertisements, finished art, and video and audio productions).
- (10) Commercial Artists. Commercial artists, who may characterize themselves as commercial artists, commercial photographers, or designers, provide services and tangible personal property to their clients for use in their clients' advertising campaigns, or for their clients' other commercial endeavors such as sales of copies of finished art (including, e.g., photographic images) provided by a commercial artist. Services they provide to their clients include the creation and development of ideas, concepts, looks, or messages. Electronic artwork they provide may be transferred through remote telecommunications such as by modem or over the Internet, or by tangible means through electronic media such as compact or floppy disc. Tangible personal property they provide may include electronic media on which electronic artwork is transferred to the client, hard copies of the electronic artwork, hard copies of finished art (which may consist of photographic images).
- (11) Contract of Sale. An agreement to transfer tangible personal property for consideration is a contract of sale. The client may, for example, issue a purchase order for the purchase of tangible personal property. The contract of sale for that tangible personal property consists of the terms of the purchase order together with the relevant terms of the master agreement (defined in Regulation 1540(a)(10)).
- (12) Hard Copies. An item is transferred on hard copy when it is transferred on any tangible personal property other than in digital format on electronic media. For example, finished art transferred on canvas or paper is transferred on hard copy while a transfer of finished art in digital format on compact or floppy disc is not regarded as a transfer on hard copy.
- (13) Third Parties. A reference in this regulation to a transfer to a client also includes a transfer to a third party on the client's behalf. For example, the discussion in Regulation 1540(b)(2)(B) for transfers of finished art by loading into the client's computer also includes transfers of the finished art by loading it into a third party's computer at the instruction of the client.

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(b) Application of Tax to Activities of Advertising Agencies and Commercial Artists.

(1) Services

(A) General.

1. Services performed to convey ideas, concepts, looks, or messages to a client may result in a transfer, enhancement, or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as "design charges," "preliminary art," "concept development," or any other designation that clearly indicates that the charges are for such services and not for finished art, they are nontaxable; however, tax applies if: (a) the master agreement or other contract provides that the advertising agency or commercial artist will pass to the client title or the right to permanent possession of the artwork in tangible form, such as on electronic media or hard copy, or (b) permanent possession of the artwork in tangible form is transferred to the client. If the master agreement provides that the client owns the concepts embodied in tangible personal property that is owned and possessed by the advertising agency or commercial artist (e.g., so that such concepts cannot be used on behalf of any other person), that contract provision does not constitute the passage of title to tangible personal property to the client. A requirement that an advertising agency or commercial artist retain permanent possession of the artwork in tangible form does not itself constitute a sale of that property to the client in the absence of a provision passing title to such property to the client.
2. Tangible personal property developed and used during services performed to convey ideas, concepts, looks, or messages is consumed in the performance of those services. Unless, prior to any use, the advertising agency or commercial artist passes title to such property to the client as discussed in the previous paragraph, the advertising agency or commercial artist is the consumer of such tangible personal property used and tax applies to the sale of property to, or to the use of the property by, the advertising

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agency or commercial artist. If the advertising agency or commercial artist passes title to, or permanent possession of, such tangible personal property to its client, tax applies to the sale of the tangible personal property by the advertising agency or commercial artist to the client.

- (B) **Digital Pre-Press Instruction.** Digital pre-press instruction is a custom computer program under Section 6010.9 of the Revenue and Taxation Code, the sale of which is not subject to tax, provided the digital pre-press instruction is prepared to the special order of the purchaser. Digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a "canned" or prewritten computer program which is held or existing for general or repeated sale or lease, even if the digital pre-press instruction was initially developed on a custom basis or for in-house use. The sale of such canned or prewritten digital pre-press instruction in tangible form is a sale of tangible personal property, the retail sale of which is subject to tax.
- (C) **Retouching Photographic Images.** Retouching a photographic image for the purpose of repairing or restoring the photograph to its original condition is a repair, the charge for which is not taxable.
- (D) **Signage.** The creation and providing of single copies of blueprints, diagrams, and instructions for signage as a result of environmental graphic design is a service the charge for which is not taxable. Charges for additional copies are taxable.
- (E) **Websites.** The design, editing, or hosting of an electronic website in which no tangible personal property is transferred to the client is a service, the charge for which is not subject to tax.
- (F) **Specific Nontaxable Charges.** The following and similar fees and commissions are not taxable when they are separately stated. Whether separately stated or not, these fees and commissions are not included in the calculation of "direct labor" for purposes of Regulation 1540(b)(3).
 - 1. Media commissions or fees received for placement of advertising whether paid by the medium, by another advertising agency, or by the client.
 - 2. Commissions or fees paid to advertising agencies by suppliers. Examples of such

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commissions are those paid to an' advertising agency by a premium manufacturer (or distributor) or a direct-by-mail supplier.

3. Consultation and concept development fees related to client discussion, development of ideas, and other services. If the advertising agency transfers to the client tangible personal property produced as a result of these services, the transfer is incidental to the advertising agency's providing of the service and is not a sale of that tangible personal property; the advertising agency is the consumer of tangible personal property transferred to the client incidental to the providing of a service.
4. Fees for research or account planning that entail consumer research and the application of that research to the client's business or industry.
5. Fees for quality control supervision that entails the proofing and review of printing and other products provided by outside suppliers.
6. Charges for the formulation and writing of copy.

(2) Finished Art

- (A) Use of Aids in Creation of Finished Art. If the advertising agency or commercial artist uses any intermediate production aids or special printing aids in the creation of the finished art, the presumptions with respect to passage of title and the calculation of the measure of tax on the sale of such aids by the advertising agency or commercial artist, is governed by the provisions of Regulation 1541 applicable to special printing aids.
- (B) Transfers of Electronic Artwork. A transfer of electronic artwork in tangible form is a sale. However, a transfer of electronic artwork from an advertising agency or commercial artist to the client or to a third party on the client's behalf that is not in tangible form is not a sale of tangible personal property, and the charges for the transfer are not subject to tax. A transfer of electronic artwork is not in tangible form if the file containing the electronic artwork is transferred through remote telecommunications (such as by modem or over the Internet), or if the file is loaded into the client's computer by the advertising agency or commercial artist, and the client does not obtain title to or possession of any

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tangible personal property, such as electronic media or hard copy. If the transfer is not a transfer in tangible form because it is loaded onto the client's computer, the advertising agency or commercial artist should document that transfer by a written statement signed at the time of loading by the client and by the person who loaded the electronic artwork into the client's computer with the following or similar language: "This electronic artwork was loaded into the computer of [client's name] by [advertising agency's or commercial artist's name], and [advertising agency's or commercial artist's name] did not transfer any tangible personal property containing the artwork, such as electronic media or hard copies, to [client's name]." When such a statement is signed at the time the file is loaded, it will be rebuttably presumed that the transfer of electronic artwork was not transferred in tangible form. If there is no such timely completed statement, the advertising agency or commercial artist may provide other substantive evidence establishing that the artwork was not transferred in tangible form.

- (C) Transfers of Finished Art in Tangible Form. The electronic or manual preparation of finished art for; use in reproduction or display is not a service. Unless the transfer is not in tangible form as explained in Regulation 1540(b)(2)(B), the transfer of finished art is a sale of tangible personal property and tax applies to charges for that finished art, including all charges for any rights sold with the finished art, such as copyrights or distribution and production rights, except as provided in Regulation 1540(b)(2)(D)2.
1. Combined Charge for Finished Art and Conceptual Services. If charges for finished art are combined into a single charge that also includes nontaxable charges for conceptual services described in Regulation 1540(b)(1)(A), the advertising agency or commercial artist may report the measure of tax on the retail sale of the finished art as specified in Regulation 1540(b)(3), provided that the reported measure of tax must also include the value of reproduction rights included with the transfer except those that are not taxable as provided in Regulation 1540(b)(2)(D)2.
 2. Lump Sum Billing -- 75/25 Presumption. If tax is not reported as provided in the previous paragraph, it will be rebuttably presumed that 75 percent of the combined charge for the finished

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art and conceptual services is for the nontaxable services and that 25 percent of the combined charge is the measure of tax on the retail sale of the finished art. However, if the sales price to the advertising agency or commercial artist of the finished art (or component parts) and any intermediate production aids or special printing aids sold to the client for that combined charge is more than 25 percent of the combined charge to the client, the measure of tax is the sales price of the tangible personal property to the advertising agency or commercial artist.

(D) Reproduction Rights Transferred With Finished Art.

1. Charges for the transfer of possession in tangible form to the client or to anyone else on the client's behalf of finished art for purposes of reproduction are included in the measure of tax on that sale, including all charges for the right to use that property, even though there is no transfer of title to the person reproducing the finished art, except as provided in Regulation 1540(b)(2)(D)2.
2. Any agreement evidenced by a writing (such as a contract, invoice, or purchase order) that assigns or licenses a copyright interest in finished art for the purpose of reproducing and selling other property subject to the copyright interest is a technology transfer agreement, as explained further in Regulation 1507. Tax applies to amounts received for any tangible personal property transferred as part of a technology transfer agreement. Notwithstanding Regulation 1540(b)(2)(C), tax does not apply to temporary transfers of computer storage media containing finished art transferred as part of a technology transfer agreement. Tax does not apply to amounts received for the assignment or licensing of a copyright interest as part of a technology transfer agreement. The measure of tax on the sale of finished art transferred by an advertising agency or commercial artist as part of a technology transfer agreement shall be:
 - a. The separately stated sales price if the finished art is permanently transferred, or the separately stated lease price if the finished art is temporarily transferred;

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provided that the separately stated price is reasonable;

- b. Where there is no such separately stated price, the separate price at which the person holding the copyright interest in the finished art has sold or leased that finished art or like finished art to an unrelated third party where: 1) the finished art was sold or leased without also transferring an interest in the copyright; or 2) the finished art was sold or leased in another transaction at a stated price satisfying the requirements of Regulation 1540(b)(2)(D) 2.a; or
- c. If there is no such separately stated price under Regulation 1540(b)(2)(D) 2.a., nor a separate price under Regulation 1540(b)(2)(D) 2.b., 200 percent of the combined cost of materials and labor used to produce or acquire the finished art. "Cost of materials" consists of the costs of those materials used or incorporated into the finished art, or any tangible personal property transferred as part of the technology transfer agreement. "Labor" means any charges for labor used to create such tangible personal property where the advertising agency or commercial artist purchases such labor from a third party, or the work is performed by an employee of the advertising agency or commercial artist.

(3) Sales of Other Tangible Personal Property by Advertising Agency or Commercial Artist

Tax applies to the total charge for the retail sale of tangible personal property by an advertising agency or commercial artist. If an advertising agency or commercial artist combines charges for nontaxable services as defined in Regulation 1540(b)(1)(F), such as media placement, with charges for tangible personal property for which the advertising agency or commercial artist is the retailer, the measure of tax on that retail sale of property includes the total of: direct labor; the cost of purchased items that become an ingredient or component part of the tangible personal property; the cost of any intermediate production aids or special printing aids; and a reasonable markup. Commissions, fees, and other charges exclusively related to the production or

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fabrication of tangible personal property are part of direct labor and are thus included in the measure of tax. Such charges include retouching of photographic images or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. An advertising agency or commercial artist must keep sufficient records to document the basis for the reported measure of tax.

(4) **Items Purchased by an Advertising Agency or Commercial Artist**

Except when property is resold prior to any use, an advertising agency or commercial artist is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to, or to the use of such property by, the advertising agency or commercial artist.

XI. STUDENT HEALTH⁴⁰

A. Prescription Medicines and Medical Devices

Sales tax does not apply to medicines sold or furnished for the treatment of a human being when those medicines are:

- Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on a prescription filled by a pharmacist in accordance with law (Regulation 1591(d)(1)), or
- Furnished by a licensed physician, dentist or podiatrist to his own patient for treatment of the patient (Regulation 1591(d)(2)), or
- Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician, dentist or podiatrist (Regulation 1591(d)(3)), or
- Sold to a licensed physician, dentist, podiatrist or health facility for the treatment of a human being (Regulation 1591(d)(4)), or
- Sold to the State of California or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by the State of California or any political subdivision or municipal corporation thereof (Regulation 1591(d)(5)), or
- Furnished by a pharmaceutical manufacturer or distributor without charge to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or to an institution of higher education for instruction or research. Such medicine must be of a type that can be dispensed only (a) for the treatment of a human being, and (b) pursuant to prescriptions issued by persons authorized to prescribe medicines. The exemption provided by this subdivision applies to the

⁴⁰ For sales made by the Medical Centers, please refer to Section 3, Medical Center as Seller.

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constituent elements and ingredients used to produce the medicines and to the tangible personal property used to package such medicines (Regulation 1591(d)(6)).⁴¹

B. Medicines and Medical Devices

The definition and scope of CA's exemption for Medicines and Medical Devices is discussed in detail in Section 5, Medical Center As Purchaser. The University of California's Student Health Services, as part of the State of California meet the conditions for exemption whether items are sold or furnished to students/patients. The exemption therefore hinges on whether an item meets the definition of a medicine or exempt medical device.

C. Sales by Pharmacy

UC's retail sale over-the-counter will be subject to CA sales and use tax like any other sale of tangible personal property. However, sales of prescribed medicines, dispensed on a prescription filled by a pharmacist in accordance with law will meet the conditions stated in Regulation 1591(d)(1). The sale under such conditions will be exempt from tax. The pharmacy will be required to maintain documentation to support the prescription, as define below.

Definitions:

1. Pharmacist

"Pharmacist" means a person to whom a certificate has been issued by the CDTFA, under the provisions of Section 4200 of the Business and Professions Code (Regulation 1591(a)(6)).

2. Prescription

"Prescription" means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist or podiatrist licensed in this state and given individually for the person or persons for whom ordered. The order must include all of the following:

- The name or names and addresses of the patient or patients.
- The name and quantity of the drug or devise prescribed and the directions for use.
- The date of issue.
- Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or license classification, and his or her federal registry number, if a controlled substance is prescribed.

⁴¹ Regulation 1591, amended effective 4/12/01.

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- A legible, clear notice of the conditions for which the drug is being prescribed, if requested by the patient or patients.
- If in writing, signed by the prescriber issuing the order (Regulation 1591(a)(7)).

XII. TECHNOLOGY LICENSING

A. Research and Development Contracts [Regulation 1501.1]

1. Qualified Research and Development Contract

Sales tax does not apply to receipts derived from qualified research and development contracts. When UC engages in the business of rendering services pursuant to a qualified research and development contract, UC is the consumer of tangible personal property used in rendering the service. ***Sales or use tax applies*** on the purchase of tangible personal property consumed in the performance of a qualified research and development contract to UC.

Definitions for Qualified Research and Development Contract

Research is defined as a planned search or critical investigation aimed at discovery of new knowledge with the hope that such knowledge will be useful in developing a new product or service or a new process or technique or in bringing about a significant improvement to an existing product or process.

Development is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. It includes conceptual formulation, design, testing of product alternatives, and construction of prototypes. However, it does not include a routine or periodic alteration to testing products, production lines, manufacturing processes, and other on-going operations even though those alterations may represent improvements, or market research or market testing activities.

A **qualified research and development contract** is a contract for a service undertaken for the purpose of discovering information which is technological in nature. The results are intended to be useful in the development of a new or improved product, process, technique, or invention. The contract will generally call for the delivery of a report detailing information developed by the contractor or other tangible personal property which is incidental to the true object of the contract.

A **qualified research and development contract does not include** a contract for research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors. Also not included is a contract for the design and production of a custom-made item.

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Tangible personal property transferred in a qualified research and development contract includes, but is not limited to:

- Appearance model - a non-operating model of a design that is a physical representation which is used to convey the image, texture, and appearance of the design.
- Prototype model - an operating model produced to validate design concepts or design specifications or demonstrate the design integrity or manufacturability of the design.
- Prototype or temporary tooling - tooling produced and used in the development of a prototypes.

2. Prototypes

Prototypes transferred in a qualified research and development contract for informational and testing purposes are ***not subject to tax*** regardless of the fact the research contract may place a value on the prototype. Prototypes transferred are for verification that a design meets the required technical specifications of the contract. No functional use of the prototypes is made. The contractor is the consumer of materials used in designing a prototype and ***tax applies*** on the sale of materials to the contractor.

Sales of additional prototypes transferred for purposes other than informational and testing use, where a functional use occurs, are at retail. For example, a sale of a prototype will be considered taxable if transferred for the purpose of testing the aesthetic features of the product by independent third parties for marketing purposes. UC is responsible for ***collecting sales tax*** on the sale of the prototype to their customer. The measure of tax will be the amount provided for in the contract for duplicate or replacement sets of the property or the fair market value as determined by a factor of three to the cost of direct materials used in the production of the prototype tooling.

3. Custom Made Items

A contract to design, develop, and manufacture a custom made item is a contract to sell tangible personal property and is generally **taxable**. Generally, a custom made item is intended for "functional use" and not for "informational and testing use." Unless the sale of the property is a sale for resale, tax applies to the gross receipts from the sale of the property intended for functional use. Gross receipts include the entire amount of the contract price, including charges related to research, design, and development activities. UC must ***charge sales tax*** on the entire contract price without regard to the fact that the research, design, and development charges may be separately stated unless the contract qualifies as a phased contract. See "phased contracts" for advantageous tax applications.

Definitions for Custom Made Items

A **custom made item** is defined as:

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- Property the purchaser desires for the item's intrinsic nature, not the data developed in the course of the manufacture of the item.
- Property the purchaser will use for purposes other than information and testing purposes.
- Property purchased for use by the purchaser or for resale.
- Production tooling produced and used for the manufacture of the final production units.

"Functional use" is defined as use for which the property was designed which occurs after completion of the research and development.

"Informational and testing use" of a prototype by the contractor or its customer does not qualify as a functional use.

Informational and testing use includes use by either the contractor or its customer including but not limited to:

- Testing for verification of a design to specifications.
- Developing data, algorithms, ideas, and/or knowledge to improve or perfect a design.
- Determining alternative design features and implementations.
- Validating testing of software and firmware embodied within a design.
- Demonstrating operation of a design for approval by a customer.
- Quality assurance and performance testing to determine limitations and failure modes of the design.
- Determining or improving interfaces to other equipment during the design process, or the processes for manufacturing the design.
- Testing to design failure.
- Evaluating numerous prototypes for the acceptability of the design and the manufacturability of such design.
- Testing prototypes to assure that the design works to the specifications desired.

4. Phased Contracts

In situations where UC will be providing research and development services in conjunction with a custom made item, it will be advantageous for UC to perform a phased contract. Within a phased contract, the research and development phase and the production phase are considered two separate contracts and are taxed as such.

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Treatment of the contract as a phased contract will allow the research and development phase to remain *exempt from sales tax*. Items produced for functional use in the production phase of the contract are still *subject to tax* unless the purchaser provides the contractor with a resale certificate or the transfer is otherwise exempt. The custom made item remains taxable as well.

A contract for the design and manufacture of a custom made item shall be considered a phased contract when the purchaser has the specific right to terminate the contract prior to or upon completion of the design phase or if two separate contracts exist, one for the design service and the other for the manufacture of the custom made item.

Definition of Phased Contract

A phased contract is one that provides for separate phases in which the purchaser has the specific right to terminate the contract prior to commencement of the next phase without the delivery of tangible personal property required to be delivered in any subsequent phase specified in the contract and without further obligation except for compensation for work completed or cancellation fees.

B. Technology Transfer Agreements (TTAs) [Regulation 1507⁴²]

"Technology transfer agreement" means an agreement evidenced by a writing (e.g., invoice, purchase order, contract, etc.) that assigns or licenses a copyright interest in tangible personal property for the purpose of reproducing and selling other property subject to the copyright interest. A technology transfer agreement also means a written agreement that assigns or licenses a patent interest for the right to manufacture and sell property subject to the patent interest, or a written agreement that assigns or licenses the right to use a process subject to a patent interest.

The licensing of software, under certain conditions, may qualify as and meets the definition of a Technology Transfer Agreement. Two recent court cases involving Nortel and Lucent concluded that software transferred on media qualify as TTAs provided certain criteria are met. These decisions could support many types of software and embedded software to be treated as TTAs for sales and use tax purposes.

The CA Department of Tax and Fee Administration's Legal Department has determined that a non-custom software transaction is similar to the software TTA's in Lucent if all of the following apply⁴³:

- The retailer of the software is the holder of the copyright or patent interests in the software;

⁴² Regulation 1507; effective 7/6/02.

⁴³ The requirements established by the CDTFA's Legal Department may or may not be consistent with the requirements established by the courts. This area continues to evolve and change, the CDTFA has not issued its final revised Regulation and as such taxpayers should continue to monitor any new developments and address any material acquisition with a professional advisor. The "Exclusive retailer" condition was not present in the *Nortel* or *Lucent* decisions.

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- The retailer transfers the software to the buyer on tangible storage media;
- The retailer transfers, in writing, a license to the buyer to copy the software;
- The tangible storage media is wholly collateral to the buyer's use of the license regarding the software, such as the tapes and discs used in *Lucent*, and
- The retailer is the exclusive retailer of its non-custom software recorded on the same or like type of wholly collateral tangible storage media.

A technology transfer agreement does not mean an agreement for the transfer of any tangible personal property manufactured pursuant to a technology transfer agreement, nor an agreement for the transfer of any property derived, created, manufactured, or otherwise processed by property manufactured pursuant to technology transfer agreement.

- (1) ***Tax applies*** to amounts received for any tangible personal property transferred in a technology transfer agreement. ***Tax does not apply*** to amounts received for the assignment or licensing of a patent or copyright interest as part of a technology transfer agreement.

The gross receipts or sales price attributable to any tangible personal property transferred as part of a technology transfer agreement shall be:

- (A) The separately stated sale price for the tangible personal property, provided the separately stated price represents a reasonable fair market value of the tangible personal property;
- (B) Where there is no such separately stated price, the separate price at which the tangible personal property or like (similar) tangible personal property was previously sold, leased, or offered for sale or lease, to an unrelated third party; or
- (C) If there is no such separately stated price and the tangible personal property, or like (similar) tangible personal property, has not been previously sold or leased, or offered for sale or lease to an unrelated third party, 200 percent of the combined cost of materials and labor used to produce the tangible personal property. "Cost of materials" consists of those materials used or otherwise physically incorporated into any tangible personal property transferred as part of a technology transfer agreement. "Cost of labor" includes any charges or value of labor used to create the tangible personal property whether the transferor of the tangible personal property contributes such labor, a third party contributes the labor, or the labor is contributed through some combination thereof. The value of labor provided by the transferor of the tangible personal property shall equal the separately stated, reasonable charge for such labor. Where no separately stated charge for labor is made, the value of labor shall equal the lower of the taxpayer's normal and customary charges for labor made to third persons, or the fair market value of such labor performed.

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- (2) **Tax applies** to all amounts received from the sale or storage, use, or other consumption of tangible personal property transferred with a patent or copyright interest, where the transfer is not pursuant to a technology transfer agreement.
- (3) Specific Applications. **Tax applies** to the sale or storage, use, or other consumption of artwork and commercial photography pursuant to a technology transfer agreement as set forth in Regulation 1540, Advertising Agencies, Commercial Artists and Designers.

Definitions:

- 1. "Copyright interest" means the exclusive right held by the author of an original work of authorship fixed in any tangible medium to do and to authorize any of the following: to reproduce a work in copies or phonorecords; to prepare derivative works based upon a work; to distribute copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending; to perform a work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; to display a copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission. For purposes of this regulation, an "original work of authorship" includes any literary, musical, and dramatic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings, including phonograph and tape recordings; and architectural works represented or contained in tangible personal property.
- 2. "Patent interest" means the exclusive right held by the owner of a patent issued by the United States Patent and Trademark Office to make, use, offer to sell, or sell a patented process, machine, manufacture, composition of matter, or material. "Process" means one or more acts or steps that produce a concrete, tangible and useful result that is patented by the United States Patent and Trademark Office, such as the means of manufacturing tangible personal property. Process may include a patented process performed with an item of tangible personal property, but does not mean or include the mere use of tangible personal property subject to a patent interest.
- 3. "Assign or license" means to transfer in writing a patent or copyright interest to a person who is not the original holder of the patent or copyright interest where, absent the assignment or license, the assignee or licensee would be prohibited from making any use of the copyright or patent provided in the technology transfer agreement.

XIII. U.S. GOVERNMENT TRANSACTIONS

A. Introduction

Certain transactions involving the U.S. Government may be exempt from sales tax. As set forth more fully in the discussion that follows, the sales and use tax regulations provide specific guidance in the following three areas:

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1. Section 1614. Sales to the U.S. Government and Its Instrumentalities. In general, sales to the U.S. Government are not subject to sales tax.
2. Section 1521(a)(3). United States Construction Contractors. [e.g., UC is the contractor]
 - Generally considered **consumers** of materials and fixtures that they furnish and install as part of their government contracts.
 - Considered **retailers** of machinery and equipment furnished in fulfilling government contracts, provided title provisions are satisfied, and must issue a **resale certificate** for such transactions.
3. Regulation 1618. United States Government Supply Contractors. [e.g., UC is the contractor]. Federal supply contractors must issue a resale certificate when they buy tools, equipment, direct consumable supplies and overhead materials to be used on a government contract, provided that title passes to the U.S. Government before the contractor uses it.

The regulations do not specifically address grants issued by the U.S. Government to grantees. In general, however, title to property acquired with grant funds vests in the University. The purchase of items of tangible personal property with grant funds is generally **subject to sales or use tax**.

B. Sales to the U.S. Government and Instrumentalities

Generally, the **sales tax does not apply** to sales to the United States or its unincorporated agencies and instrumentalities; any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States; the American National Red Cross, its chapters and branches; or incorporated federal instrumentalities not wholly owned by the United States, unless federal law permits taxing the instrumentality. Examples of incorporated federal instrumentalities exempt from tax are Federal Reserve banks, federal credit unions, federal land banks, and federal home loan banks (Regulation 1614)

Likewise, application of the use tax to the storage, use, or other consumption of tangible personal property by agencies or instrumentalities of the United States is prohibited unless federal law permits taxing the agency or instrumentality.

In order to support non-taxable sales to the United States, the following supporting documents should be retained for review by the California Department of Tax and Fee Administration auditors:

- Copies of U.S. Government purchase orders
- Copies of U.S. Government drafts or checks to prove that payment was made directly to the campus by the United States agency or instrumentality.

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C. U.S. Government Construction Contractors

A “U.S. Construction Contractor” means “a construction contractor who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract for the United States Government” (Regulation 1521) A construction contract for this purpose generally refers to a contract for construction involving real property.

The tax consequences associated with such contracts may vary depending upon whether the contract involves the purchase of:

- Materials
- Fixtures
- Machinery and equipment

U.S. Government contractors are treated as *consumers* of materials and fixtures which they furnish in connection with a U.S. Government contract; either the sales tax or use *tax applies* to sales to such contractors. However, U.S. Government contractors are *retailers* of machinery and equipment furnished in connection with the performance of a U.S. Government contract, *provided* that title to the property passes to the United States before the contractor makes any use of it.

D. U.S. Government Supply Contracts

A “U.S. Government Supply Contract” means “a contract with the United States to furnish, or to fabricate and furnish, tangible personal property...whereby title to tangible personal property purchased for use in fulfilling the contract passes to the United States pursuant to title provisions contained in the contract before the contractor uses the property to perform the function or act for which the property was designed and manufactured” (Regulation 1618). The term does not include contracts to construct improvements on real property or to the purchase of tangible personal property for use in fulfilling such contracts.

The tax application to U.S. Government contractors varies depending on:

- Type of contract being performed by the contractor
- The accounting method used to charge parts, materials or supplies to the contract
- The Federal Acquisition Regulations (FARs) applicable to the contract.

E. Cost Reimbursement Contracts (CPXX) and Fixed Price Contracts (FPXX)

Both construction and supply contracts may take the form of cost reimbursement or fixed price contracts.

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1. Cost Reimbursement Contracts (CPXX)

Generally, all items which are reimbursable costs under a CPXX contract with the U.S. government are *exempt* from tax when FAR 52.245.5 - Government Property Title Clause is incorporated by reference in the contract. This includes all deliverables, direct costs and indirect costs (i.e., overhead materials and supplies) since title passes to the U.S. Government upon delivery to the contractor, upon issuance of the property for use in the performance of the contract or upon reimbursement of the cost of the property by the U.S. Government, whichever occurs first. However, property that is leased by the contractor to perform the contract with the U.S. is subject to sales or use tax since the contractor cannot pass title to the government when the contractor does not hold title to the property in question.

2. Fixed Price Contracts (FPXX)

The application of tax to FPXX contracts is more complicated. The primary factor in determining whether an item is subject to tax is the timing of title passage. When the following FARs are present or incorporated by reference in a FPXX contract with the U.S. Government, all purchases of deliverables, direct materials and indirect materials (i.e., overhead supplies and materials) are properly purchased for resale.

- FAR 52.245-2 - Government Property Title Clause
- FAR 52.232-16 - Progress Payments Clause
- FAR 52.245-17 - Special Tooling
- FAR 52.245-18 - Special Test Equipment

When FAR 52.232.16 - Progress Payments is not present in a FPXX contract, only items which are direct charges to the contract or are deliverables under the contract are properly purchased for resale. Therefore, property defined as "special tooling or test equipment" or indirect overhead materials and supplies is *subject to sales or use tax* since the contractor normally consumes these items in the performance of the contract and title is not deemed to pass prior to use.

F. U.S. Government Grants

When UC is the recipient of a research grant or other grant from a United States government agency or instrumentality, UC may receive money, government property or both for use in fulfilling the grants purposes and objectives.

When UC receives grant funds, it does not stand in the shoes of the government agency providing the funds. Any property purchased with the grant funds are subject to California sales or use tax when UC purchases items of tangible personal property to consume in its research or in furtherance of the grant purpose.

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Government property which is provided to UC can either remain government property or become UC property upon delivery. Government property is any property to which the government has title to or previously held title to prior to its grant of the property.

1. Disposal or Sale of Equipment

Upon completion of the research or grant purpose, UC will be the retailer of any used property sold to unrelated third parties and will be subject to sales tax for property sold to California consumers. Disposition of U.S. Government property will not be subject to sales or use tax.

G. Grants or Contracts with Non-U.S. Government Instrumentalities

When UC conducts research under a contract with the State of California, UC is deemed the consumer of property consumed in the performance of the contract ***and sales tax must be paid to suppliers or use tax accrued*** and paid directly to the State. UC will be considered the retailer of any property sold to the State of California under the terms of its contract and ***sales tax will apply*** to the sale.

Since other states or instrumentalities or foreign governments and instrumentalities are not included in the definition of "Person" under CA Revenue & Tax Code Section 6005, property sold or furnished by such entities is ***not subject sales or use tax***. However, property purchased by UC for use in the performance of such contracts will be ***subject to sales or use tax***. Items purchased or developed for sale to a foreign government or instrumentality ***will not be subject to tax*** when the property is shipped directly to the purchaser outside California.

Section 3: Medical Center As Seller

Section 3: Medical Center As Seller

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I. HOSPITALS AND OTHER MEDICAL SERVICE FACILITIES

A. General Information (Regulation 1503)

Hospitals and other Medical Service Facilities are generally regarded as the consumers of tangible personal property used in the performance of their patient care services or in the operation of their facilities. However, a medical service facility may be treated as a retailer in certain situations.

When a medical service facility acts as a retailer of property furnished, tax applies to its charge for that property unless the sale is exempt from tax. A hospital is the retailer of property furnished for a charge to persons other than residents and patients.

A Hospital or other Medical Service Facility is the retailer of tangible personal property, when:

1. It makes a separately itemized charge if the property is furnished to a patient or resident with the intent that the patient or resident remove the property from the premises of the hospital for use by the patient or resident. Examples of such items include crutches or a wheelchair provided upon release from the medical service facility and discharge kits for new mothers (which might include formula, diapers, etc.).
2. Its contract with the hospital's resident or patient or other customer specifically provides that title to the subject tangible personal property passes to the resident or patient or other customer. When the contract has a provision passing title to the subject tangible property to the resident or patient or other customer, the hospital may purchase such property for resale, and tax applies to the charge by the hospital unless its sale is otherwise exempt from tax.

B. Definitions (Regulation 1503)

"Medical service facility" means those institutions specified in Regulation 1503(a), including:

- health facilities defined under 1250 of the Health and Safety Code,
- community care facility as defined in Section 1502 of the Health and Safety Code,
- a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code,
- an alcoholism or drug abuse recovery or treatment facility, as defined in Section 11834.02 of the Health and Safety Code,
- as well as surgery centers and similar medical service facilities whether patients are accepted for periods of less than or more than twenty-four hours, such as dialysis center, AIDS centers or cancer centers.

II. SPECIFIC ACTIVITIES, AS SELLER

A. Medical Service Facilities, with Clause Passing Title

1. Medicare Program – Pending changes

MEDICARE PROGRAM. Tax does not apply to the sale of items to a person insured pursuant to Part A of the Medicare Act as such sales are considered exempt sales to the United States.

Tax applies to the sale of an item to a person insured pursuant to Part B of the Medicare Act even though the person assigns the claim for reimbursement to the retailer and the retailer files the claim with, and is paid by, a carrier administering Medicare claims under contract with the United States.

When a medical service facility acts as a retailer and has paid CA sales or use tax on the purchase of tangible personal property furnished to patients insured by Part A of the Medicare Act, they are entitled to a deduction for the sales or use tax paid on the purchase of the property sold. The medical service facility may alternatively purchase such property for resale without payment of sales or use tax.

B. Pharmacy

1. Over the Counter – Sales tax applies to retail sales of drugs, medicines, and other tangible personal property by pharmacists¹ and others except as provided below (Regulation 1591(d)).
2. Prescriptions² and Medicines³ - ***Sales tax does not apply*** to sales of medicines for the treatment of a human being when those medicines are:
 - Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on a prescription filled by a pharmacist in accordance with the law (Regulation 1591(d)(1)).
3. Sales tax also does not apply to any medicine distributed by the hospitals in patient pharmacy, provided the medicine is:
 - Furnished by a licensed physician, dentist or podiatrist to his or her own patient for treatment of the patient (Regulation 1591(d)(2)),
 - Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician, dentist or podiatrist (Regulation 1591(d)(3)),
 - Sold to a licensed physician, dentist, podiatrist or health facility for the treatment of a human being (Regulation 1591(d)(4)),

¹ See Section 8.I.Q, Pharmacist.

² See Section 8.I.R, Prescription.

³ See Section 8.I.M, Medicine.

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- Sold to the State of California or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by the State of California or any political subdivision or municipal corporation thereof (Regulation 1591(d)(5)),
- Furnished by a pharmaceutical manufacturer or distributor without charge to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or to an institution of higher education for instruction or research. Such medicine must be of a type that can be dispensed only (a) for the treatment of a human being, and (b) pursuant to prescriptions issued by persons authorized to prescribe medicines. The exemption provided by this subdivision applies to the constituent elements and ingredients used to produce the medicines and to the tangible personal property used to package such medicines (Regulation 1591(d)(6)).

C. Medical Records

1. In General - **Tax does not apply** to charges made by a hospital for photocopying of medical records. The transaction is regarded as a service transaction, and the fees are nontaxable if the photocopies are furnished to the patient, or to someone acting on behalf of the patient, or to the patient's representative, as provided in Health and Safety Code Section 123110(b) (Regulation 1528(b)(2)(A)).

Tax does not apply to a separately stated charge made for providing a typewritten transcription of a medical report or an interpretation of the contents of a medical record. However, the tax applies to the fair retail value of any photocopies produced for the customer in connection with the nontaxable service.

2. Copies of records furnished by hospitals in response to subpoena Duces Tecum (subpoena instructing witness to bring in evidence for the court) served on it are **not subject to tax** with respect to copying, witness, mileage or other fees received. These fees remain nontaxable if the copying is performed by a copying service which sells the copies to the hospital for resale to the requesting party, or when passed on to the requesting party by a copying service that purchases the copies from the hospital for resale to the requesting party. The fees are **taxable**, however, when billed directly to the requesting party by a copying service which, by agreement with the hospital, makes the copies and furnishes them directly to the requesting party (Regulation 1528).
3. X-ray film hospital laboratories that produce x-ray film or photographs to diagnose medical or dental conditions of humans, excluding such films and photographs used solely for cosmetic purposes, are the consumers of materials and supplies used in the production thereof. Thus, **sales tax does not apply** to the sale of such items to medical center customers. However, **tax applies** to the **purchase** of such materials and supplies by the laboratories producing x-ray film or photographs for the purpose of such diagnoses. The UC purchasing department should either accrue use tax or pay sales tax to the suppliers on these purchases (Regulation 1528).

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D. Rentals/Home Health Care

1. Medical Oxygen Delivery Systems

Sales tax does not apply to the sale of medical oxygen delivery systems when sold, leased or rented to an individual for the personal use of that individual as directed by a licensed physician. "Medical oxygen delivery systems" includes liquid oxygen containers, high pressure cylinders, regulators, oxygen concentrators, tubes, masks and related items necessary for the delivery of oxygen to the person. Ventilators and other respiratory equipment qualify for the exemption. The term also includes repair and replacement parts for use in such a system.

A medical oxygen delivery system is a system used to administer oxygen directly into the lungs of the patient for the relief of conditions in which the human body experiences an abnormal deficiency or inadequate supply of oxygen. Devices that only assist the patient in breathing, but do not deliver air or oxygen directly into the lungs of the patient, do not qualify as medical oxygen delivery systems.

Sales tax does apply to sales of medical oxygen delivery systems to hospitals, immediate care facilities, physicians, or other health care providers for use on their premises. A rental or lease of a medical oxygen delivery system to a health facility is ***not subject to tax*** when the facility intends to lease or rent the system to an individual for the personal use of that individual as directed by a licensed physician and the system is then leased or rented as intended. The transaction between the health facility and the individual must constitute an actual lease or rental.

Sales tax does not apply to the sale of medical oxygen and other gases to licensed physicians or surgeons, podiatrist, dentist or health facilities for the treatment of human beings.

2. Hemodialysis

Tax does not apply to the sale or use of hemodialysis products supplied on order of a licensed physician and surgeon to a patient by a pharmacist or by a manufacturer, wholesaler, or other supplier authorized by Section 4054 or 4059 of the Business and Professions Code to distribute such products directly to the patient (Regulation 1591.1).

(a) Mammary Prostheses and Ostomy Appliances and Supplies

Tax does not apply to the sale or use of mammary prostheses and ostomy appliances and related supplies required as a result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste when sold or furnished under one of the conditions provided in Regulation 1591(d)(1) through (d)(6). The mammary prostheses devices and ostomy appliances and related supplies do not need to be furnished by a pharmacist, within the meaning of Regulation 1591(d)(1), to be considered dispensed on prescription as

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long as they are furnished pursuant to a written order of a person authorized to prescribe (Regulation 1591.1).

Ostomy appliances and related supplies must be used in postoperative situations or sold as an accommodation to patients following surgery in order to qualify as medicines. When used as an adjunct to surgical procedures, the sale or use of these items is subject to tax unless the appliances remain in the patient for postoperative purposes (Regulation 1591.1).

Qualifying mammary prostheses and qualifying ostomy appliances and related supplies include, but are not limited to, bras to hold a mammary prosthesis in place, filler pads, lymphedema arm sleeves, adhesive spray and remover; catheters used as a result of an artificial opening created in the human body; colostomy bags; deodorant used on the person of the user; karaya rings; antacid used externally as a skin ointment; skin gel; non-allergic paper tape and gauze; skin bond cement; tincture of benzoin applied topically as a protective; urinary drainage appliances; closed stoma bags; drainable stoma bags; loop ostomy supplies and tubing; and endotracheal and tracheotomy tubes and tracheostomy tubes used for the evacuation of metabolic waste when used post-operatively or for home care.

(b) Insulin and Insulin Syringes

"Insulin" and "insulin syringes" furnished by a pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of Revenue and Taxation Code Section 6369(e). As such, the sale or use of insulin and insulin syringes furnished by a pharmacist to a person for treatment of diabetes, as directed by a physician, is ***exempt from tax*** (Regulation 1591.1).

Glucose test strips and skin puncture lancets furnished by a registered pharmacist that are used by a diabetic patient to determine his or her own blood sugar level and the necessity for and amount of insulin and/or other diabetic control medication needed to treat the disease in accordance with a physician's instructions are an integral and necessary active part of the use of insulin and insulin syringes or other anti-diabetic medications and, accordingly, ***are not subject to sales or use tax*** pursuant to Revenue and Taxation Code Section 6369(e).

(c) Wheelchairs, Crutches, Canes, Quad Canes and Walkers

Sales tax does not apply to sales, including leases that are "sales," of wheelchairs, crutches, canes, quad canes, white canes used by the legally blind, and walkers and replacement parts for these devices when sold to an individual for the personal use of that individual as directed by a licensed physician.

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Sales tax does apply to sales, including leases that are “sales,” of wheelchairs, crutches, canes, and walkers to hospitals or other health facilities for use by patients while at the facilities.

(d) Modifications to Vehicles Used by Physically Handicapped Persons

Sales tax does not apply to the sale of items and materials used to modify a vehicle for physically handicapped persons that are necessary to enable the vehicle to be used to transport a physically handicapped person or persons. In the case of a sale of a modified vehicle to a physically handicapped person, ***sales tax does not apply*** to the gross receipts attributable to that portion of the vehicle modified to enable the vehicle to transport a physically handicapped person or persons.

"Physically handicapped" persons include disabled persons qualified for special parking privileges.

"Vehicles" includes all devices that qualify under Vehicle Code Section 670 including but not limited to automobiles, vans, trucks, mobile homes and trailer coaches. Qualifying "vehicles," as they apply here, include vehicles which are owned and operated by physically handicapped persons or vehicles which are used in the public or private transport of physically handicapped persons and which would otherwise qualify for a distinguishing license plate if the vehicle were registered to the physically handicapped person or persons.

E. Hospital: Gift Shop

In general, the gross receipts from sales of tangible personal property from medical center gift shops ***are taxable***. The majority of items sold from gift shops are tangible personal property items that are not specifically excluded from taxes. These include such items as cards; books; small ceramic, metallic or wooden figures; and annual plants that do not ordinarily constitute food for human consumption. There is no specific exemption for these items and the retail sale of such items is ***subject to sales tax***.

Certain items may be exempt from tax under specific exemptions, such as "food products," annual plants that ordinarily constitute food for human consumption or items transferred to a customer to an out-of-state location. All purchases of inventory items intended to be resold in the operation of the business may be made with a resale certificate ***exempt from tax***.

F. Hospital: Cafeterias and other Food Services

The sale to and the use of meals and food products by the institutions defined as medical service facilities are exempt from sales and use tax when furnished or served to and consumed by their residents or patients:

1. Food products include those items described as food under Regulation 1602.
2. Meals includes the following:

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- (a) Carbonated beverages furnished or served as part of the meals.
- (b) Food provided to the patient or resident by way of enteral feeding, Total Parenteral Nutrition (also called TPN), and Intradialytic Parenteral Nutrition (also called IDPN), as each is defined in Regulation 1591, provided these forms of nutrition are furnished or served to and consumed by a resident or patient of an institution specified as medical service facilities.
- (c) Non-reusable items that become components of the meals. These include straws, paper napkins, and plastic eating utensils. These also include bags and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, each of which is used to dispense enteral feeding as meals to the patient or resident including: gastrostomy tubes (also called G tubes) which are used to deliver the nutrition directly into the stomach; jejunostomy tubes (also called J tubes) which are used to deliver the nutrition directly into the intestinal tract; and nasogastric tubes (also called NG tubes) which are used to deliver the nutrition directly through the nasal passage to the stomach. Needles, syringes, cannulas, bags, and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, used to dispense TPN or IDPN as meals to the patient or resident are also regarded as components of those meals provided each of these items is used primarily to dispense the TPN or IDPN.

3. Non-Patient Meals – meals and food products sold to non-patients follow the tax application described in Regulation 1603.⁴

G. Clinics, Surgical Centers and Other Outpatient Facilities

The services provided at separate clinics, surgical centers or other outpatient facilities are subject to same requirements for exemption and treatment as a seller of Hospital and Medical Service Facilities discussed in Regulations 1503 and 1591. Sales of tangible personal property or medicines by non-physicians or to patients outside a prescribed regimen of treatment are subject to tax unless sold under a prescription (Annotation 425.1140).

Example: A line of skin care products is sold only to physicians and aestheticians for treatment of skin ailments. Three of the products of the line may only be sold to licensed physicians. None of the products require a medical prescription per se. The patient receives initial treatment by the physician followed by a prescribed regimen of home care. Products sold or furnished by a physician for treatment of a patient are exempt. Sales by non-physicians or to patients of physicians outside a prescribed regimen of treatment are subject to tax unless sold under a prescription.

⁴ See Section 2.VI, Food Services/Student Cafeteria.

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When a clinic both sells tangible personal property and consumes items in the treatment of patients, it must identify items purchased for resale (without tax) and items consumed where use tax would apply to the use of the items unless it is an exempt medicine.⁵

1. Examples of specialty clinics include, but are not limited to, the following:
 - (a) Dermatology/Facial Plastics sells/furnishes items such as skin care products and topical creams/ointments.
 - (1) Exemption may apply to skin care products as medicines.
 - (b) Otolaryngology (ENT) sells/furnishes items such as hearing aids and components.
 - (1) Treated as Consumer when seller is hearing aid dispenser licensed by Department of Consumer Affairs, Hearing Aid Dispensers Examining Committee.
 - (2) Treated as Retailer if seller not licensed hearing aid dispenser.
 - (c) Optics sells/furnishes items such as prescription eyewear, Plano glasses and contact lenses.
 - (1) Registered dispensing opticians are treated as consumer when sold on prescription. The purchase by the University would be subject to CA sales or use tax.
 - (2) The sale of non-corrective glasses or non-corrective colored contact lenses are treated as retail sales and subject to sales tax.

H. Miscellaneous Sales

1. Equipment

Intercampus transfers of equipment from one UC Medical Center to another are sales within the same legal entity and ***not subject to tax***. Sales of equipment used in the operation of the Medical Centers to outside organizations are generally ***subject to tax*** unless otherwise exempt, such as sales in interstate commerce or sales for resale.

⁵ See Section 5, Medical Center As Purchaser for listing of exempt medicines.

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I. PURCHASING DISBURSEMENTS

A. California Vendors vs. Out-of-State Vendors

1. Policy for Vendors not Charging Tax

Vendors should generally charge sales or use tax to UC on sales of tangible personal property. The following are instances where vendors will not charge UC sales tax:

- UC is purchasing items for resale and issues a resale certificate to the vendor.
- UC is purchasing items not subject to CA sales/use tax and may have issued exemption certificate to the vendor.
- The vendor is not engaged in business in California and not required to collect the sales or use tax. Generally, the vendor is located out-of-state.

For sales of tangible personal property at retail by a California retailer, the sales tax is the responsibility of the retailer (Section 6015). Whether a retailer adds sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale.

In the event that the retailer accidentally or intentionally omits the sales tax on the invoice, receipt, or sales agreement/contract, UC does not have a legal liability under the Revenue and Taxation Code to remit the “sales” tax to the State. If the retailer wishes to obtain tax reimbursement for a sales transaction after the fact, Civil Code Section 1656.1 only provides a right for sales tax reimbursement, when the agreement of sale expressly provides for such addition of sales tax reimbursement.¹

¹ Civil Code Section 1656.1 also provides for collection of sales tax reimbursement when the tax is shown on invoice at the time of sale or where the retailer posts or provides a visible a notice that sales tax reimbursement will be added to the sale, both of which are not applicable when tax reimbursement was not added at the time of the sale.

USER NOTE:

In addition to the statutory responsibility for sales tax discussed above, Campus may adopt a Policy to report use tax directly to the State when a vendor does not bill sales tax even though a legal liability or obligation to do so does not exist. In setting any such Policy, the following should be considered:

For interstate shipments of goods, the applicable tax is **sales tax** only when: 1) title to goods passes within CA; and 2) there is in state participation in the sale by the vendor. Accordingly, a legal liability and responsibility to report use tax exists when both of these requirements are not satisfied even though a vendor may be physically located in California. The vendor may also be held responsible.

As a not-for-profit entity and a University organized under the State of California, many vendors may **incorrectly** not bill tax reimbursement presuming that the University of California is an exempt entity. In such situation, it may be appropriate to notify or clarify with the vendors that the UC is a taxable entity for CA sales and use tax purposes and tax should be collected where appropriate.

Finally, when evaluating purchases from local vendors, staff should be aware that under the California Revenue and Taxation Code, there are many product exemptions and scenarios where sellers may be treated as statutory consumers such that tax does not apply (i.e. construction contracts, leases of tax paid property, optional service agreements). When local vendor invoices do not include sales tax reimbursement, caution should be used to ensure that an exemption or special treatment does not apply before tax is reported.

2. Consumed Items Purchased Ex-Tax

Items purchased under a resale card that are consumed/used prior to reselling the item are ***subject to use tax***. UC must accrue the use tax on these items.

When an item is purchased from an out-of-state vendor who is not required to collect use tax, it is UC's policy to accrue use tax on items subject to tax that are consumed by them. *The Taxability by Product Description Table*² details the general tax status of items purchased by UC, its general nature of use and taxable status. This table should be referred to in deciding whether to accrue the use tax. However, if the UC purchase order states differently, it will be the governing document.

² See Section 4.III, Taxability by Product Description - Table.

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*** USER NOTE: Other States ***	
Observation: CA is the only state recognized as a person for sales and use tax purposes under Section 6005. As such, purchases from other states are not subject to CA sales or use tax.	
Exemption Keys: Other Non-CA state agencies such as colleges and universities are also not recognized as a person by the CDTFA for CA sales and use tax purposes so purchases from these entities are not subject to CA tax. As such, no use tax self-assessment should be accrued by the University.	

3. Reimbursement Policy for Purchases Made from Out-of-State Vendors

When a UC employee makes a purchase from an out-of-state vendor who is known not to charge the use tax, it is UC's responsibility to accrue the tax.³ Generally, these out-of-state purchases will be from company websites on the Internet. Additionally, it is irrelevant how the purchase is transacted. For example, when an employee purchases an item and is reimbursed for the expenses, the use tax is still UC's responsibility and must be accrued.

When proper documentation is available, such as a receipt, it should be requested from the employee purchasing the item. This will enable UC to determine whether the sales or use tax has been remitted to the vendor.

Example: A professor requires a textbook for research purposes that can only be ordered online from a distributor in Maine. The company in Maine is not registered with California. Therefore, the use tax is not charged on the purchase. The professor orders the textbook and charges the amount on his personal charge card. The professor then submits the charge slip and requests a reimbursement for expenses. UC must accrue the use tax due on the purchase (less freight) made by the professor.

4. Transaction Taxes

Occasionally, items will be purchased from California retailers or out-of-state retailers engaged in business in California that are not engaged in business in the county in which purchases are made. Consequently, they are not required to collect the transaction tax for the district. In this case, the transaction taxes become the responsibility of the purchaser as a use tax. The use tax is complementary to the sales tax and imposed upon the storage, use or other

³ See Section 1.II.C, Out-of-State Retailer Engaged in Business in California for non-California retailers with economic nexus that are required to collect and remit use taxes. Please note that if an out-of-state vendor does not collect use tax from the UC, then the UC is responsible for self-accruing the use tax, whether or not the out-of-state vendor has nexus in California (please refer to Sections 1.V.A, Imposition of Use Tax, 1.V.D, Out-of-State Retailer Engaged in Business in California; Sales Tax vs. Use Tax, and 1.V.E, Out-of-State Retailer Without Nexus in California for more information about the UC's and out-of-state vendor's responsibilities for use tax).

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consumption in the district of tangible personal property purchased from any retailer for storage, use or other consumption in the district (Section 7262).⁴

Example: UCLA purchases supplies consumed by the art department in Los Angeles from a vendor (retailer) located in Riverside in June 2019. The vendor is solely engaged in business in Riverside County, and *the vendor* and *all persons related to the vendor* have less than \$500,000 in combined sales of tangible personal property in California per calendar year. Consequently, the vendor is not responsible for collecting the district taxes imposed by the County of Los Angeles because *the vendor* and *all persons related to the vendor* do not meet the Section 7262 requirement of having \$500,000 or more in sales of tangible personal property within California. UCLA must self-accrue and report the applicable district taxes.⁵ Los Angeles County imposes district taxes totaling 2.25% in June 2019. In this example, UCLA is required to accrue and report 2.25% of the taxable purchase. The remaining 7.25% is the responsibility of the California retailer or out-of-state retailer.

B. Purchases of Tangible Personal Property

Tangible personal property is defined as personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses (Section 6016).

Examples: Equipment, canned software programs, books, office supplies.

Every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer is liable for use tax. The liability is not extinguished until the tax has been paid to this State, except by a receipt from a retailer engaged in business in this State (Section 6202). The following are examples of purchases subject to use tax:

1. Tangible personal property purchased from an out-of-state vendor who is not engaged in business in California is subject to use tax if consumed by the purchaser.
2. Tangible personal property purchased for resale from a California retailer or out-of-state retailer engaged in business in California that is subsequently consumed by the consumer rather than resold is subject to use tax.
3. Persons engaged in the business of rendering services are the consumers of tangible personal property which they use incidentally in rendering the service. UC renders services as well as retails tangible personal property. Therefore, in the event that services are rendered, it will be the consumer of such property used in the process. Purchases of tangible personal property for the rendering of a

⁴ Please see Section 1.II.D, UC Transaction/District Tax Responsibility For Sales Outside Its District, in which more use taxes, including district taxes, will be collected because AB 147 amended Cal. Rev. & Tax. Cd. Section 7262 to adopt an economic nexus standard of \$500,000 or more in sales of tangible personal property within California by the retailer and all persons related to the retailer to determine whether an out-of-district retailer is required to collect district tax.

⁵ District taxes include all local taxes such as transit, other, etc.

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service should be purchased tax paid or the use taxes should be accrued for such uses.

4. Additionally, UC will occasionally purchase an item ex-tax which is consumed by them. The use tax must be accrued on these purchases.
5. Some property with a useful life of more than one year may be partially exempt from sales and use tax if they are used for research and development and a partial exemption certificate is provided to the vendor. Such property refers to qualified property. Please see Addendum: UC Guidelines – California Partial Sales and Use Tax Exemption for more information on the partial sales and use tax exemption when purchasing qualified property used for research and development.

C. Purchases of Services

The definition of sale for California sales and use tax purposes does not include services (Section 6006). Accordingly, services are ***not subject to the California sales and use tax*** even if tangible personal property is transferred to the purchaser, as long as it is incidental to the service. However, at times it is difficult to distinguish a service that transfers incidental tangible personal property from tangible personal property that is subject to tax. The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract. If the service is the true object of the contract, the transaction is not subject to tax.

Example: UC purchases canned software for use in their computer lab. The canned software is considered tangible personal property if delivered on a physical medium (may also qualify as a TTA⁶).

On the other hand, UC is setting up a mainframe system and requires customized programming for the operation to run. The program is transmitted on a disc. The customized programming is a service. The true object of the contract is the programming and not the disc transmitted with the service.

	*** USER NOTE: Services ***	
	<p>Observation: Persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property (TPP) which they use incidentally in rendering their services.</p> <p>True object of the contract distinguishes between: (1) Sale of TPP or (2) Transfer of TPP incidental to the performance of a service. Examples include tax preparation, attorney services, and training seminars.</p> <p>Exemption Keys: Tax should not be paid or self-assessed on TPP that is incidental to services provided to the University.</p>	

⁶ See Section 2.XII.B, Technology Transfer Agreements (TTAs).

D. Progress Payment

Purchase agreements that require deposits or involve progress payment can present significant difficulties for Account Payment based on the fact that sales and use tax may be due on the complete order, but are not payable until title to the property transfers from the seller to the buyer. Furthermore, sellers generally do not bill or collect sales tax until the transfer of title at or upon final payment, such that any self-assessment or accrual of use tax on the payments would represent an overpayment.

	*** USER NOTE: Progress Payments ***	
	Observation: Progress payments and other deposits prior to the transfer of title to the property being purchased are not taxable events. Any sales and use tax applicable would be due on the final payment.	
	Exemption Keys: Many overpayments occur when use tax is self-assessed on transactions where the vendor includes the tax on a later invoice. Procedures should be put in place to either confirm the tax with the vendor or reverse any use tax erroneously self-assessed.	

E. Purchases for Resale

To prevent sales and use tax evasion and to reinforce the duty to collect the tax, it is presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this State until the contrary is established (Section 6241). A certificate accepted by a seller which denotes that the item is being purchased for resale will **relieve the seller of any liability for the sales tax**. As a result, if UC gives a resale certificate to a vendor, the liability for the tax shifts to UC.

When a resale certificate is given by UC, the premise is that the items will be resold in the regular course of business.⁷ The item may either be resold or sold at retail by UC. If UC purchases items predominantly for self-consumption from a vendor, a resale certificate should not be given to the vendor.

For items that are purchased tax paid and resold prior to any use, a deduction may be taken for the purchase price of the property on the sales tax returns in the reporting period that the item was resold. This deduction is taken in the form of a tax paid purchases resold deduction.

F. Exemption Certificates

Exemption certificates support the exempt status of the purchaser or property purchased. They are issued by a purchaser who is not required to pay sales or use tax on an item due

⁷ If a purchase is made with the intent to transfer title to a federal entity prior to first use, then a resale certificate should be provided by the UC to the supplier. Though the federal entity will not need to provide a resale certificate to the UC, the documentation listed in Section 1.III.E, Exemptions from Resale Certificate: Sales to the United States Government and Section 2.XIII.B, Sales to the U.S. Government and Instrumentalities, are required for the sales and use tax exemptions for sales to the federal entity.

to the nature of the products' use, other than for resale, or the status of the purchaser. In general, if the purchaser has a general exemption under Chapter 4, Article 1, the certificate need not describe the facts of the situation; otherwise, the certificate must specify the facts to prove exemption.

It is important to note that exemption certificates are not interchangeable with resale certificates. If UC accepts an exemption certificate for an item purchased for resale, the State will not find the certificate as valid support for a sale for resale, and vice versa.

Example: An exemption exists for animal feed for food animals and non-food animals held for resale. All other purchases of animal feed are subject to sales tax. In this case, the seller must obtain an exemption certificate (not a resale certificate) for purchases falling under the exemption. A resale certificate would not support the exemption as the purchaser does not intend to resell the animal food.

II. INVENTORY WITHDRAWALS/STOREHOUSE

A. Inventory: Tax Paid Purchases Withdrawn from Inventory for Self-Consumption

UC purchases items tax paid for the storehouse. Items withdrawn by departments, administration, or any other divisions of the campus associated with UC are items withdrawn for self-consumption. As tax has already been accrued or paid on these withdrawals, no further action is necessary. Items withdrawn from inventory for Associated Students are not part of UC and tax will be due on the retail selling price of the item (see also "Sales to Third Parties" below).

B. Inventory: Sales to Third Parties

1. Tax Paid Purchases Resold

Retailers who resell tangible personal property at retail before making any use of it, may take a deduction on the sales tax returns for the purchase price of property if the retailer paid sales/use tax on the item (Section 6012). The deductions must be taken in the same quarter the tax paid item was sold, either at retail or wholesale. Note that the deduction cannot result in an overpayment on the return. That is, the deduction can only offset tax due and can only reduce the liability to zero.

Example: An item for which sales tax has been paid is resold to another wholesaler. Because tax has been paid, UC can claim a deduction for the tax already paid to offset other tax due down to zero (but not below a zero liability).

Retaining, demonstrating, or displaying the property while holding the item for sale in the regular course of business is *not considered a taxable use*.

The tax paid purchases resold deduction must be taken simultaneously in the quarter when the related sale is made.

2. Situations Where the Tax Paid Credit May Be Taken

The tax paid purchases credit may be taken in the following circumstances:

- The retailer originally intended to purchase the item for self-consumption, however, resold the item prior to any taxable use.
- The particular property purchased is of a kind not ordinarily sold or stocked by the retailer and customarily not covered by a resale certificate and is the subject of an unusual sale.
- The retailer generally consumes the property, but a small portion is occasionally resold.
- Sales tax reimbursement was paid in error on items that are normally resold in the regular course of business.

C. Inventory: Bookstore

The campus bookstore purchases all inventory ex-tax. These items are generally sold at retail where the sales tax is collected from the consumer and reported for sales tax purposes.

1. Departmental Purchase Orders (DPO)

When a department withdraws inventory to be used by them, they are requisitioned through a DPO. Purchases by the department and other UC offices from the bookstore are not retail sales. UC is the consumer of the items purchased and should accrue use tax on the withdrawals of the inventory. The tax is accrued measured by the cost of the item to the bookstore.

2. Buyback of Used Textbooks

The buyback of used textbooks are purchases for resale. The texts should be purchased ex-tax as they are not sales at retail. Technically, to buy the textbooks for resale, the bookstore is required to provide a resale certificate to the seller. However, since the majority of sellers are students not engaged in retail business, it is not necessary to issue resale certificates to the students.

III. Taxability By Product Description - Table

With respect to this table, the tax status of products refers to purchases made by UC where sales tax was not charged on the invoice. However, if UC purchased the item from a California retailer, regardless of what the tax chart instructs, use tax need not be accrued on these purchases as the tax is the responsibility of the retailer. In these situations, the transaction is subject to sales tax, not use tax. One exception exists to this rule: if UC issued a resale certificate for these purchases and subsequently made use of the items without reselling them, then UC must accrue the use tax on these purchases.

UC must accrue use tax on the storage, consumption or use of tangible personal property that is not subject to the sales tax. This would generally occur when the purchase is made from an

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out-of-state vendor of tangible personal property who is not registered or required to be registered in California. Therefore within this section, when the chart states that an item is taxable, we are assuming that the charge is subject to use tax and UC did not pay sales tax on the item.

Description	Tax Status	Comments
Accommodations	NO	See Section 4.IV.A
Accountants	NO	See Section 4.IV.B
Advertising	YES/NO	See Section 4.IV.C
Agricultural Machinery and Equipment and Diesel Fuel	YES	See Section 4.IV.D, including information about partial sales and use tax exemption for machinery & equipment and diesel fuel used for agricultural activities
Agricultural Supplies	YES	See Section 4.IV.E
Air Filters	YES	
Air Filters for Resale	NO	See Section 4.IV.F
Animal Cages	YES	
Animal Feed for Food Animals	NO	See Section 4.IV.G
Animal Feed for Non-Food Animals for Resale	NO	See Section 4.IV.G
Animal Feed-Medicated for Food Animals	NO	See Section 4.IV.H
Animal Feed-Medicated for Non-Food Animals for Resale	NO	See Section 4.IV.H
Animal Feed-In General	YES	
Animal Feed-Medicated in General	YES	
Animals: Livestock	YES/NO	See Section 4.IV.I
Animals: Items for Livestock	YES	
Animals: Laboratory Research Food Animals	NO	See Section 4.IV.J
Animals: Laboratory Research Non-Food Animals	YES	See Section 4.IV.K
Appliances	YES	See Section 4.IV.L
Appliances-Mandatory Warranties	YES	See Section 4.IV.M
Appliances-Optional Warranties	NO	See Section 4.IV.N
Art Supplies	YES	See Section 4.IV.O
Art Supplies-Bookstore Inventory	NO	See Section 4.IV.P. Supply Resale Card to Vendor
Art Work	YES/NO	See Section 4.IV.Q
Art Work-Original Work of Art for Public Display	NO	See Section 4.IV.R
Athletic/Recreational Equipment/Supplies	YES	

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Description	Tax Status	Comments
Audio Visual Equipment and Supplies	YES	
Audio Visual Service	NO	See Section 4.IV.S. Also see Video Production Services (below)
Automotive Parts and Accessories	YES	
Automotive Parts Sold in Connection with Repair Work	YES	
Automotive Repair and Services	NO	See Section 4.IV.T
Aviation Parts and Supplies	YES	See Section 4.IV.U
Aviation Services	NO	
Awards, Plaques, Trophies	YES	
Bags, Backpacks & Similar Products-Bookstore Inventory	NO	See Section 4.IV.V. Supply Resale Card to Vendor
Bags, Backpacks, & Similar Products	YES	
Credit Balances w/Vendors	NO	
Bar Coding Equipment	YES	
Bar Coding Supplies	YES/NO	See Section 4.IV.W
Batteries	YES	See Section 4.IV.X
Batteries-Bookstore Inventory	NO	See Section 4.IV.Y. Supply Resale Card to Vendor - See Comments
Binder/Book Binders	YES	See Section 4.IV.Z
Binder/Book Binders-Bookstore Inventory	NO	See Section 4.IV.Z. Supply Resale Card to Vendor - See Comments
Biochemical and Biological Products	YES	See Section 4.IV.AA
Blueprinting Services	NO	See Section 4.IV.BB
Blueprinting Supplies-Bookstore Inventory	NO	Supply Resale Card to Vendor - See Comments
Blueprinting Supplies	YES	
Boiler and Steam Plant Services	NO	
Books and Educational Materials - In General	YES	See Section 4.IV.CC
Books and Educational Materials - Bookstore Inventory	NO	Supply Resale Card to Vendor - See Comments
Building and Ground Services	NO	See Section 4.IV.DD
Calligraphy and Design	YES	See Section 4.IV.EE
Cargo Containers	YES	See Section 4.IV.FF
Cartographic Services	YES	
Cash Protection and Cash Handling	NO	
Catering/Food Services	YES/NO	
Chemicals and Chemical products	YES	
Chemicals, Radioactive	YES	
Clocks and Timing Devices	YES	

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Description	Tax Status	Comments
Clothing	YES	
Clothing-Bookstore Inventory	NO	Supply Resale Card to Vendor - See Comments
Communications Equipment and Supplies	YES	
Compressed Gases, Equipment, and Supplies	YES	
Computer Hardware and Peripherals	YES	
Computer Program Developers/Consultants	NO	See Section 4.IV.GG
Computer Repair Services - Bookstore Inventory	NO	See Section 4.IV.HH & II
Computer Repair Services and Hardware Contracts	YES/NO	See Section 4.IV.HH & II
Computer Software and Peripherals - Bookstore Inventory	NO	Supply Resale Card to Vendor - See Comments
Computer Software and peripherals	YES	See Section 4.IV.JJ
Computer Supplies and Peripherals - Bookstore Inventory	NO	Supply Resale Card to Vendor - See Comments
Computer Supplies and Peripherals	YES	
Computer Services	NO	
Computer Systems - Bookstore Inventory	NO	Supply Resale Card to Vendor - See Comments
Computer Systems	YES	
Construction and Building Materials	YES	See Section 4.IV.KK if Part of a Construction Contract
Consultants	NO	See Section 4.IV.LL
Copy Machines	YES	
Copy Supplies	YES/NO	See Section 4.IV.MM
Controlled Substances - Used on Testing Animals	YES	
Data Collection/Research Services	NO	See Section 4.IV.NN
Data Processing Equipment and Supplies	YES	
Data Processing Services	YES/NO	See Section 4.IV.OO
Delivery/Courier Services	NO	
Dental Equipment	YES	
Dental Supplies	YES	
Dentist - Medicines Administered by a Dentist	NO	See Section 4.IV.PP
Dictating and Transcribing Machines	YES	

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Description	Tax Status	Comments
Diesel Fuel Taxes	YES	For information on the separate Diesel Fuel Tax, see Section 6.IV, Diesel Fuel Taxes
Discounted Purchases: Not Trade-In's	NO	See Section 4.IV.QQ
Pharmaceutical Services - Prescription Medicines	NO	
Pharmaceutical Services - Over the Counter Medicines	NO	Supply Resale Card to Vendor - See Comments
Duplicating and Copying Services	YES	
Editorial Services	NO	
Electrical Supplies and Equipment	YES	
Electronic Components	YES	
Electronic Manufacturing	NO	
Emblems	YES	
Emblems - Bookstore Inventory	NO	Supply Resale Card to Vendor - See Comments
Employment Services	NO	
Engineering and Architectural Services - In General	YES/NO	See Section 4.IV.RR
Engineering and Architectural Services - Blueprints	NO	
Engineering and Architectural Services - Calibration	NO	
Equipment	YES	
Fabrication Labor	YES	See Installation Charges (below) and Section 4.IV.AAA
Fabrication Supplies	YES	
Fabrication Supplies for Items Resold at Retail or Wholesale	NO	
Farm Labor	NO	
Fasteners	YES	
Fence Equipment and Supply	YES	
Filing System/Supplies	YES	
Films, Video Tapes: Processed	YES	
Financial leasing	YES	See Section 4.IV.SS
Flags/Banners/Maps	YES	
Flags/Banners/Maps - Bookstore Inventory	NO	Supply Resale Card to Vendor
Floor Covering and Carpeting	YES	
Florist	YES	
Food Service Equipment/Supplies	YES	

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Description	Tax Status	Comments
Food/Meat products	NO	
Freight/Shipping	YES/NO	See Section 4.IV.TT
Furniture	YES	
Furniture Refurbishing - Materials and Parts	YES	See Section 4.IV.UU
Furniture Refurbishing - Fabrication Labor	YES	See Section 4.IV.UU
Furniture Refurbishing - Repairing and Application Labor	NO	See Section 4.IV.UU
General Transportation Svc's; bus, taxi	NO	
Generators, Alternators	YES	
Gifts	YES	
Glass, Auto/Window and Miscellaneous	YES	
Graphic Design Services	YES/NO	See Section 4.IV.VV
Graphic Design Services - Preliminary Art	NO	
Hardware Contracts	YES/NO	See Computer Repair Services & Hardware Contracts (above)
Hardware and Abrasives	YES	
Hauling/Freight Services	NO	See Freight/Shipping (above)
Herbicides, Pesticides	YES	
Hospital Equipment and Supplies	YES	
Household Moving, & Storage	NO	
HVAC Equipment Supplies	YES	
Industrial Equipment & Supplies	YES	
Installation	NO	See Section 4.IV.WW
Instructional Training Aids	YES/NO	See Section 4.IV.XX
Instructional Services	NO	See Section 4.IV.XX
Interior/Office Design - Bona Fide Professional Services	NO	See Section 4.IV.YY
Interior/Office Design - Associated with Tangible property	YES	See Section 4.IV.ZZ
Irrigation Systems and Supplies	YES	
Janitorial & Cleaning Services	NO	
Janitorial Equipment and Supplies	YES	
Jewelry	YES	
Jewelry - Bookstore Inventory	NO	Supply Resale Card to Vendor
Labels and Tags - Purchased for Items for Resale	NO	

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Description	Tax Status	Comments
Labels and Tags - Purchases for Consumption	YES	
Laboratory Analysis and Medical Lab's	NO	
Laboratory/Scientific Equipment/Supplies	YES	
Labor - Fabrication	YES	See Installation Charges (above) and Section 4.IV.AAA
Lamps and Lighting Fixtures	YES	
Landscaping Equipment/Supplies	YES	
Landscaping Services	NO	
Laundry Services	NO	
Law Enforcement Products	YES	
Linen & Textile Supplies	YES	
Locks and Locksmiths	YES	
Lumber, Millwork, Plywood & Veneer	YES	
Machine Shop Services & Equipment	YES	See Section 4.IV.BBB
Mailing Services	NO	See Section 4.IV.CCC for listing of services that are not subject to tax.
Mailing Lists	YES	
Mailing Lists Restricted to One Time Use	NO	Includes lists transferred by magnetic tape or similar device.
Mailing Labels	YES	
Materials Handling Equipment	YES	
Measuring and Testing Instruments	YES	
Medical & Scientific Illustration Services	YES	Finished Art is Taxable
Medical/Surgical Equipment and Supplies	YES	
Memberships	YES/NO	Regulation 1584
Metal Fabrication	YES	
Metals	YES	
Microfilm, Equipment, and Supplies	YES	
Microfilming Services	YES	
Miscellaneous Equipment	YES	
Miscellaneous Services	YES/NO	Must look to True Object of Contract. If the true object is a service-nontaxable.
Modular Office Buildings	YES	Limited to 40% of the Retail Price. See Section 4.IV.DDD

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Description	Tax Status	Comments
Musical Instruments/Sheet Music	YES	
Nurseries - Plants & Trees	YES/NO	See Section 4.IV.EEE
Office Equipment and Supplies	YES	
Office Equipment, Repair and Services	YES/NO	See Repairs (below)
Over-the-Counter-Medicines	YES	
Packaging Materials	YES	
Packaging Materials - For Items for Resale	NO	See Section 4.IV.FFF
Paper Products	YES	
Paper Products - Bookstore Inventory	NO	Supply Resale Card to Vendor
Parking Equipment and Accessories	YES	
Partitions	YES	
Pest Control Services	NO	
Pest Control Supplies	YES	
Petroleum Products	YES	
Photographic Equipment and Accessories	YES	
Photographic Services	YES	See Section 4.IV.GGG
Plastic Bags, Boxes, and Containers - For Items for Resale	NO	
Plastic Bags, Boxes, and Containers - For Consumption	YES	
Plastic Sheets, Rods, Etc.	YES	
Plumbing Services	NO	See Section 4.IV.HHH
Printing Services and Supplies	YES	
Prescription Medicines - Pharmaceutical Services	NO	
Printed Materials - Brochures	YES/NO	See Section 4.IV.III
Printed Materials - Copies	YES	
Printed Materials - Charges from Graphic Artists	YES	See Comments under Printed Materials - Brochures (above)
Publishing	NO	See Section 4.IV.JJJ
Publishing - Fees Paid to Designers and Art Directors	YES/NO	See Section 4.IV.KKK
Publishing - Production Functions	YES/NO	See Section 4.IV.LLL
Pumps & Compressors	YES	
Rentals/Leases	YES/NO	See Section 4.IV.MMM

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Description	Tax Status	Comments
Repairs	YES/NO	See Section 4.IV.NNN
Restocking Fees	YES/NO	Yes, if in excess of actual costs. See Section 4.IV.OOO
Safety Equipment and Supplies	YES	
Secretarial Services	NO	
Security Services	NO	
Security Systems and Devices	YES	
Sewing Services	NO	
Shipping/Handling	YES/NO	See Section 4.IV.PPP
Signs	YES	
Software Licenses - Canned Programs	YES	
Software Licenses - Custom Programs	NO	See Comments for Qualification Requirements
Software Licenses - Electrically Transmitted Software	NO	
Software Maintenance Contracts	YES/NO	See Section 4.IV.QQQ
Software Upgrades	YES/NO	See Software Maintenance Contracts (above)
Stationary Supplies	YES	
Stationary Supplies - Bookstore Inventory	NO	Supply Resale Card to Vendor
Subscriptions	NO	See Section 4.IV.RRR for Definition of Subscriptions
Surveying Equipment Supplies	YES	
Surveying Services	NO	
Swimming Pool Equipment/Supplies	YES	
Theatrical Equipment & Supplies	YES	
Toiletries & Cosmetics	YES	
Toiletries & Cosmetics - Bookstore Inventory	NO	Supply Resale Card to Vendor
Tools/Hand Tools	YES	
Trade-In Allowances on Tangible Personal Property	YES	See Section 4.IV.SSS
Trailers/Parts/for Trailers	YES	
Transcription Services	NO	See Section 4.IV.TTT
Transcription Services - Copies of Transcripts	YES	
Translation Services	NO	
Travel Agencies	NO	
Typewriters	YES	

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Description	Tax Status	Comments
Use Fuel Taxes	YES	For information on the separate use fuel tax, see Section 6.III, Use Fuel Taxes
Utilities	NO	Applicable taxes are charged by the Utility Companies
Vehicles	YES/NO	See Section 4.IV.UUU
Veterinary Equipment and Supplies	YES	
Video Equipment and Accessories	YES	
Video Production Services	NO	See Section 4.IV.VVV
Waste Removal Services	NO	
Waste Removal Supplies	YES	
Warranties	YES/NO	See Section 4.IV.WWW
Water Treatment Services	NO	
Watercraft	YES/NO	See Section 6.VI for the exemption information on watercraft and the exemption certificate
Welding Equipment & Supplies	YES	
Window Coverings	YES	See Section 4.IV.XXX
Wines and Liquor Stores	YES	
Word Processing Equipment/Supplies	YES	
Word Processing Services	NO	See Section 4.IV.YYY

IV. Taxability By Product Description - Expanded Explanations

A. Accommodations (i.e., Hotels)

Regulation 1501 (CA Rev & Tax Code)

Accommodations are services which are not subject to sales or use tax. Any tangible personal property purchased from a hotel will be taxable at the point of sale. Therefore, the retailer is responsible for the sales tax. Use tax does not apply in this situation.

B. Accountants

Regulation 1501 (CA Rev & Tax Code)

Accountants provide services which generally are not subject to sales or use tax. Additionally, tangible personal property transferred with the service may be considered incidental to the service and not subject to sales or use tax.

Example: An accountant charges \$500 for keeping UC's books. Included in the services are the general ledgers and journals which are given to UC upon the close of the fiscal year. The general ledgers and journals are tangible personal property. However, they are considered incidental to the service. The accountant should pay sales or use tax on the purchase of the materials used to produce the

ledgers and journals. However, any charges for additional copies of the ledgers and journals for UC would be taxable.

C. Advertising

Regulation 1540⁸, Annotation 100.0250 (CA Rev & Tax Code)

With respect to billings issued by advertising agencies, some charges may represent the sale of tangible personal property. Tax applies to the total charge for the retail sale of the property. Tax applies whether the property was prepared by employees of the agency or acquired from an outside source. UC must accrue the use tax on these purchases if use tax was not charged. UC is not required to accrue tax on a sales tax transaction where UC did not issue a resale or other valid exemption certificate.

Example: An out-of-state advertising agency is requested by UC to produce buttons advertising a UC sponsored event. The buttons will be given away to all those who volunteer their services. The advertising agency designs and produces the buttons. UC will owe tax on the charges made by the advertising agency for the buttons. If the agency did not charge use tax, UC should accrue the use tax.

1. Definitions⁹

- (a) **Digital Pre-Press Instruction.** Digital pre-press instruction is the creation of original information in electronic form by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press, which is then transferred on electronic media such as tape or compact disc.
- (b) **Electronic Artwork.** Electronic artwork is artwork created through the use of computer hardware and software processes which results in artwork in a digital format that can be transmitted to others via electronic means (that is, transmitted through remote telecommunications such as by modem or over the Internet, or by electronic media such as compact or floppy disc). Elements of the process include the creation of original artwork or photographic images, scanning of artwork or photographic images, composition and design of text, insertion and manipulation of scanned and original electronic artwork, photographic images, and text. Electronic artwork does not include artwork that is transferred to clients in a tangible form, other than on electronic media, even where such artwork may have been manufactured or produced in whole or in part by computer hardware and software processes.
- (c) **Finished Art.** Finished art is the final artwork used for actual reproduction by photomechanical or other processes, or used for display. It includes electronic artwork, illustrations (e.g. drawings, diagrams, halftones, or color images), photographic images, sculptures, paintings, and handlettering. Blueprints, diagrams, and instructions for signage

⁸ Regulation 1540, effective 10/3/02.

⁹ Regulation 1540, effective 10/3/02.

furnished to a client as the result of environmental graphic design services are not finished art.

- (d) Intermediate Production Aids. Intermediate production aids include items such as artwork, illustrations, photograph images, photo engravings, and other similar materials which are used to produce special printing aids or finished art.
- (e) Master Agreement. A master agreement is a contract, however characterized (such as "agency-client agreement"), entered into between an advertising agency or commercial artist and its client which specifies the obligations of each party to the master agreement with respect to their relationship, whether for a specified time or advertising campaign or until one of the parties terminates the agreement. A master agreement between an advertising agency and its client may specify the obligations of each with respect to the design of an advertising campaign for the client, the placement of the advertising with print and television media, and for the sale and purchase of tangible personal property related to the advertising campaign. There may then be additional terms for the purchase of specific tangible personal property during the advertising campaign, such as in a purchase order, which identifies the specific property that will be purchased and sold and the sales price for that property.
- (f) Preliminary Art. Preliminary art is tangible personal property which is prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into, or before approval is given, for preparation of finished art provided neither title to, nor permanent possession of, such tangible personal property passes to the client. Examples of preliminary art include roughs, visualizations, layouts, comprehensives, and instant photos.
- (g) Special Printing Aids. Special printing aids are reusable manufacturing aids which are used by a printer during the printing process and are of unique utility to a particular client. Special printing aids include electrotypes, stereotypes, photo engravings, silk screens, steel dies, cutting dies, lithographic plates, film, single or multi-color separation negatives, and flats.

2. Application of Tax to Activities of Advertising Agencies and Commercial Artists.

(a) Services

(1) General.

- (A) Services performed to convey ideas, concepts, looks, or messages to a client may result in a transfer, enhancement, or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are

separately stated as "design charges," "preliminary art," "concept development," or any other designation that clearly indicates that the charges are for such services and not for finished art, they are nontaxable; however, tax applies if: (1) the master agreement or other contract provides that the advertising agency or commercial artist will pass to the client title or the right to permanent possession of the artwork in tangible form, such as on electronic media or hard copy, or (2) permanent possession of the artwork in tangible form is transferred to the client. If the master agreement provides that the client owns the concepts embodied in tangible personal property that is owned and possessed by the advertising agency or commercial artist (e.g., so that such concepts cannot be used on behalf of any other person), that contract provision does not constitute the passage of title to tangible personal property to the client. A requirement that an advertising agency or commercial artist retain permanent possession of the artwork in tangible form does not itself constitute a sale of that property to the client in the absence of a provision passing title to such property to the client.

- (B) Tangible personal property developed and used during services performed to convey ideas, concepts, looks, or messages is consumed in the performance of those services. Unless, prior to any use, the advertising agency or commercial artist passes title to such property to the client as discussed in the previous paragraph, the advertising agency or commercial artist is the consumer of such tangible personal property used and tax applies to the sale of property to, or to the use of the property by, the advertising agency or commercial artist. If the advertising agency or commercial artist passes title to, or permanent possession of, such tangible personal property to its client, tax applies to the sale of the tangible personal property by the advertising agency or commercial artist to the client.
- (2) Digital Pre-Press Instruction. Digital pre-press instruction is a custom computer program under Section 6010.9 of the Revenue and Taxation Code, the sale of which is not subject to tax, provided the digital pre-press instruction is prepared to the special order of the purchaser. Digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a "canned" or prewritten computer program which is held or existing for general or repeated sale or lease, even if the digital pre-press instruction was initially developed on a custom basis or for in-house use. The sale of such canned or prewritten digital pre-press instruction in tangible form is a sale of tangible personal property, the retail sale of which is subject to tax.

- (3) Retouching Photographic Images. Retouching a photographic image for the purpose of repairing or restoring the photograph to its original condition is a repair, the charge for which is not taxable.
- (4) Signage. The creation and providing of single copies of blueprints, diagrams, and instructions for signage as a result of environmental graphic design is a service the charge for which is not taxable. Charges for additional copies are taxable.
- (5) Websites. The design, editing, or hosting of an electronic website in which no tangible personal property is transferred to the client is a service, the charge for which is not subject to tax.
- (6) Specific Nontaxable Charges. The following and similar fees and commissions are not taxable when they are separately stated. Whether separately stated or not, these fees and commissions are not included in the calculation of "direct labor" for purposes of Regulation 1540(b)(3).
 - (A) Media commissions or fees received for placement of advertising whether paid by the medium, by another advertising agency, or by the client.
 - (B) Commissions or fees paid to advertising agencies by suppliers. Examples of such commissions are those paid to an advertising agency by a premium manufacturer (or distributor) or a direct-by-mail supplier.
 - (C) Consultation and concept development fees related to client discussion, development of ideas, and other services. If the advertising agency transfers to the client tangible personal property produced as a result of these services, the transfer is incidental to the advertising agency's providing of the service and is not a sale of that tangible personal property; the advertising agency is the consumer of tangible personal property transferred to the client incidental to the providing of a service.
 - (D) Fees for research or account planning that entail consumer research and the application of that research to the client's business or industry.
 - (E) Fees for quality control supervision that entails the proofing and review of printing and other products provided by outside suppliers.
 - (F) Charges for the formulation and writing of copy.

(b) Finished Art

- (1) Use of Aids in Creation of Finished Art. If the advertising agency or commercial artist uses any intermediate production aids or special printing aids in the creation of the finished art, the presumptions with respect to passage of title and the calculation of the measure of tax on the sale of such aids by the advertising agency or commercial artist is governed by the provisions of Regulation 1541 applicable to special printing aids.
- (2) Transfers of Electronic Artwork. A transfer of electronic artwork in tangible form is a sale. However, a transfer of electronic artwork from an advertising agency or commercial artist to the client or to a third party on the client's behalf that is not in tangible form is not a sale of tangible personal property, and the charges for the transfer are not subject to tax. A transfer of electronic artwork is not in tangible form if the file containing the electronic artwork is transferred through remote telecommunications (such as by modem or over the Internet), or if the file is loaded into the client's computer by the advertising agency or commercial artist, and the client does not obtain title to or possession of any tangible personal property, such as electronic media or hard copy. If the transfer is not a transfer in tangible form because it is loaded onto the client's computer, the advertising agency or commercial artist should document that transfer by a written statement signed at the time of loading by the client and by the person who loaded the electronic artwork into the client's computer with the following or similar language: "This electronic artwork was loaded into the computer of [client's name] by [advertising agency's or commercial artist's name], and [advertising agency's or commercial artist's name] did not transfer any tangible personal property containing the artwork, such as electronic media or hard copies, to [client's name]." When such a statement is signed at the time the file is loaded, it will be rebuttably presumed that the transfer of electronic artwork was not transferred in tangible form. If there is no such timely completed statement, the advertising agency or commercial artist may provide other substantive evidence establishing that the artwork was not transferred in tangible form.
- (3) Transfers of Finished Art in Tangible Form. The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless the transfer is not in tangible form as explained in Regulation 1540(b)(2)(B), the transfer of finished art is a sale of tangible personal property and tax applies to charges for that finished art, including all charges for any rights sold with the finished art, such as copyrights or distribution and production rights, except as provided in Regulation 1540(b)(2)(D)2.

- (A) Combined Charge for Finished Art and Conceptual Services. If charges for finished art are combined into a single charge that also includes nontaxable charges for conceptual services described in Regulation 1540(b)(1)(A), the advertising agency or commercial artist may report the measure of tax on the retail sale of the finished art as specified in Regulation 1540(b)(3), provided that the reported measure of tax must also include the value of reproduction rights included with the transfer except those that are not taxable as provided in Regulation 1540(b)(2)(D)2.
 - (B) Lump Sum Billing -- 75/25 Presumption. If tax is not reported as provided in the previous paragraph, it will be refutably presumed that 75 percent of the combined charge for the finished art and conceptual services is for the nontaxable services and that 25 percent of the combined charge is the measure of tax on the retail sale of the finished art. However, if the sales price to the advertising agency or commercial artist of the finished art (or component parts) and any intermediate production aids or special printing aids sold to the client for that combined charge is more than 25 percent of the combined charge to the client, the measure of tax is the sales price of the tangible personal property to the advertising agency or commercial artist.
- (4) Reproduction Rights Transferred With Finished Art.
- (A) Charges for the transfer of possession in tangible form to the client or to anyone else on the client's behalf of finished art for purposes of reproduction are included in the measure of tax on that sale, including all charges for the right to use that property, even though there is no transfer of title to the person reproducing the finished art, except as provided in Regulation 1540(b)(2)(D) 2.
 - (B) Any agreement evidenced by a writing (such as a contract, invoice, or purchase order) that assigns or licenses a copyright interest in finished art for the purpose of reproducing and selling other property subject to the copyright interest is a technology transfer agreement, as explained further in Regulation 1507.¹⁰ Tax applies to amounts received for any tangible personal property transferred as part of a technology transfer agreement. Notwithstanding Regulation 1540(b)(2)(C), tax does not apply to temporary transfers of computer storage media containing finished art transferred as part of a technology transfer agreement.

¹⁰ See Section 2.XII.B, Technology Transfer Agreements (TTAs).

Tax does not apply to amounts received for the assignment or licensing of a copyright interest as part of a technology transfer agreement. The measure of tax on the sale of finished art transferred by an advertising agency or commercial artist as part of a technology transfer agreement shall be:

1. The separately stated sales price if the finished art is permanently transferred, or the separately stated lease price if the finished art is temporarily transferred; provided that the separately stated price is reasonable;
2. Where there is no such separately stated price, the separate price at which the person holding the copyright interest in the finished art has sold or leased that finished art or like finished art to an unrelated third party where: 1) the finished art was sold or leased without also transferring an interest in the copyright; or 2) the finished art was sold or leased in another transaction at a stated price satisfying the requirements of Regulation 1540(b)(2)(D)2.a.; or
3. If there is no such separately stated price under Regulation 1540(b)(2)(D) 2.a., nor a separate price under Regulation 1540(b)(2)(D) 2.b., 200 percent of the combined cost of materials and labor used to produce or acquire the finished art. "Cost of materials" consists of the costs of those materials used or incorporated into the finished art, or any tangible personal property transferred as part of the technology transfer agreement. "Labor" means any charges for labor used to create such tangible personal property where the advertising agency or commercial artist purchases such labor from a third party, or the work is performed by an employee of the advertising agency or commercial artist.

(c) Sales of Other Tangible Personal Property by Advertising Agency or Commercial Artist

Tax applies to the total charge for the retail sale of tangible personal property by an advertising agency or commercial artist. If an advertising agency or commercial artist combines charges for nontaxable services as defined in Regulation 1540(b)(1)(F), such as media placement, with charges for tangible personal property for which the advertising agency or commercial artist is the retailer, the measure of tax on that retail sale of property includes the total of: direct labor; the cost of purchased items that become an ingredient or component part of the tangible personal

property; the cost of any intermediate production aids or special printing aids; and a reasonable markup. Commissions, fees, and other charges exclusively related to the production or fabrication of tangible personal property are part of direct labor and are thus included in the measure of tax. Such charges include retouching of photographic images or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. An advertising agency or commercial artist must keep sufficient records to document the basis for the reported measure of tax.

(d) **Items Purchased by an Advertising Agency or Commercial Artist**

Except when property is resold prior to any use, an advertising agency or commercial artist is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to, or to the use of such property by, the advertising agency or commercial artist.

D. Agricultural Machinery and Equipment and Diesel Fuel

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

Tangible personal property used in manufacturing that is not incorporated into the product is taxable.

1. **Agricultural Machinery and Equipment**

A partial exemption from sales and use tax exists for farming equipment and machinery, and the parts thereof, used primarily in producing and harvesting agricultural products is available (Regulation 1533.1).¹¹ Provide [CDTFA-230-D, PARTIAL EXEMPTION CERTIFICATE QUALIFIED SALES AND PURCHASES OF FARM EQUIPMENT AND MACHINERY](#), to the vendor to obtain the partial exemption.

2. **Diesel Fuel Used in Farming Activities or Food Processing**

A partial exemption from sales and use tax exists for purchases of diesel fuel used in farming activities or food processing (Regulation 1533.2). Provide [CDTFA-230-G, PARTIAL EXEMPTION CERTIFICATE FOR QUALIFIED SALES AND PURCHASES OF DIESEL AND FARM EQUIPMENT AND MACHINERY](#), to the vendor to obtain the partial exemption.

E. Agricultural Supplies

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

Tangible personal property used in manufacturing that is not incorporated into the product is taxable.

¹¹ See Section 2.V.C.4, Farm Equipment for more information.

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F. Air Filters For Resale

Section 6091, Regulation 1668 (CA Rev & Tax Code)

Air filters that are purchased to be resold or incorporated into a product to be resold should be purchased ex-tax under a resale certificate. Any other use constitutes a taxable use.

G. Animal Feed for Food Animals and Non-Food Animals for Resale

Section 6358, Regulation 1587¹² (CA Rev & Tax Code)

Tax does not apply to sale of feed for food animals or for any non-food animals which are to be sold in the regular course of business.

Feed includes:

Cod-liver oil, salt, bone meal, calcium, carbonate, double purpose limestone granulars, oyster shells and any item purchased for use as an ingredient of a product which would constitute a feed if the product itself were sold.

Feed does not include:

Sand, charcoal, granite grit, sulfur and medicines.

UC should give an exemption certificate in order to purchase the feed ex-tax. Following is an acceptable form of the certificate. An additional copy for reproduction can be found in the **Section 9, Exhibits**.

I hereby certify that all of the feed which I shall purchase from _____ will be purchased for use as feed for food animals or for non-food animals which are being held for sale in the regular course of business. This certificate shall be considered a part of each order which I give unless such order shall otherwise specify. This certificate shall be good until revoked in writing.

Signature _____

Address _____

Occupation _____

Seller's Permit No. (if any) _____

H. Animal Feed - Medicated for Food Animals and Non-Food Animals for Resale

Section 6358, Regulation 1587¹³ (CA Rev & Tax Code)

¹² Regulation 1587, amended effective 5/18/00.

¹³ Regulation 1587, amended effective 5/18/00.

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Tax does not apply to the sale of medicated feed for food animals and non-food animals which are to be sold in the regular course of business.

The primary purpose for medicated feed must be for the prevention and control of disease for food animals or non-food animals which are to be sold in the regular course of business. Also included within the exemption for medicated feed are ingredients purchased from different sellers by a purchaser who mixes them for feeding to such animal life in proportions so that the product is an exempt medicated feed rather than a drug.

Currently, medicines are not considered feed and subject to tax when administered to animal life directly or as an additive to drinking water. However, **effective April 1, 1996**, gross receipts from the sale, storage, use, or other consumption in California of drugs or medicines administered to animals as an additive to their feed or drinking water will be exempt if administered for purposes of prevention and control of diseases in food animals or non-food animals to be sold in the regular course of business.

Effective January 1, 1997, tax does not apply to the sale or use of oxygen administered to food animals for the primary purpose of preventing or controlling disease, including oxygen injected into ponds or tanks that house or contain aquatic species raised, kept, or used as food for human consumption. However, tax does apply to the sale or use of oxygen administered to non-food animals whether or not the animals are being held for sale in the regular course of business.

Effective January 1, 1997, tax does not apply to the sale or use of drugs or medicines which are administered directly (e.g., orally hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals. The sale or use of drugs or medicines administered directly to non-food animals are subject to tax regardless that such animals are being held for sale in the regular course of business.

Purchasers of drugs or medicines to be mixed with feed or drinking water for food animals or for non-food animals being held for sale in the regular course of business, to be administered directly to a food animal, or, if oxygen, administered to a food animal such as by pumping or injecting the oxygen into the animal's living environment should provide a certificate in the following form:

I hereby certify that the drugs or medicines which I shall purchase from _____ will be purchased

[] as an additive to feed or drinking water for food animals or for non-food animals being held for sale in the regular course of business,

[] for administration directly to a food animal, or

[] for oxygen administered to a food animal.

This certificate shall be considered a part of each order which I give unless such order shall otherwise specify. This certificate shall be good until revoked in writing.

Signature _____

Section 4: University As Purchaser

Address_____

Occupation_____

Seller's Permit No. (if any)_____

An additional copy for reproduction can be found in the **Section 9, Exhibits**.

I. Animals: Livestock

Section 6358, Regulation 1587 (CA Rev & Tax Code)

Tax does not apply to sales of any form of animal life which ordinarily constitute food for human consumption regardless of their actual use. Examples are cattle, sheep, swine, baby chicks, hatching eggs, fish, bees, ostriches and emus.

Non-food animals do not qualify for the tax exemption even if purchased for breeding. The term “food animals” does not include any forms of animal life which are commonly kept as pets or companions, the sale of which for food is prohibited by Penal Code Section 598b, nor does it include any horse, the sale of which for human consumption is prohibited by Penal Code section 598c. For example, cats, dogs, horses, mink, and canaries are not food animals.¹⁴ Consequently, the purchase is taxable.

J. Animals: Laboratory Research Food Animals

Section 6358, Regulation 1587 (CA Rev & Tax Code)

The sale of animals of a kind ordinarily used for human consumption is exempt even though the sale is made to an educational institution for research.

Example: Chickens purchased by the Biology Department for medical studies are not subject to tax.

K. Animals: Laboratory Research Non-Food Animals

Section 6358, Regulation 1587 (CA Rev & Tax Code)

Tax is applicable to the sale of non-food animals regardless of their use.

Example: Guinea pigs purchased for medical research are subject to tax.

L. Appliances

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

Tangible personal property is subject to tax. However, effective 7/1/14, purchases of qualified property used in a qualified manner by a qualified person may be eligible for a partial exemption from the sales and use tax. See discussion in Addendum – UC Guidelines – Partial Sales and Use Tax Exemption.

¹⁴ Regulation 1587, amended effective 5/18/00.

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M. Appliances - Mandatory Warranties

Section 6006-6012, Regulation 1655 (CA Rev & Tax Code)

The purchase of mandatory warranties are taxable when purchased in conjunction with tangible personal property.

N. Appliances - Optional Warranties

Section 6006-6012, Regulation 1655 (CA Rev & Tax Code)

The purchase of optional warranties is not taxable, as the person obligated under an optional warranty contract is the consumer of the parts furnished under an optional warranty.¹⁵

	*** USER NOTE: Optional Hardware Maintenance ***	
	<p>Observation: The determination of optional maintenance is whether the vendor would sell the hardware without requiring the buyer to also purchase maintenance from them.</p> <p>In addition, some vendors may not separately state the maintenance on their invoice and bill the hardware and maintenance on a lump sum basis. Regardless of billing method, the value for the optional maintenance is exempt from CA sales and use tax.</p> <p>Exemption Keys: Optional hardware maintenance is exempt so the vendor must exclude the value of the maintenance on their sales invoice to the customer.</p>	

O. Art Supplies

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

The purchase of tangible personal property by a consumer is taxable.

P. Art Supplies Purchased by the Bookstore

Section 6091, Regulation 1668 (CA Rev & Tax Code)

If the bookstore purchases the items for inventory, they are sales for resale. UC should issue a resale card for purchases of items so that they may be purchased ex-tax.

Q. Art Work

Section 6007, 6009, 6016, 6051, 6201, 6202, Regulation 1540¹⁶ (CA Rev & Tax Code)

¹⁵ See Section 4.IV.WWW.2, Optional Warranty.

¹⁶ Regulation 1540, amended effective 10/3/02.

Section 4: University As Purchaser

1. Performance of services

Services performed to convey ideas, concepts, looks, or messages to a client may result in a transfer, enhancement, or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as "design charges," "preliminary art," "concept development," or any other designation that clearly indicates that the charges are for such services and not for finished art, they *are nontaxable*; however, *tax applies* if:

- (a) the master agreement or other contract provides that the advertising agency or commercial artist will pass to the client title or the right to permanent possession of the artwork in tangible form, such as on electronic media or hard copy, or
- (b) permanent possession of the artwork in tangible form is transferred to the client. If the master agreement provides that the client owns the concepts embodied in tangible personal property that is owned and possessed by the advertising agency or commercial artist (e.g., so that such concepts cannot be used on behalf of any other person), that contract provision does not constitute the passage of title to tangible personal property to the client. A requirement that an advertising agency or commercial artist retain permanent possession of the artwork in tangible form does not itself constitute a sale of that property to the client in the absence of a provision passing title to such property to the client.

Tangible personal property developed and used during services performed to convey ideas, concepts, looks, or messages is consumed in the performance of those services. Unless, prior to any use, the advertising agency or commercial artist passes title to such property to the client as discussed in the previous paragraph, the advertising agency or commercial artist is the consumer of such tangible personal property used and tax applies to the sale of property to, or to the use of the property by, the advertising agency or commercial artist. If the advertising agency or commercial artist passes title to, or permanent possession of, such tangible personal property to its client, tax applies to the sale of the tangible personal property by the advertising agency or commercial artist to the client.

2. Finished Art

- (a) **Use of Aids in Creation of Finished Art.** If the advertising agency or commercial artist uses any intermediate production aids or special printing aids in the creation of the finished art, the presumptions with respect to passage of title and the calculation of the measure of tax on the sale of such aids by the advertising agency or commercial artist, is governed by the provisions of Regulation 1541 applicable to special printing aids.
- (b) **Transfers of Electronic Artwork.** A transfer of electronic artwork in tangible form is a sale. However, a transfer of electronic artwork from an advertising agency or commercial artist to the client or to a third party on

the client's behalf that is not in tangible form is not a sale of tangible personal property, and the charges for the transfer are not subject to tax. A transfer of electronic artwork is not in tangible form if the file containing the electronic artwork is transferred through remote telecommunications (such as by modem or over the Internet), or if the file is loaded into the client's computer by the advertising agency or commercial artist, and the client does not obtain title to or possession of any tangible personal property, such as electronic media or hard copy. If the transfer is not a transfer in tangible form because it is loaded onto the client's computer, the advertising agency or commercial artist should document that transfer by a written statement signed at the time of loading by the client and by the person who loaded the electronic artwork into the client's computer with the following or similar language: "This electronic artwork was loaded into the computer of [client's name] by [advertising agency's or commercial artist's name], and [advertising agency's or commercial artist's name] did not transfer any tangible personal property containing the artwork, such as electronic media or hard copies, to [client's name]." When such a statement is signed at the time the file is loaded, it will be rebuttably presumed that the transfer of electronic artwork was not transferred in tangible form. If there is no such timely completed statement, the advertising agency or commercial artist may provide other substantive evidence establishing that the artwork was not transferred in tangible form.

- (c) Transfers of Finished Art in Tangible Form. The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless the transfer is not in tangible form as explained in Regulation 1540(b)(2)(B), the transfer of finished art is a sale of tangible personal property and tax applies to charges for that finished art, including all charges for any rights sold with the finished art, such as copyrights or distribution and production rights, except as provided in Regulation 1540(b)(2)(D) 2.
 - (1) Combined Charge for Finished Art and Conceptual Services. If charges for finished art are combined into a single charge that also includes nontaxable charges for conceptual services described in Regulation 1540(b)(1)(A), the advertising agency or commercial artist may report the measure of tax on the retail sale of the finished art as specified in Regulation 1540(b)(3), provided that the reported measure of tax must also include the value of reproduction rights included with the transfer except those that are not taxable as provided in Regulation 1540(b)(2)(D)2.
 - (2) Lump Sum Billing -- 75/25 Presumption. If tax is not reported as provided in the previous paragraph, it will be rebuttably presumed that 75 percent of the combined charge for the finished art and conceptual services is for the nontaxable services and that 25 percent of the combined charge is the measure of tax on the retail sale of the finished art. However, if the sales price to the advertising agency or commercial artist of the finished art (or

component parts) and any intermediate production aids or special printing aids sold to the client for that combined charge is more than 25 percent of the combined charge to the client, the measure of tax is the sales price of the tangible personal property to the advertising agency or commercial artist.

(d) Reproduction Rights Transferred With Finished Art.

- (1) Charges for the transfer of possession in tangible form to the client or to anyone else on the client's behalf of finished art for purposes of reproduction are included in the measure of tax on that sale, including all charges for the right to use that property, even though there is no transfer of title to the person reproducing the finished art, except as provided in Regulation 1540(b)(2)(D) 2.
- (2) Any agreement evidenced by a writing (such as a contract, invoice, or purchase order) that assigns or licenses a copyright interest in finished art for the purpose of reproducing and selling other property subject to the copyright interest is a technology transfer agreement, as explained further in Regulation 1507.¹⁷ Tax applies to amounts received for any tangible personal property transferred as part of a technology transfer agreement. Notwithstanding Regulation 1540(b)(2)(C), tax does not apply to temporary transfers of computer storage media containing finished art transferred as part of a technology transfer agreement. Tax does not apply to amounts received for the assignment or licensing of a copyright interest as part of a technology transfer agreement. The measure of tax on the sale of finished art transferred by an advertising agency or commercial artist as part of a technology transfer agreement shall be:
 - (A) The separately stated sales price if the finished art is permanently transferred, or the separately stated lease price if the finished art is temporarily transferred; provided that the separately stated price is reasonable;
 - (B) Where there is no such separately stated price, the separate price at which the person holding the copyright interest in the finished art has sold or leased that finished art or like finished art to an unrelated third party where:
 - 1) the finished art was sold or leased without also transferring an interest in the copyright; or
 - 2) the finished art was sold or leased in another transaction at a stated price satisfying the requirements of Regulation 1540(b)(2)(D) 2.a.; or
 - (C) If there is no such separately stated price under Regulation 1540(b)(2)(D) 2.a., nor a separate price under

¹⁷ See Section 2.XII.B, Technology Transfer Agreements (TTAs).

Regulation 1540(b)(2)(D) 2.b., 200 percent of the combined cost of materials and labor used to produce or acquire the finished art. "Cost of materials" consists of the costs of those materials used or incorporated into the finished art, or any tangible personal property transferred as part of the technology transfer agreement. "Labor" means any charges for labor used to create such tangible personal property where the advertising agency or commercial artist purchases such labor from a third party, or the work is performed by an employee of the advertising agency or commercial artist.

3. **Sales of Other Tangible Personal Property by Advertising Agency or Commercial Artist**

Tax applies to the total charge for the retail sale of tangible personal property by an advertising agency or commercial artist. If an advertising agency or commercial artist combines charges for nontaxable services as defined in Regulation 1540(b)(1)(F), such as media placement, with charges for tangible personal property for which the advertising agency or commercial artist is the retailer, the measure of tax on that retail sale of property includes the total of: direct labor; the cost of purchased items that become an ingredient or component part of the tangible personal property; the cost of any intermediate production aids or special printing aids; and a reasonable markup. Commissions, fees, and other charges exclusively related to the production or fabrication of tangible personal property are part of direct labor and are thus included in the measure of tax. Such charges include retouching of photographic images or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. An advertising agency or commercial artist must keep sufficient records to document the basis for the reported measure of tax.

4. **Items Purchased by an Advertising Agency or Commercial Artist**

Except when property is resold prior to any use, an advertising agency or commercial artist is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to, or to the use of such property by, the advertising agency or commercial artist.

R. Art Work - Original Works of Art

Regulation 1586 (CA Rev & Tax Code)

Original works of art purchased for public or nonprofit organizations for the purpose of displaying the art to the public in a museum or public place is exempt from tax.

S. Audio Visual Service

Regulation 1529 (CA Rev & Tax Code)

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Tax applies to charges for services which are fabrication or processing of tangible personal property. Generally, audio visual services are involved in the fabrication of a product and therefore, will be subject to tax.

Motion picture productions are not subject to tax.

T. Automotive Repairs and Services

Regulation 1546 (CA Rev & Tax Code)

Charges for labor or services for repairing or installing the property purchased are excluded from the tax. Other services provided by auto mechanics should also be exempt from tax, except for fabrication, assembly or services related to the sale of any tangible personal property, such as parts.

U. Aviation Parts and Supplies

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

Tax applies to the purchase of aviation parts that are used in California.

V. Bag, Backpacks, and Similar Products Purchased for the Bookstore

Section 6091 (CA Rev & Tax Code)

The bookstore's purchases of bags, backpacks, and similar products to be sold in the bookstore should be purchased ex-tax under a resale card.

W. Bar Coding Supplies

Section 1589 (CA Rev & Tax Code)

Tax does not apply to the purchase of bar coding supplies, such as labels or name-plates, if the purchaser affixes them to the property to be sold and sells them along with and as part of such property or if the purchaser affixes them to nonreturnable containers of property to be sold. Labels and nameplates affixed to returnable containers of such property, are not taxable if a new label is affixed to the container each time it is refilled.

The labels are exempt if they are purchased for the purpose of shipping items that are either sold at retail or for resale. Such labels must describe the product to which they are affixed and generally be for the benefit of the ultimate consumer. If they do not fall into both categories, the purchase of the bar coding supplies is taxable. Additionally, if the bar code holds only sales price information, it is a taxable purchase by UC. Otherwise, it is a purchase for resale and a resale card should be given to the vendor.

Example: The bookstore purchases bar code labels which are designed to track inventory. The purchase of the labels by the bookstore is taxable.

Example: The bookstore purchases bar code labels which are used as price tags on inventory. The labels are subject to tax.

X. Batteries

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

Batteries that are consumed by UC are subject to tax.

Y. Batteries - Bookstore Inventory

Section 6091 (CA Rev & Tax Code)

Purchases of batteries for inventory in the bookstore are sales for resale and use tax should not be accrued on these items. For purchases from California vendors, a resale certificate should be issued to the vendor.

Z. Binder/Book Binders-Bookstore Inventory and Library Services

Regulation 1553 (CA Rev & Tax Code)

Bookbinders are typically subject to tax. Tax applies to the entire charge for binding done in connection with the furnishing of a finished product, i.e., a bound book, including a book produced with either a hard or soft cover by binding together materials such as magazines, newspapers, or business records. Typically University libraries will be subject to tax on the bookbinders because the libraries purchase bookbinders for their own use.

On the other hand, if a University bookstore sells the materials purchased in the binding operations, it would be taxable sales or exempt depending on whether the customer resells the binding books. When bound books are sold at retail, tax applies to the gross receipts without any deduction for the cost of binding, even when done by the seller of the books. Tax also applies to the entire charge for the initial binding of new books furnished to a bookbinder for binding, unless the customer of the bookbinder will sell the books in the regular course of business, in which case the customer of the bookbinder may furnish a resale certificate to the bookbinder.

AA. Biochemical and Biological Products

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

Tax applies to the purchase of tangible personal property consumed by the purchaser. Biochemical and biological products are generally consumed in the processes in which they are used. It is irrelevant that the chemicals are consumed as part of a process which may result in an end product for resale.

Example: Biochemical product A is used in producing tangible personal property that is produced for purpose of resale. Biochemical product A is consumed in the process. Tax is due on the purchase price of the chemical consumed by UC, unless any part of the item is physically required to be in the ultimate product for sale.

BB. Blueprinting Services

Annotation 515.0380, Regulation 1506 (CA Rev & Tax Code)

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Fees paid to architects or engineers for their ability to design, conceive, or dictate ideas, concepts, designs, or specifications are ***not subject to tax***. Any blueprint provided under the architect's contract or commissions are incidental to the architect's services and are not taxable. If after the completion of the contract or commission the architect transfers additional copies of the original blueprint, ***tax applies*** to any charge for the additional copies.

CC. Books and Educational Materials - In General

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

Purchases of books or educational materials, other than for the bookstore for resale, are subject to tax. This includes purchases of books made by departments and professors, unless resold to students. If the sales tax has not been paid to the vendor, UC must accrue the use tax on purchases of these items since there is no exemption for educational materials.

DD. Building and Grounds Services

Section 6007, 6016, 6051, 6202, Regulation 1501 (CA Rev & Tax Code)

Generally, building and grounds services are exempt from tax. On occasion, such services may include tangible personal property such as plants which the service providers sell to UC. These items are subject to tax. However, since the building and grounds service providers must be California retailers, they will be responsible for the sales tax. Accordingly, UC will not be responsible for accruing the use tax on these items.

EE. Calligraphy and Design

Section 6007, 6016, 6051, 6202, Regulation 1501 (CA Rev & Tax Code)

A person engaged in calligraphy for the purpose of creating documents in calligraphy is not providing a service. The "true object" of the transaction is the document written in calligraphy, not the service. Therefore, it is subject to tax. If the transaction is for instructions on how to produce documents in calligraphy, then the "true object" would be a service.

FF. Cargo Containers

Section 6007, 6009, 6016, 6051, 6201, 6202 (CA Rev & Tax Code)

The first consumptive use in California of a cargo container creates a taxable use. It is assumed that cargo containers purchased by UC will be used within California. Therefore, they are subject to tax. UC must accrue the use tax, where sales tax has not been paid.

GG. Computer Program Developers/Consultant

Regulation 1502 (CA Rev & Tax Code)

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Tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. A custom program is a computer program prepared to the special order of the customer. It may incorporate preexisting routines, utilities or similar program components. A custom program also includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer.

Tax does not apply to the transfer of a custom program or custom programming services performed in connection with the sale or lease of computer equipment, whether or not the charges for the custom program or programming are separately stated.

Custom computer programming services are always exempt, even when sold with tangible personal property. Any written documentation or manuals designed to facilitate the use of a custom computer program by the customer are nontaxable, whether or not a separate charge is made for the documentation or manuals.

Therefore, UC should not accrue tax on any charges associated with custom programs or services.

Modifications to Prewritten Programs

Tax applies to custom modifications to prewritten programs if the charges do not qualify as custom programs. Custom programs are not subject to sales tax.

To evaluate whether modifications are significant enough to qualify as custom programs, the following guidelines are used by the State:

- If the prewritten program was previously marketed, the new program will qualify as a custom program, if the price of the prewritten program was 50% or less of the price of the new program.

Example: Canned program A written by XYZ company is sold at retail for \$20. Anyone can purchase the program and run it on any personal computer without customization.

UC requests that modifications be made to Canned program A. UC is charged \$40 for the work involved to customize the program. The program costs a total of \$60. The new program is exempt from tax as a custom program.

- If the prewritten program was not previously marketed, the new program will qualify as a custom program, if the charge made to the customer for custom programming services, as evidenced in the records of the seller, was more than 50% of the contract price to the customer.

Example: Canned program A is a new product which has not been previously marketed. UC contracts to purchase the product for \$80. Customized programming is necessary for utilization and included within the purchase price. The programming services are charged at \$45. The program is exempt as a custom program.

HH. Computer Repair Services Not Under Warranty

Section 6006, 6010, 6011, 6015, Regulation 1546 (CA Rev & Tax Code)

1. Taxable Repairs

If the retail value of the parts and materials furnished in connection with repair work is more than 10% of the total charge, or if a separate charge is made for the parts and materials, tax applies to the retail selling price of the tangible personal property.

2. Nontaxable Repairs

If the retail value of the parts and materials furnished in connection with the repair work is 10% or less of the total charge, and a separate charge is not made for the parts and materials, the charges for repairs are not subject to tax. The person providing the repairs is the consumer of the parts and materials.

II. Computer Repair Services Under Warranty¹⁸

Section 6011, 6015, Regulation 1502, 1655 (CA Rev & Tax Code)

The tax treatment for repairs made under warranties and the replacement parts used in the fulfillment of the warranties varies depending on the nature of the contract.

1. Mandatory Warranty

Warranties that are required to be purchased as a condition of the sale are mandatory warranties. Services that are a part of a sale are included within the definition of "sales price" (Section 6011). As a result, mandatory warranties when purchased in connection with computer hardware are subject to the sales or use tax.

Example: UC purchases a computer for a department. The purchase of a one year warranty is mandatory with the sale of the computer. The invoice separately states the price for the warranty contract. The price of the warranty is taxable. However, it is not relevant that the warranty contract is separately stated.

2. Optional Warranty

Optional warranties are not subject to sales or use tax. The person obligated to provide services under an optional warranty contract is the consumer of parts furnished in conjunction with the contract. (The service provider will have paid or accrued sales tax on the purchase of parts used in connection with the optional warranty). The charges for the optional warranty should be separately stated on the sales invoice along with a clear indication that the warranty is optional.

¹⁸ See Section 4.IV.WWW, Warranties.

Example: UC purchases a computer for a department. The salesperson asks whether UC would like to purchase a one year warranty in conjunction with the purchase of the computer. UC purchases the warranty and 90 days later, the screen burns out. The initial purchase of the warranty is exempt from tax. Additionally, UC does not owe sales tax on the replacement of the screen. The seller is the consumer of the screen and is required to pay use tax on its purchase cost of the screen.

JJ. Computer Software and Peripherals

Section 6006, 6012, Regulation 1502 (CA Rev & Tax Code)

Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration is a sale (Section 6006). Sales of tangible personal property by a retailer are subject to sales tax.

Computers, printers, and other related hardware are all tangible personal property, the sale of which is subject to sales tax.

1. Installation

Reasonable labor or service charges for installation are excluded from the definition of gross receipts (Section 6012(c)(3)). Therefore, installation charges are exempt from tax.

Although installation charges are always exempt, to avoid complications in an audit the charges should be separately stated. In an audit, this will avoid having the CDTFA estimate the installation costs if not otherwise stated. Installation charges must be reasonable or they will be challenged by the CDTFA regardless of whether they are separately stated.

2. Sales of Software

Licensing fees for prewritten (canned) programs transferred by disc or magnetic tape are subject to sales tax. A prewritten program is a program held or existing for general or repeated sale or lease. The term also includes a program developed for in-house use which is subsequently offered for sale or lease as a product. Tax applies whether or not title to the storage media on which the program transfers passes. If the program is transferred by remote telecommunications, it is exempt from sales tax. If a hard copy is provided in conjunction with the remote transfer, however, the exemption will not be available.

If the transfer of a prewritten program is a nontaxable transaction, then the seller is the consumer of tangible personal property used to produce written documentation of manuals (including documentation or manuals in machine-readable form) designed to facilitate the use of the program and transferred to the purchaser for no additional charge. If a separate charge is made for the documentation or manuals, then tax applies to the separate charge.¹⁹ See also

¹⁹ Regulation 1502, amended effective 1/29/99.

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discussion regarding Technology Transfer Agreements (TTAs) in Section 2.XII.B.

KK. Construction and Building Materials

Regulation 1521 (CA Rev & Tax Code)

The purchase of construction and building materials by UC are generally subject to tax.

However, if UC is purchasing construction and building materials from a construction contractor performing a construction contract, UC is not required to accrue the use tax on these purchases because a construction contractor must be a California retailer.

Therefore, the sale tax liability lies with the construction contractor. The contractor may require tax reimbursement from UC.

LL. Consultants

Regulation 1501 (CA Rev & Tax Code)

Services provided by consultants are generally exempt from tax. Any tangible personal property that is provided incidentally to the service is also exempt. However, if the tangible personal property is the "true object" of the service, the entire charge related to the tangible personal property is subject to tax.\

MM. Copy Supplies

Section 6359.45, Regulation 1528, 1574 (CA Rev & Tax Code)

1. Supplies for Contract Copy Services for Non-UC Related Departments

Sales tax does not apply to UC's purchase of materials that become a component part of the copies sold under contract copy services. These items should be purchased for resale by UC's purchasing department and a resale certificate should be provided to the vendors of these items.

UC is the consumer of other materials and supplies that do not become a component part of the copies sold. **Sales tax applies** to the purchase of these materials by UC (Regulation 1528).

2. Supplies for Self Service Copies

(a) Fifteen Cents or Less

UC is the consumer of photocopies when sold through a coin-operated machine for fifteen cents or less per copy. UC is the consumer of the paper and other copy machine supplies. **Sales or use tax applies** to UC's purchase of these items (Section 6359.45).

(b) More Than Fifteen Cents

UC is the retailer of photocopies when sold through a coin-operated machine for more than fifteen cents per copy. UC's purchasing

department should purchase the supplies that become component parts of the copies sold, such as the paper and ink, for resale and provide vendors of these items with a resale certificate upon such purchase. The purchase of these items is ***not subject to sales and use tax. Sales or use tax applies*** to UC's purchase of other supply items that do not become component parts of the copies sold (Regulation 1574(b)).

NN. Data Collection and Research Services

Annotation 515.0950 (CA Rev & Tax Code)

California's sales and use tax laws and regulations do not specifically address data collection and research services. However, in an annotation discussing the exempt nature of a medical retrieval service, the taxpayer provided the most current medical information regarding a medical condition to a client. The client was provided a computer printout discussing the ailment. The annotation determined that the true object of the transaction was a medical diagnosis. The printout was only the means of transmitting the information and incidental to the service. Thus, the service was deemed exempt from the tax.

See also Regulation 1502(c)(3) which provides that a contract for the service of researching and developing original information for a customer is not subject to tax.

OO. Data Processing Services

Regulation 1501, 1502 (CA Rev & Tax Code)

UC does not generally purchase data processing services. These services are provided internally. Accruals should not be made for sales or use tax on internally provided data processing services.

With respect to data processing services purchased externally, ***sales tax generally applies*** to the conversion of customer-furnished data from one physical form of recordation to another. However, if the contract is for the service of developing original information from customer-furnished data, ***sales tax does not apply*** to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.

1. Data Entry and Verification

This section covers situations where a data processing firm's agreement provides only for data entry, data verification, and proof listing of data, or any combination of these operations. It does not include contracts under which these services are performed as steps in the processing of customer-furnished information as discussed two paragraphs below.

Agreements providing solely for data entry and verification, or data entry providing a proof list and/or verifying of data are regarded as contracts for the fabrication of storage media and sales of proof lists. Charges are taxable, whether the storage media is furnished by the customer or by the data processing firm. Tax also applies to charges for the imprinting of characters on a document to be

used as the input medium in an optical character recognition system. The tax application is the same regardless of the storage media used in the operation.

"Processing of customer-furnished information" means the developing of original information from data furnished by the customer. Examples of automatic data processing which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such processes also include the updating of a continuous file of information maintained by the customer with the data processing firm.

"Processing of customer-furnished information" does not include:

- An agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing,
- The using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters,
- The mere converting of data from one medium to another, or
- An agreement under which a person undertakes to prepare artwork, drawings, illustrations or other graphic material (unless the provisions regarding digital or electronic pre-press instruction and custom computer programs apply)²⁰. However, graphic material furnished incidentally to the performance of a service is not subject to tax. For example, graphics furnished in connection with the performance of architectural, engineering, accounting or similar professional services are not subject to tax.

Contracts for the processing of customer-furnished information usually provide that the data processing firm will receive the customer's source documents, record data on storage media, make necessary corrections, process the information, and then record and transfer the output to the customer.

Where a data processing firm enters into a contract for the processing of customer-furnished information, the transfer of the original information to the customer is considered to be the rendition of a service. Tax does not apply to the charges made under contracts providing for the transfer of the original information whether the original information is transferred on storage media, microfilm, microfiche, photorecording paper, input media for an optical character recognition system, punched cards, preprinted forms, or tabulated listing. The breakdown of the total charge into separate charges for each operation involved in processing the customer-furnished information will not change the application of tax.

The furnishing of computer programs and data by the customer for processing under direction and control of the data processing firm will not be taxable, notwithstanding that charges are based on computer time.

²⁰ Regulation 1502, amended effective 12/3/99.

2. Taxable Items

Where a data processing firm has entered into a contract which is regarded as a service contract and the data processing firm, pursuant to the contract, transfers to its customer tangible property other than property containing the original information, such as: duplicate copies of storage media; inventory control cards for use by the customer; membership cards for distribution by the customer; labels (other than address labels); microfiche duplicates; or similar items for use, tax applies to the charges made for such items. If no separate charge is made, tax applies to that portion of the charge made by the data processing firm which the cost of the additional computer time (if any), cost of materials, and labor cost to produce the items bear to the total job cost.

When additional copies of records, reports, tabulation, etc., are provided, tax applies to the charges made for the additional copies.

PP. Dentist - Medicines Administered by a Dentist

Section 6369, Regulation 1591 (CA Rev & Tax Code)

Tax does not apply to charges made by a licensed dentist to his/her patient for medicines furnished for the treatment of the patient. Tax also does not apply to sales of medicines to licensed dentists for the treatment of a human beings regardless of whether a specific charge to the patient is made.

QQ. Discounted Purchases

Section 6012(c)(1) (CA Rev & Tax Code)

Tax applies only to the amount of consideration received for the purchase of tangible personal property. If a discount such as a sale or trade discount is given, tax applies only on the amount of payment made.

This does not include discounts given due to trade-ins. The value of a trade-in is taxable as this is consideration for the payment of tangible personal property.

RR. Engineering and Architectural Services - In General

Regulation 1501, Regulation 1506, Annotation 515.0455 (CA Rev & Tax Code)

In distinguishing between the sale of a service (nontaxable) and the sale of tangible personal property, it is necessary to determine the true object of the transaction, i.e., whether the real object sought by the buyer is the service or the finished articles produced by the service. Generally, engineering and architectural services are exempt, unless tangible personal property is involved.

Specific Application

When engineering or architectural services involve the transfer of prototypes, models, or other tangible personal property produced in connection with a contract for research and development or a contract for product design, the services may be subject to tax.

The decision depends upon whether the original data represented by the property could have been conveyed to the client in verbal or written form. If the verbal or written forms were possible, the transfer of the property is subject to tax as it is now more than incidental to the service provided. In this application, the tangible personal property is what is sought, rather than the idea or verbal form. According to Regulation 1501, a service is not taxable when the transfer of tangible personal property is only incidental to the services rendered.

SS. Financial Leasing

Regulation 1660 (CA Rev & Tax Code)

Where a contract designated as a lease binds the lessee for a fixed term and the lessee is to obtain title at the end of the term upon completion of the required payments or has the option to purchase the property for a nominal amount, the contract will be regarded as a sale under a security agreement from its inception and not as a lease. The option price will be regarded as nominal if it does not exceed \$100 or 1% of the total contract price, whichever is the lesser amount. Sales or use tax applies to this transaction.

Financing transactions are not subject to sales or use tax. In general, a transaction is considered a financing transaction if the original purchase of the item under the financing transaction was considered a sale under California sales and use tax law and the main purpose for financing the item is to raise capital.

Transactions structured as sales and leasebacks will be treated as financing transactions if the "lease" transaction would be regarded as a sale at inception under the paragraph stated above, the purchaser-lessor does not claim any deduction, credit or exemption with respect to the property for federal or state income tax purposes, and the amount which would be attributable to interest had the transaction been structured originally as a financing agreement, is not usurious under California law.

Special Applications

Transactions structured as sales and leasebacks will also be treated as nontaxable financing transactions if **all** of the following requirements are met:

- The initial purchase price of the property has not been completely paid by the seller-lessee to the equipment vendor;
- The seller-lessee assigns to the purchaser-lessor all of its rights, title, and interest in the purchase order and invoice with the equipment vendor;
- The purchaser-lessor pays the balance of the original purchase obligation to the equipment vendor on behalf of the seller-lessee;
- The purchaser-lessor does not claim any deduction, credit, or exemption with respect to the property for federal or state income tax purposes;
- The amount which would be attributable to interest, had the transaction been structured originally as a financing agreement, is not usurious under California law; and

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- The seller-lessee has an option to purchase the property at the end of the lease term, and the option price is fair market value or less.

Tax does not apply to sale and leaseback transactions entered into in accordance with former Internal Revenue Code Section 168(f)(8), as enacted by the Economic Recovery Tax Act of 1981 (Public Law 97-34).

Sales or use tax also does not apply to the transfer of title to, or the lease of, tangible personal property which is a sale and leaseback transaction satisfying **all** of the following conditions:

- The seller/lessee has paid California sales tax reimbursement or use tax with respect to that person's purchase of the property;
- The acquisition sale and leaseback is consummated within 90 days of the seller/lessee's first functional use of the property (this 90 day period does not begin to run until the first functional use of the property; a period of storage after the purchase but before the first functional use is not used to calculate the 90 day period); and
- The acquisition sale and leaseback transaction is consummated on or after January 1, 1991.

The sale of property at the end of the lease term is subject to use tax. Any lease of the property by the purchaser/lessor to any person other than the seller/lessee would be subject to use tax measured by rentals payable. A lease to the seller/lessee at the end of the original lease term is subject to use tax measured by rentals payable unless such lease is pursuant to an election to exercise an option to extend the lease term, in which the option was contained in the original lease agreement.

TT. Freight/Shipping

Section 6011 (CA Rev & Tax Code)

1. Shipping & Transportation Charges

Shipping and transportation charges that are incurred in connection with the sale of tangible personal property are **excluded** from the computation of **sales tax** when **separately stated** and the shipment is delivered directly to the purchaser (Section 6011(c)(7)).

(a) Shipment Made By Common Carrier

When shipment is made by common carrier, the charges for shipping and transportation must not exceed the actual cost of shipping. Transportation charges exceeding costs are taxable. Therefore, when UC purchases tangible personal property and the common carrier shipping charges are separately stated, UC should not accrue sales or use tax for the charges that represent actual shipping costs.

(b) Shipment Made By The Retailer

If the transportation is by facilities of the retailer, or the property is sold for a delivered price, then the shipping and transportation charges are taxable unless (1) incurred *after* the UC purchases the property from the retailer and (2) meets the conditions listed in Section 4.IV.TT.1 above.

2. Handling Charges

Handling charges are *not exempt* from tax unless in conjunction with exempt property. Handling charges include any charges over actual delivery/shipping costs, such as packaging, fees, insurance, fuel or delivery surcharge, dry ice, inbound freight, etc. Amounts that exceed the cost of transportation are generally taxable.

3. Lump Sum Charges for Shipping and Handling

When a vendor lumps the charges for shipping and handling into one line item, the charges for shipping must be separately stated from handling charges to keep the exemption for shipping costs intact. Historically, in some audits, the CDTFA has allocated 20%-40% of the charge to exempt shipping when a segregation could not be done.

However, if the shipping and handling charges pertain to a purchase which is not subject to the sales or use tax, the shipping and handling charges are exempt as well.

UU. Furniture Refurbishing

Section 6012, 6015, Regulation 1550 (CA Rev & Tax Code)

Tax applies to materials and parts sold in connection with reupholstering jobs. Examples are furniture covering, cushions, foam rubber, padding, and burlap.

Tax applies to charges for fabrication labor. Cutting and sewing materials for coverings for furniture being reupholstered is considered fabrication labor.

Labor charges for repairing furniture and for applying new materials to furniture are exempt. If there is no segregation of the labor from materials and parts made on the invoice, 80% of the charges will be considered exempt labor.

VV. Graphic Designs

Regulation 1540²¹ (CA Rev & Tax Code)

1. Performance Of Services

Services performed to convey ideas, concepts, looks, or messages to a client may result in a transfer, enhancement, or revision of either electronic artwork, hard

²¹ Regulation 1540, amended effective 10/3/02.

copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as "design charges," "preliminary art," "concept development," or any other designation that clearly indicates that the charges are for such services and not for finished art, they **are nontaxable**; however, **tax applies** if:

- (a) the master agreement or other contract provides that the advertising agency or commercial artist will pass to the client title or the right to permanent possession of the artwork in tangible form, such as on electronic media or hard copy, or
- (b) permanent possession of the artwork in tangible form is transferred to the client. If the master agreement provides that the client owns the concepts embodied in tangible personal property that is owned and possessed by the advertising agency or commercial artist (e.g., so that such concepts cannot be used on behalf of any other person), that contract provision does not constitute the passage of title to tangible personal property to the client. A requirement that an advertising agency or commercial artist retain permanent possession of the artwork in tangible form does not itself constitute a sale of that property to the client in the absence of a provision passing title to such property to the client.

Tangible personal property developed and used during services performed to convey ideas, concepts, looks, or messages is consumed in the performance of those services. Unless, prior to any use, the advertising agency or commercial artist passes title to such property to the client as discussed in the previous paragraph, the advertising agency or commercial artist is the consumer of such tangible personal property used and tax applies to the sale of property to, or to the use of the property by, the advertising agency or commercial artist. If the advertising agency or commercial artist passes title to, or permanent possession of, such tangible personal property to its client, tax applies to the sale of the tangible personal property by the advertising agency or commercial artist to the client.

2. Finished Art

- (a) **Use of Aids in Creation of Finished Art.** If the advertising agency or commercial artist uses any intermediate production aids or special printing aids in the creation of the finished art, the presumptions with respect to passage of title and the calculation of the measure of tax on the sale of such aids by the advertising agency or commercial artist, is governed by the provisions of Regulation 1541 applicable to special printing aids.
- (b) **Transfers of Electronic Artwork.** A transfer of electronic artwork in tangible form is a sale. However, a transfer of electronic artwork from an advertising agency or commercial artist to the client or to a third party on the client's behalf that is not in tangible form is not a sale of tangible personal property, and the charges for the transfer are not subject to tax. A transfer of electronic artwork is not in tangible form if the file containing the electronic artwork is transferred through remote

telecommunications (such as by modem or over the Internet), or if the file is loaded into the client's computer by the advertising agency or commercial artist, and the client does not obtain title to or possession of any tangible personal property, such as electronic media or hard copy. If the transfer is not a transfer in tangible form because it is loaded onto the client's computer, the advertising agency or commercial artist should document that transfer by a written statement signed at the time of loading by the client and by the person who loaded the electronic artwork into the client's computer with the following or similar language: "This electronic artwork was loaded into the computer of [client's name] by [advertising agency's or commercial artist's name], and [advertising agency's or commercial artist's name] did not transfer any tangible personal property containing the artwork, such as electronic media or hard copies, to [client's name]." When such a statement is signed at the time the file is loaded, it will be rebuttably presumed that the transfer of electronic artwork was not transferred in tangible form. If there is no such timely completed statement, the advertising agency or commercial artist may provide other substantive evidence establishing that the artwork was not transferred in tangible form.

- (c) **Transfers of Finished Art in Tangible Form.** The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless the transfer is not in tangible form as explained in Regulation 1540(b)(2)(B), the transfer of finished art is a sale of tangible personal property and tax applies to charges for that finished art, including all charges for any rights sold with the finished art, such as copyrights or distribution and production rights, except as provided in Regulation 1540(b)(2)(D) 2.
 - (1) **Combined Charge for Finished Art and Conceptual Services.** If charges for finished art are combined into a single charge that also includes nontaxable charges for conceptual services described in Regulation 1540(b)(1)(A), the advertising agency or commercial artist may report the measure of tax on the retail sale of the finished art as specified in Regulation 1540(b)(3), provided that the reported measure of tax must also include the value of reproduction rights included with the transfer except those that are not taxable as provided in Regulation 1540(b)(2)(D)2.
 - (2) **Lump Sum Billing -- 75/25 Presumption.** If tax is not reported as provided in the previous paragraph, it will be rebuttably presumed that 75 percent of the combined charge for the finished art and conceptual services is for the nontaxable services and that 25 percent of the combined charge is the measure of tax on the retail sale of the finished art. However, if the sales price to the advertising agency or commercial artist of the finished art (or component parts) and any intermediate production aids or special printing aids sold to the client for that combined charge is more than 25 percent of the combined charge to the client, the measure

of tax is the sales price of the tangible personal property to the advertising agency or commercial artist.

(d) Reproduction Rights Transferred With Finished Art.

- (1) Charges for the transfer of possession in tangible form to the client or to anyone else on the client's behalf of finished art for purposes of reproduction are included in the measure of tax on that sale, including all charges for the right to use that property, even though there is no transfer of title to the person reproducing the finished art, except as provided in Regulation 1540(b)(2)(D) 2.
- (2) Any agreement evidenced by a writing (such as a contract, invoice, or purchase order) that assigns or licenses a copyright interest in finished art for the purpose of reproducing and selling other property subject to the copyright interest is a technology transfer agreement, as explained further in Regulation 1507.²² Tax applies to amounts received for any tangible personal property transferred as part of a technology transfer agreement. Notwithstanding Regulation 1540(b)(2)(C), tax does not apply to temporary transfers of computer storage media containing finished art transferred as part of a technology transfer agreement. Tax does not apply to amounts received for the assignment or licensing of a copyright interest as part of a technology transfer agreement. The measure of tax on the sale of finished art transferred by an advertising agency or commercial artist as part of a technology transfer agreement shall be:
 - (A) The separately stated sales price if the finished art is permanently transferred, or the separately stated lease price if the finished art is temporarily transferred; provided that the separately stated price is reasonable;
 - (B) Where there is no such separately stated price, the separate price at which the person holding the copyright interest in the finished art has sold or leased that finished art or like finished art to an unrelated third party where: 1) the finished art was sold or leased without also transferring an interest in the copyright; or 2) the finished art was sold or leased in another transaction at a stated price satisfying the requirements of Regulation 1540(b)(2)(D)2.a.; or
 - (C) If there is no such separately stated price under Regulation 1540(b)(2)(D) 2.a., nor a separate price under Regulation 1540(b)(2)(D) 2.b., 200 percent of the combined cost of materials and labor used to produce or acquire the finished art. "Cost of materials" consists of

²² See Section 2.XII.B, Technology Transfer Agreements (TTAs).

the costs of those materials used or incorporated into the finished art, or any tangible personal property transferred as part of the technology transfer agreement. "Labor" means any charges for labor used to create such tangible personal property where the advertising agency or commercial artist purchases such labor from a third party, or the work is performed by an employee of the advertising agency or commercial artist.

3. Sales of Other Tangible Personal Property by Advertising Agency or Commercial Artist

Tax applies to the total charge for the retail sale of tangible personal property by an advertising agency or commercial artist. If an advertising agency or commercial artist combines charges for nontaxable services as defined Regulation 1540(b)(1)(F), such as media placement, with charges for tangible personal property for which the advertising agency or commercial artist is the retailer, the measure of tax on that retail sale of property includes the total of: direct labor; the cost of purchased items that become an ingredient or component part of the tangible personal property; the cost of any intermediate production aids or special printing aids; and a reasonable markup. Commissions, fees, and other charges exclusively related to the production or fabrication of tangible personal property are part of direct labor and are thus included in the measure of tax. Such charges include retouching of photographic images or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. An advertising agency or commercial artist must keep sufficient records to document the basis for the reported measure of tax.

4. Items Purchased by an Advertising Agency or Commercial Artist

Except when property is resold prior to any use, an advertising agency or commercial artist is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to, or to the use of such property by, the advertising agency or commercial artist.

WW. Installation Charges

Regulation 1546 (CA Rev & Tax Code)

Installation charges are always exempt, whether or not separately stated. However, amounts designated as installation charges must be reasonable and supportable in the case of an audit.

Installation charges encompass charges attributable to the labor required to install a product. It is separate and distinct from fabrication labor which is subject to tax.²³ Fabrication labor is generally defined as any step in the process to further manufacture tangible personal property.

²³ See Section 4.IV.AAA, Labor – Fabrication.

XX. Instructional Services

Regulation 1501, Annotation 515.0015 (CA Rev & Tax Code)

Instructional services by schools generally are not subject to tax. In addition, schools (UC) are the consumer of materials in the following situations:

- Schools which provide significant educational services, including classroom instruction, are consumers of printed instructional matter and special instructional sound recordings furnished to students where tuition charges made to students do not separately state charges for such teaching aids.
- Schools are consumers of materials and supplies furnished to students for use in the classroom even though a separate material fee may be charged to the student.

However, schools which provide significant educational services, including classroom instruction, are retailers of test equipment, kits for building items such as television sets, and other durable goods furnished to students even though no separate charge is made to students for these items. Ordinarily the measure of sales tax will be regarded as the cost of the item to the school. If a separate charge is made, tax applies measured by such charge.

YY. Interior/Office Design - Bona Fide Professional Services

Regulation 1521, 1550 (CA Rev & Tax Code)

Fees for bona fide professional services are exempt from the sales/use tax. Consultation, layout, coordination of furniture and barracks, selection of color schemes, and supervision of installations, etc. are examples of bona fide professional services. Fees for the services must be separately stated from fees which are related to tangible personal property.

ZZ. Interior/Office Design - Associated with Tangible Personal Property

Regulation 1521, 1550 (CA Rev & Tax Code)

Fees charged in connection with acquiring and providing furnishings or other tangible personal property are taxable. A fee charged solely for accompanying a client to showrooms, or for otherwise assisting in or recommending the selection of furnishings, is considered part of the taxable selling price of the furnishings sold by interior decorators. However, when a sale of merchandise is not made, the fees are exempt.

If furnishings or other kinds of tangible personal property are billed at cost and a separately stated fee includes overhead, profit, etc., directly related to the property sold, as well as other charges, the total fee charged will be considered subject to tax, unless it is established that a portion of the fee is for exempt professional services as described above.

AAA. Labor - Fabrication

Section 6006, Regulation 1526 (CA Rev & Tax Code)

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Although labor is generally exempt from sales and use taxes, tax applies to charges for producing, fabricating, assembling, processing, printing or imprinting of tangible personal property. It is irrelevant who supplies the materials.

Fabrication labor is generally defined as any step in the process to further manufacture tangible personal property.

BBB. Machine Shop

Section 6006, Regulation 1526 (CA Rev & Tax Code)

Producing, fabricating, and processing are subject to tax. They include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property.

CCC. Mailing Services

Regulation 1504 (CA Rev & Tax Code)

Tax does not apply to charges for services rendered in preparing material for mailing. Examples include: addressing, enclosing, sealing, collating, affixing labels, blocking out, tucking or clasping envelope flaps, metering, affixing stamps, edging seal or edging with stamp, addressing permit indicia, and sorting, tying, and sacking in compliance with postal rules and regulations.

DDD. Modular Office Buildings

Regulation 1521 and 1521.4 (CA Rev & Tax Code)

Tax applies to 40% of the sales price at which factory-built housing or school buildings are sold to a consumer.

EEE. Nurseries - Plants & Trees

Section 6358, Regulation 1588 (CA Rev & Tax Code)

Tax does not apply to sales of seeds and annual plants, the products of which ordinarily constitute food for human consumption. Tax does not apply to sales of seed, the products of which will be used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption.

Tax does not apply to sales of non-annual plants, the products of which ordinarily constitute food for human consumption, including fruit trees, berry vines, and grape rootlings or rootstock, or cuttings of every variety.²⁴

FFF. Packaging Materials - For Items for Resale

Section 6364, Regulation 1589 (CA Rev & Tax Code)

²⁴ Regulation 1588, amendment effective 12/3/99.

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Packaging materials are considered nonreturnable containers and tax does not apply to the purchase of these items if they are to be resold with the contents of the package. "Popcorn" Styrofoam is considered packaging material and is therefore not subject to tax.²⁵

GGG. Photographic Services

Section 6051; Regulation 1528 (CA Rev & Tax Code)

Sales tax applies to all film processing charges (i.e., printing, enlarging and duplicating photos, as distinguished from negative development). These are taxable as the end result is tangible personal property subject to sales tax (Section 6051).

Negative Development of Customer-Furnished Film

Sales tax does not apply to separately stated charges for the negative development of customer-furnished film. To sustain the exemption, the film development charges must be stated separately from the processing charge. Development of film by the reverse process method is not the negative development of film.

HHH. Plumbing Services

Regulation 1501 (CA Rev & Tax Code)

Plumbing services must generally be performed on the premises.

Plumbers performing work for UC are considered consumers of the tangible personal property which they use incidentally in rendering the service. Tax applies to the sale of property to them. UC should not accrue use tax on any plumbing services performed in California. Plumbers are only considered retailers if they sell tangible personal property to UC.

III. Printed Materials - Brochure

Regulation 1541 (CA Rev & Tax Code)

All printed matter sold by printers is *subject to tax unless* the item is sold for resale or is specifically exempt, such as items qualifying as printed sales messages under Section 6379.5 (see below). The production of printed matter for a consumer is a sale of tangible personal property whether the materials incorporated into the printed matter are furnished by the consumer or the printer. Unless that sale is exempt from tax, tax applies to the total gross receipts or sales price of the sale with no deduction on account of: the cost of the raw materials or other components; labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property; or any other expenses or services that are a part of the sale. Printers may not deduct from the gross receipts or sales price from their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them, nor can they deduct the costs of special printing aids for which they are consumers under Regulation 1541(c)(1)(A), whether or not a separate charge is made to the customer for the special

²⁵ Annotation 195.0707, dated 12/2/96.

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printing aids. Receipts attributable to such costs are includable in the measure of tax (Regulation 1541(b)²⁶). Therefore, UC **must accrue use tax** on these purchases, **unless** purchased from a California retailer or purchased under a resale certificate, where UC intends to resell the brochure.

1. Services

Tax applies to customer charges for services that are a part of the sale of tangible personal property to consumers, such as overtime and set-up charges and charges for die cutting, embossing, folding (except as provided for mailing services below), and other binding operations. **Tax applies** regardless of whether or not the materials or any parts thereof are furnished by the customer (Regulation 1541(b)).

2. Printed Sales Messages [Regulation 1541.5]

"Printed sales messages" are limited to catalogs²⁷, letters, circulars, brochures, and pamphlets printed for the purpose of advertising and promoting goods or services. Items not qualifying as "printed sales messages" include campaign literature and other fund-raising materials; stationery; sales invoices; containers for sample merchandise; newspapers or periodicals; calendars; notepads; cash register tapes; directories that do not meet the principal purpose of advertising or promoting goods or services. Reply envelopes, order forms or other printed matter will be considered part of the printed sales message when such property is inserted in, stapled, glued, or otherwise affixed to the printed sales message in such a manner that it becomes a component or integral part of the printed sales message and is sold together with the printed sales message. Accordingly, the total charge in such cases is deemed to be for printed sales messages and not subject to tax.

Sales tax does not apply to the sale or use of printed sales messages that meet all of the following conditions:

- (a) They are printed to the special order of the purchaser;
- (b) They are mailed or delivered by the seller, the seller's agent or a mailing house acting as an agent of the purchaser, through the U.S. Postal Service or by common carrier; and

²⁶ Regulation 1541, amendment effective 10/3/02.

²⁷ If the purchase or sale of catalogs by a school falls under the "Printed Sales Message" exemption, the catalog will be exempt from the sales and use tax. Tax will not be due on the cost of the materials to UC. Otherwise the purchase of the catalog or materials consumed by UC in producing the catalog are subject to the sales or use tax. The retail sale by the UC of the catalog should be exempt. Section 6361.5 states: "Any public or private school, school district, county office of education, or student organization is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to yearbooks and catalogs prepared for or by it and distributed to students." History.—Added by Stats. 1977, Ch. 921, operative January 1, 1978. Stats. 1988, Ch. 205, in effect June 23, 1988, operative October 1, 1988, added "county office of education."

- (c) They are distributed at no cost to third parties that become the owners of the printed material.

Sales tax applies to the charges for printed sales messages in the same manner as for other printed matter if **all** the above conditions are not met. Documentation such as postal receipts, bills of lading and exemption certificates must be acquired and retained to support a claim for exemption of printed sales messages.

In order for the exemption for printed sales messages to apply, the printed material must be delivered by the seller, the seller's agent or a mailing house acting as the agent for the purchaser, to a third party. The purchaser cannot take possession of the printed sales message. An agent or mailing house acting as an agent for the purchaser must be an entity that is independent from the purchaser; it cannot be a division within the purchaser.

Thus, campus mailing divisions cannot act as UC's agent for purpose of the exemption as they do not meet the definition of "mailing house" for purpose of the regulation. Failure to comply with the regulation in ordering printed sales messages will result in these transactions becoming subject to tax.

III. Publishing

Regulation 1543 (CA Rev & Tax Code)

The transfer to a publisher or syndicator of an original manuscript, whether on paper or in machine-readable form, by the author for the purpose of publication is not subject to taxation. However, tax applies to the sale of copies of an author's work.

KKK. Publishing - Fees Paid to Designers and Art Directors

Regulation 1543 (CA Rev & Tax Code)

Fees paid to a designer or art director for their ability to design, conceive or dictate ideas, concepts, or specifications are not subject to tax if the designer or art director does not transfer tangible personal property to convey the ideas.

LLL. Publishing - Production Functions

Regulation 1543 (CA Rev & Tax Code)

Tax applies to the gross receipts from the retail sale of camera-ready art or camera-ready copy. Charges for the performance of all production functions, whether or not separately stated are included.

However, the following functions are not subject to tax: manuscript mark-up, formatting, typesetting, proofreading, production coordination, and production editing. If such functions are separable in the sense that there is not a contract for camera-ready copy or art until after such functions are completed, then such functions are nontaxable.

MMM. Rentals/Leases

Regulation 1660 (CA Rev & Tax Code)

Generally, rentals are use tax transactions for which the owner/lessor is responsible for the collection of tax. Owner/lessors have the option to pay tax on the purchase price of items they will rent or lease and not collect tax on the rental receipts derived from the property, if leased in substantially the same form as acquired. Therefore, it should be questioned whether the owner/lessor paid sales tax on the purchase price. If sales or use tax was paid on the purchase price, no use tax is due on the rental receipts.

Tax should be accrued by UC on rentals of property when the property is rented from a retailer who does not charge use tax on the rental receipts.

Although it is the informal policy of the CDTFA to pursue the lessor (unless out-of-state) for the payment of the tax, the primary liability lies with UC for tax on the rental payments. The owner/lessor may pursue reimbursement from UC for tax on the lease payments.

NNN. Repairs

Section 6011, 6012 (CA Rev & Tax Code)

Generally, repair work that is not covered under a warranty has the following tax applications:

1. Repairperson as Retailer

If the retail value of the parts and materials furnished in connection with repair work is more than 10% of the total charge, or if the repairperson makes a separate charge for such property, the repairperson is the retailer and ***sales tax applies*** to the fair retail selling price of the property. The invoice must segregate the fair retail selling price of the parts and materials from the charges for labor. If a segregation is not made, the CDTFA will estimate the retail value of the parts and materials during an audit.

Generally, the repairperson will be located in California. UC does not need to accrue taxes for purchases from California retailers, even when the transaction is taxable, unless UC issues a resale certificate to the retailer.

2. Repairperson as Consumer

If the retail value of the parts and materials furnished in connection with the repair work is 10% or less of the total charge, **and** if no separate charge is made for such property, the repairperson is the consumer of the property. UC is not required to accrue or pay any taxes for these purchases.

000. Restocking Fees

Section 6011, 6012 (CA Rev & Tax Code)

When restocking fees exceed the average cost of restocking and returning items to inventory, the credit for returns from customers will be disallowed and the entire charge will be taxable. However, this penalty is imposed on the retailer and not the consumer. Therefore, UC should not accrue tax on restocking fees.

PPP. Shipping and Handling Charges

Section 6011 (CA Rev & Tax Code)

1. Shipping & Transportation Charges

Shipping and transportation charges that are incurred in connection with the sale of tangible personal property are **excluded** from the computation of **sales tax** when **separately stated** and shipment is delivered directly to the purchaser (Section 6011(c)(7)).

(a) Shipment Made By Common Carrier

When shipment is made by common carrier, the charges for shipping and transportation must not exceed the actual cost of shipping. Transportation charges exceeding actual costs are taxable. Therefore, when UC purchases tangible personal property and the common carrier shipping charges are separately stated, UC should not accrue sales or use tax for the charges that represent actual shipping costs.

(b) Shipment Made By The Retailer

If the transportation is by facilities of the retailer, or the property is sold for a delivered price, then the shipping and transportation charges are taxable unless (1) incurred **after** the UC purchases the property from the retailer and (2) meets the conditions listed in Section 4.IV.PPP.1 above.

2. Handling Charges

Handling charges are **not exempt** from tax unless in conjunction with exempt property. Handling charges include any charges over actual delivery/shipping cost, such as packaging, fees, insurance, fuel or delivery surcharge, dry ice, inbound freight, etc. Amounts that exceed the cost of transportation are generally taxable.

3. Lump Sum Charges for Shipping and Handling

When a vendor lumps the charges for shipping and handling into one line item, the charges must be separately stated from handling charges to keep the exemption for shipping costs intact. Historically, in some audits, the CDTFA has allocated 20%-40% of the charge to exempt shipping when a segregation could not be done.

However, if the shipping and handling charges pertain to a purchase which is not subject to the sales or use tax, the shipping and handling charges are exempt as well.

QQQ. Software Maintenance Contracts

Section 6011, Regulation 1502 (CA Rev & Tax Code)

Maintenance contracts sold in conjunction with software have different tax applications depending on the type of contract involved. A maintenance contract generally provides that a customer will be entitled to receive, during the contract period, storage media on which prewritten program improvements or error corrections have been recorded. It may also provide that the customer will be entitled to receive, during the contract period, telephone or on-site services.

Mandatory maintenance contracts are **taxable** regardless of whether they are for consulting services, updates, or a combination of the two.

Beginning January 1, 2003²⁸, with respect to **optional maintenance contracts**—

- If no tangible personal property is transferred to the customer during the period of the maintenance contract, tax does not apply to any portion of the charge.
- If the maintenance contract entitles the customer to receive program improvements or error corrections in the form of tangible storage media, 50% of the charge is taxable as the sale of tangible personal property. The remaining 50% of the lump sum charge is treated as a nontaxable charge for repair. A refund of the tax paid upfront is available if no tangible personal property is received by the UC during the maintenance period.
- Tax does not apply to a separately stated charge for consultation services if the purchaser is not required to purchase those services in order to purchase or lease the tangible personal property.

	*** USER NOTE: Software Maintenance ***	
	<p>Observation: Optional software maintenance contracts are exempt if no tangible personal property is transferred during the maintenance term. If the customer is entitled to updates or correction in tangible form then the maintenance contract is 50% taxable.</p> <p>Exemption Keys: Software maintenance contracts are never more than 50% taxable. In addition, a refund is due on the tax paid for a maintenance contract if no tangible personal property is transferred during the maintenance period.</p>	

RRR. Subscriptions

Regulation 1590 (CA Rev & Tax Code)

²⁸ Regulation 1502(f)(1)(C), effective July 1, 2014.

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Tax does not apply to the subscription of a periodical, including a newspaper, which appears, at least four, but not more than 60 times each year. The periodical must be sold by subscription and delivered by mail or common carrier.

SSS. Trade-In Allowances

Regulation 1654 (CA Rev & Tax Code)

Trade-in allowances on purchases of tangible personal property are taxable. The allowance is consideration in the form of barter. Tax applies to all charges attributed to the trade-in allowance as well as other forms of consideration paid by UC to the vendor.

Example: UC purchases a computer for departmental use. One year later, the department decides to upgrade the computer. The retailer of the computer is offering a special on trade-ins of old computers. In exchange for the old system, the vendor will give a \$500 discount on a new system. The transaction appears as follows:

New Computer	\$ 2,000
Discount (Trade-in)	<u>500</u>
Sales Price	\$ <u>1,500</u>

The taxable sale is \$2,000. UC should accrue tax on the entire \$2,000.

TTT. Transcription Services

Regulation 1501, Annotations 515.0140 (CA Rev & Tax Code)

In general, a contract to report and transcribe an oral proceeding is a contract to perform a service and tax does not apply.

Tax applies to the sale of printed matter where a single copy of a transcript is furnished and no services are performed, unless the transcript is required by law to be furnished.

UUU. Vehicles

Regulation 1610 (CA Rev & Tax Code)

Sales and use tax does not apply to purchases of vehicles when they are transferred in a bulk sale **and** the real or ultimate ownership remains substantially similar. Real or ultimate ownership remaining substantially similar means more than 80% of a company's assets must be transferred in a single transaction and 80% of the ownership must remain the same.

Sales tax does not apply to vehicles purchased for use out-of-state. For a vehicle to be considered to be purchased for use out-of-state, it must **not** enter California within one year of the purchase date.

Responsibility for Use Tax Accrual

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Generally, the vehicle dealer is responsible for the collection of sales or use tax due on the sale of a vehicle. However, if the vehicle is purchased from a non-dealer, the use tax due will be collected directly by the Department of Motor Vehicles upon UC's registration of the vehicle. Therefore, UC should not accrue the use tax on any vehicle purchases as the tax will be collected by the DMV.

VVV. Video Production Services

Regulation 1529 (CA Rev & Tax Code)

Tax does not apply to any "qualified production service" performed by any person in any capacity in connection with the production of all or any part of a "qualified motion picture".

A "qualified production service" is defined as any fabrication performed by any person in any capacity on film, tape, or other audiovisual embodiment in connection with the production of all or any part of any qualified motion picture. The services include, but are not limited to, photography, sound or music recording, and creation of special effects or animation.

A "qualified motion picture" is any motion picture or portion thereof, whether finished or not, which is produced, adapted, or altered for exploitation in, on, or through any medium or by any device for any purpose, including, but not limited to, any entertainment, commercial, advertising, promotional, industrial, or educational purpose.

Qualified motion pictures do not include motion pictures produced for private non-commercial use, such as motion pictures of weddings or graduations to be used as family mementos, accident reconstruction videotapes to be used for legal analysis, or student films to be used for class projects.

WWW. Warranties²⁹

Section 6011, Regulation 1655 (CA Rev & Tax Code)

The tax treatment for repairs made under warranties and the replacement parts used in the fulfillment of the warranties varies depending on the nature of the contract.

1. Mandatory Warranty

Warranties that are required to be purchased as a condition of the sale are mandatory warranties. Services that are a part of a sale are included within the definition of "sales price" (Section 6011). As a result, mandatory warranties when sold in connection with tangible personal property are ***subject to sales tax***.

2. Optional Warranty

Optional warranties are ***not subject to sales tax***. The person obligated to provide services under an optional warranty contract is the consumer of parts furnished in conjunction with the contract. (The service provider will have paid or accrued

²⁹ See Section 4.IV.II, Computer Repair Services Under Warranty for examples.

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sales tax on the purchase of parts used in connection with the optional warranty). The charges for the optional warranty should be separately stated on the sales invoice along with a clear indication that the warranty is optional.

XXX. Window Coverings

Regulation 1521 (CA Rev & Tax Code)

The purchase of drapery and drapery hardware is ***subject to tax***. However, draperies are generally installed by a contractor at the customer's premises. Therefore, when they are installed by the contractor, the sale becomes a sales tax transaction and UC will pay sales tax on the invoiced amount. However, use tax is not required to be accrued in the event that the contractor neglects to charge the sales tax.

YYY. Word Processing Services

Regulation 1502.1 (CA Rev & Tax Code)

Tax does not apply to charges for furnishing original letters or documents, or carbon copies produced simultaneously with the original that is prepared by using a typewriter or word processing equipment.

Tax applies to charges for producing multiple copies of letters, manuscripts, or other documents using word processing equipment. Multiple copies include form letters produced with a slight variation which personalizes essentially the same letter. Tax applies to the entire charge including set up fees.

Tax does not apply to charges made by a word processing company for keyboarding (entering) original names and addresses, setting up and sorting, and for printing names and addresses onto mailing labels.

Tax does not apply to charges made when a word processor is used to produce copy which is acquired and used exclusively for reproduction purposes.

Section 5: Medical Center As Purchaser

Section 5: Medical Center As Purchaser

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Section 5: Medical Center As Purchaser

I. HOSPITALS AND HEALTH FACILITIES, AS PURCHASER

Hospitals and health facilities are generally regarded as the consumers of tangible personal property used in the performance of their patient care services or in the operation of hospital facilities. They should normally pay sales or use tax to their suppliers or accrue tax on their sales and use tax returns for their purchases of equipment, furniture, fixtures, and supply items administered to patients or otherwise used in the operation of the hospital.

Operative April 1, 2001, except where a medical service facility acts as a seller¹, hospitals and other medical service facilities are service providers to their patients and residents. The medical service facility is the consumer of tangible personal property furnished in connection with those services, whether separately itemizing charges for the services and for the tangible personal property or billing in lump sum. The sales of that tangible personal property to the medical service facility are taxable retail sales unless specifically exempted.

The California Revenue and Taxation Code exempts from tax Medicines and certain Medical Devices when sold or furnished under certain conditions. The following summarizes the conditions required for exemption as well as the types of products defined as exempt Medicines or Medical Devices. The definition of Medicines includes regulated prescription items, but also extends to many over-the-counter preparations and substances when sold or furnished under certain conditions.² Regulation 1591 and sub-Regulations also exempts many other sales of tangible personal property as Medical Devices.

As a matter of practice and policy, the California Department of Tax and Fee Administration recognizes that all medicines and medical devices dispensed, furnished, administered or used as part of a patient's care while admitted to the hospital or medical center are done so as part of the recorded plan of treatment prescribed by and under the direction of their physician.

A. Definitions

1. **Health Facility** – “Health facility” means those facilities defined in Section 1250 of the Health and Safety Code, and also includes "clinic" as defined in Sections 1200 and 1200.1 of the Health and Safety Code.
 - (a) Section 1250 of the Health and Safety Code provides that "health facility" means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer.
 - (b) Section 1200 of the Health and Safety Code provides that "clinic" means an organized outpatient health facility which provides direct medical, surgical, dental, optometric, or podiatric advice, services, or treatment to patients who remain less than 24 hours, and which may also provide diagnostic or therapeutic services to patients in the home as an incident to care provided at the clinic facility. A place, establishment, or

¹ See Section 3, Medical Center As Seller.

² See Section 8.I.M, Medicine.

Section 5: Medical Center As Purchaser

institution which solely provides advice, counseling, information, or referrals on the maintenance of health or on the means and measures to prevent or avoid sickness, disease, or injury, where such advice, counseling, information, or referrals does not constitute the practice of medicine, surgery, dentistry, optometry, or podiatry, shall not be deemed a clinic for purposes of this subdivision.

- (c) Section 1200.1 of the Health and Safety Code provides that "clinic" also means an organized outpatient health facility which provides direct psychological advice, services, or treatment to patients who remain less than 24 hours. As provided in Section 1204.1 of the Health and Safety Code, such clinics serve patients under the direction of a clinical psychologist as defined in Section 1316.5 of the Health and Safety Code, and are operated by a nonprofit corporation, which is exempt from federal taxation under paragraph (3), subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, and which is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds, or contributions which may be in the form of money, goods, or services. In such clinics, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. Such clinics may also provide diagnostic or therapeutic services authorized under chapter 6.6 (commencing with Section 2900) of division 2 of the Business and Professions Code to patients in the home as an incident to care provided at the clinic facility.
2. **Physician and Pharmacist** - "Physician" means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Osteopathic Medical Board of California and includes an unlicensed person lawfully practicing medicine pursuant to Section 2065 of the Business & Professions Code, when acting within the scope of that section. "Pharmacist" means a person to whom a license has been issued by the California State Board of Pharmacy, under the provisions of Section 4200 of the Business and Professions Code, except as specifically provided otherwise in chapter 9 of the Pharmacy Law.³
3. **Prescription**⁴ - "Prescription" means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist, or podiatrist licensed in this state *and* given individually for the person or persons for whom ordered.
4. **Administer, Furnish, Dispense** – "Administer" means the direct application of a drug or device to the body of a patient by injection, inhalation, ingestion or other means. "Furnish" means to supply by any means, by sale or otherwise. "Dispense" means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist or podiatrist. It also means the furnishing of drugs or devices directly to a patient by a physician, dentist, optometrist, or podiatrist.

³ See Section 8.I.Q, Pharmacist.

⁴ See Section 8.I.R, Prescription.

B. Application of Tax: Medicines

1. Tax applies to retail sales, including over-the-counter sales of drugs and medicines, and other tangible personal property by pharmacists and others.
2. However, tax does not apply to the sales or the use of medicines (including certain Medical Devices, when sold or furnished under one of the following conditions (exemption requirements):
 - (a) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law, or
 - (b) Furnished by a licensed physician and surgeon, dentist or podiatrist to his or her own patient for treatment of the patient, or
 - (c) Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician and surgeon, dentist or podiatrist, or
 - (d) Sold to a licensed physician and surgeon, dentist, podiatrist or health facility for the treatment of a human being, or
 - (e) Sold to this state or any political subdivision or municipal corporation, thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof, or
 - (f) Effective January 1, 1995, furnished by a pharmaceutical manufacturer or distributor without charge to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or to an institution of higher education for instruction or research. Such medicine must be of a type that can be dispensed only: (1) for the treatment of a human being, and (2) pursuant to prescriptions issued by persons authorized to prescribe medicines.

C. Medicines and Medical Devices (Regulation 1591)

1. In general: “Medicines” mean:
 - (a) Any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for that use; or
 - (b) Except where taxable for all uses provided in Regulation 1591(c), any product fully implanted or injected in the human body, or any drug or biologic, when such are “approved by the United States Food and Drug

Section 5: Medical Center As Purchaser

Administration”⁵ to diagnose, cure, mitigate, treat or prevent any disease, illness or medical condition regardless of ultimate use.

Note: *the CDTFA interprets this section to stand for the position that if a device is exempt for any use under Regulation 1591(b), which exempts specific uses of certain articles, devices and appliances, then all such products are exempt. An example of products covered by this section would be elective cosmetic implants that do not replace or assist a body function, which are normally required as a condition of exemption for implants. The policy avoids any CDTFA requirement to review confidential patient information to determine taxability.*

2. In addition to the definition set forth above, the term “medicine” means and includes the following items:
 - (a) **Preparations and Substances** – Preparations and similar substances intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which are commonly recognized as a substance or preparation intended for such use qualify as medicines.

"Preparations and similar substances" include, but are not limited to, drugs such as penicillin, and other antibiotics, "dangerous drugs" (drugs that require dispensing only on prescription); alcohol (70% solution) and isopropyl; aspirin; baby lotion, oil, and powder; enema preparations; hydrogen peroxide; lubricating jelly; medicated skin creams; oral contraceptives; measles and other types of vaccines; topical creams and ointments; and sterile nonpyrogenic distilled water. Preparations and similar substances applied to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease qualify as medicines. "Preparations and similar substances" also include Total Parenteral Nutrition (also called TPN), Intradialytic Parenteral Nutrition (also called IDPN), and food provided by way of enteral feeding, except when the TPN, IDPN, or food provided by enteral feeding qualifies as a meal under Regulation 1503. For purposes of this regulation, TPN, IDPN, and enteral feeding are means of providing complete nutrition to the patient; TPN and IDPN are provided in the form of a collection of glucose, amino acids, vitamins, minerals, and lipids, TPN being administered intravenously to a patient who is unable to digest food through the gastrointestinal tract and IDPN being administered to hemodialysis patients as an integral part of the hemodialysis treatment; enteral feeding is the feeding of the patient directly into the gastrointestinal tract.

⁵ For purposes of this Regulation 1591(a)(9)(A), products "approved by the United States Food and Drug Administration" means any product for which a premarket notification was cleared by the United States Food and Drug Administration or for which an application for premarket approval was approved by the United States Food and Drug Administration.

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*** USER NOTE: Preparations and Similar Substances ***	
<p>Observation: There are many products beyond pharmaceutical medicines (such as penicillin and antibiotics) that qualify under this category. Additional examples of exempt preparations & similar substances include anesthetic gases, baby lotions, oil and powder, dietary supplements, IV and flush solutions, medicated dressings, medicated skin creams, ointments, oxygen/medical gases, and radioactive pellets.</p> <p>This category also includes surgical scrubs used on patients and/or by doctors, nurses, and other operating personnel, and for hand cleaning by hospital personnel caring for and treating patients.</p> <p>Exemption Keys: Substance or preparation is applied to the human body either externally or internally.</p>	

Additional examples of products that would be considered Preparations & Substances

- Alcohol (70% Solution)
- Aspirin
- Bone Cement
- Oral Contraceptives
- Skin Staples
- Food Provided by TPN or IDPN

- (b) **Permanently Implanted Articles** – Articles permanently implanted in the human body to assist the functioning of, as distinguished from replacing all or any part of, any natural organ, artery, vein or limb and which remain or dissolve in the body qualify as medicines.

Except for devices excluded from the definition of "medicines," permanently implanted articles include the interdependent internal and external components that operate together as one device in and on the person in whom the device is implanted. In addition, articles permanently implanted in the human body to mark the location of a medical condition, such as breast tissue markers, qualify as medicines.

Definitions for purposes of Permanent Implant:

- (1) Permanently implanted is considered to be six months or longer.
- (2) An article is considered to be permanently implanted if its removal is not otherwise anticipated.

Implantable articles that do not qualify as "permanently" implanted medicines include, but are not limited to, Chemoport implantable fluid systems; Port-a-Cath systems used for drug infusion purposes; disposable urethral catheters; temporary myocardial pacing leads used during surgery and recovery; and defibrillator programmer and high voltage stimulator used with an implanted defibrillator.

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*** USER NOTE: Implants ***	
<p>Observation: Examples of articles permanently implanted that qualify as exempt medicines include bone screws, bone pins, plates, pacemakers, tendon implants, ear implants and permanently implanted catheters. Also includes permanent implants used for cosmetic purposes, such as Botox and collagen.</p> <p>Devices that deliver the implanted article into the body also qualify under this exemption category. Examples of preloaded delivery devices include delivery catheters preloaded with stents, preloaded skin staplers, and pre-threaded suture needles. There are also certain preloaded devices that a partially taxable such as Abbot's Mitraclip system at 25%, St. Jude's Angioseal at 15.99% and preloaded cutter/staplers at 25% taxable.</p> <p>Exemption Keys: Implants must be permanent (intended to stay in the body six months or longer) and assists the functioning of any natural organ, artery, vein or limb.</p>	

Additional examples of products that would be considered Implants

- Dental Implant Systems ▪ Defibrillators
- Pacemakers ▪ Implanted Leads

(c) **Artificial Limbs and Eyes** - Artificial limbs and eyes, or their replacement parts, including stump socks and stockings worn with artificial legs and intraocular lenses for human beings, qualify as medicines as provided by Revenue and Taxation Code Section 6369(c)(5). Tax does not apply to the sale or use of these items when sold or furnished.

(d) **Orthotic Devices (braces, supports, sling and belts)** – Orthotic devices and their replacement parts designed to be worn on the person as a brace, support or correction for the body structure. Orthopedic shoes and supportive devices for the foot are not exempt unless they are an integral part of a leg brace or artificial leg or are custom-made biomechanical foot orthoses (Regulation 1591(b)(4)).

"Orthotic devices" include, but are not limited to, abdominal binders, ace bandages, ankle braces, anti-embolism stockings, casts, and cast components, post-surgical corsets, elbow supports, head halters, pelvic traction devices, post-operative knee immobilizers, rib belts and immobilizers, rupture holders, sacral belts, sacro-lumbar back braces, shoulder immobilizers, slings, stump shrinkers, support hose (and garter belts used to hold them in place), trusses, and wrist and arm braces.

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*** USER NOTE: Orthotics ***	
<p>Observation: The primary condition to qualify as an orthotic is that the device and their replacement parts are designed to be worn on the person as a brace, support or correction for the body structure. Any item attached to the bed, wall, ceiling or other equipment is not considered fully worn on the body and does not qualify for this exemption.</p> <p>Exemption Keys: Devices that support a body structure and qualify as orthotics include fixators, halos and neck collars. Also, pressure garments when used for burn and skin graft patients qualify as orthotics (Annotation 425.0740).</p>	

Additional examples of products that would be considered Orthotic Devices

- Arm Braces
- Cervical Supports
- Fixators
- Neck Collars
- Sternum Supports
- Thumb/Finger Splints

- (e) **Prosthetics** – Prosthetic devices and their replacement parts designed to be worn or in the patient to replace or assist a body function other than auditory, ophthalmic and ocular devices or appliances, and other than dentures, removable or fixed bridges, crowns, caps, inlays, artificial teeth and other dental prosthetic materials and devices (Regulation 1591(b)(5)).

*** USER NOTE: Prosthetics ***	
<p>Observation: Similar to implants that must assist the functioning of a natural part of the human body, prosthetics must assist or replace any natural human body part; however, unlike implants there is no “permanent” condition. The other main requirement is that prosthetic devices must be fully worn or in the patient. Any item attached to the bed, wall, ceiling or other equipment is not considered fully worn on the body and does not qualify for this exemption.</p> <p>Exemption Keys: Exempt prosthetic devices include short-term devices that are fully worn on or in the patient to replace or assist the functioning of a natural part of the human body. Examples include trial nerve stimulators that are intended to be worn for about a week to allow patients to experience the benefits of nerve stimulators that are permanently implanted.</p>	

Additional examples of products that would be considered Prosthetics

- Atrial Valves
- Finger Joint Prosthesis
- Tissue & Breast Expanders
- Neuromuscular Electrical Stimulators

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- Heart Valves
- Urinary Incontinent Devices

- (f) **Mammary Prostheses and Ostomy Appliances and Supplies** - Tax *does not apply* to the sale or use of mammary prostheses and ostomy appliances and related supplies required as a result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste when sold or furnished under one of the conditions provided in Regulation 1591(d)(1) through (d)(6). The mammary prostheses devices and ostomy appliances and related supplies do not need to be furnished by a pharmacist, within the meaning of Regulation 1591(d)(1), to be considered dispensed on prescription as long as they are furnished pursuant to a written order of a person authorized to prescribe (Regulation 1591.1).
Ostomy appliances and related supplies must be used in postoperative situations or sold as an accommodation to patients following surgery in order to qualify as medicines. When used as an adjunct to surgical procedures, the sale or use of these items is subject to tax unless the appliances remain in the patient for postoperative purposes (Regulation 1591.1).

Qualifying mammary prostheses and qualifying ostomy appliances and related supplies include, but are not limited to, bras to hold a mammary prosthesis in place, filler pads, lymphedema arm sleeves, adhesive spray and remover; catheters used as a result of an artificial opening created in the human body; colostomy bags; deodorant used on the person of the user; karaya rings; antacid used externally as a skin ointment; skin gel; nonallergic paper tape and gauze; skin bond cement; tincture of benzoin applied topically as a protective; urinary drainage appliances; closed stoma bags; drainable stoma bags; loop ostomy supplies and tubing; and endotracheal and tracheotomy tubes and tracheostomy tubes used for the evacuation of metabolic waste when used post-operatively or for home care.

- (g) **Vitamins, Minerals, Herbs** - In general, sales of vitamins, minerals, herbs and other such supplements *are subject to tax*. However, when vitamins, minerals, herbs and other such supplements are used in the cure, mitigation, treatment or prevention of disease, and are commonly recognized as a substance or preparation intended for such use, they will qualify as medicines for the purposes of Revenue and Taxation Code Section 6369. As such, their sale or use is *not subject to tax* when sold or furnished under one of the conditions in Regulation 1591(d)(1) through (d)(6).
- (h) **Dialysis Supplies** - The term "ostomy appliances" and "related supplies" includes kidney dialysis machines, replacement parts for the kidney dialysis machines, and the catheters, dialysis fluid additives, volumetric infusion pumps, tubing, blood sets, fistula sets, and shunts used in conjunction with such machines. To qualify as a "related supply," an item must be a necessary and integral part of the machine itself, or a substance or preparation intended for external or internal application to the human body of the patient undergoing dialysis (Regulation 1591.1).

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(i) **Certain Catheters: Drainage and Angioplasty**

- (1) Catheters used for drainage purposes through which an artificial opening is created in the human body. Such catheters qualify as ostomy materials and related supplies.
 - (A) Catheters or similar types of devices used for drainage purposes through natural openings in the human body to assist or replace the functioning of a natural part of the human body. Such catheters are designed to be worn on or in the body of the user and qualify as prosthetic devices.
- (2) Coronary and Angioplasty - Intra-aortic balloon pump catheters and coronary angioplasty balloon catheters.

(j) **Insulin and Insulin Syringes and Related Supplies** - "Insulin" and "insulin syringes" furnished by a pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of Revenue and Taxation Code Section 6369(e). As such, the sale or use of insulin and insulin syringes furnished by a pharmacist to a person for treatment of diabetes, as directed by a physician, is ***exempt from tax*** (Regulation 1591.1). Glucose test strips and skin puncture lancets furnished by a registered pharmacist that are used by a diabetic patient to determine his or her own blood sugar level and the necessity for and amount of insulin and/or other diabetic control medication needed to treat the disease in accordance with a physician's instructions are an integral and necessary active part of the use of insulin and insulin syringes or other anti-diabetic medications and, accordingly, ***are not subject to sale or use tax*** pursuant to Revenue and Taxation Code Section 6369(e). These medical supplies are not medicines and their sale or use does not qualify for tax exemption under subsections (a) or (b) of Revenue and Taxation Code Section 6369.

(k) **Drug Infusion Devices** – Programmable drug infusion devices to be worn on or implanted in the human body that automatically cause the infusion of measure quantities of a medicine into the body.

(l) **Antiseptic Cleaners / Scrubs** - ***Tax does not apply*** to the sale or use of substances or preparations, such as antiseptic cleansers or scrubs, when such substances or preparations qualify as medicines and are used by hospital personnel on the patient or by hospital personnel on their own bodies to benefit the patient, and which constitute a critical component of the patient's treatment. Qualifying medicines used on the bodies of hospital personnel include antimicrobial agents used for preoperative scrubbing or hand cleansing prior to any patient contact such as Accent plus Skin Cleanser; Accent Plus Perineal Cleanser; Bacti-Stat; Betadine; and Medi-Scrub. However, antimicrobial agents such as Accent plus 1 Skin Lotion; Accent Plus 2 Body Massage; Accent Plus 2 Skin Crème; and Accent Plus Total Body Shampoo applied to the body of hospital

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personnel are not considered used in the treatment of the patient and the sale or use of these products is subject to tax.

3. Other Medical Products

- (a) Diagnostic Substances, test kits, etc. - Tax applies to the sale or use of diagnostic substances applied to samples of cells, tissues, organs, or bodily fluids and waste after such samples have been removed, withdrawn, or eliminated from the human body. Diagnostic substances are applied to the samples outside the living body ("in vitro") in an artificial environment. They are not administered in the living body ("in vivo"). As the substances are not applied internally or externally to the body of the patient, they do not qualify as medicines under Revenue and Taxation Code Section 6369.

D. Exclusions from the Definition of Medicine

- 1. In general, except as otherwise provided in the above categories of exempt medicines, the following items are specifically excluded from the definition of medicines. Sales of these items are subject to tax in the same manner as any other sale of tangible personal property.
 - (a) Orthodontic, auditory, ophthalmic, ocular.
 - (b) Bandages, pads, compresses, supports, dressings.
 - (c) Instruments, apparatus, appliances, contrivances, devices or other mechanical, electronic, optical or physical equipment or article, including traction units (other than those fully worn on the patient).
 - (d) Arch supports, cervical pillows, exercise weights (boots or belts), hospital beds.
 - (e) Orthopedic shoes and supportive devices (unless an integral part of a leg brace or artificial leg), plastazote inserts, plastazote shoes, plastic shoes (custom or ready-made), sacro-ease seats, shoe modifications, spenco inserts, thermophore pads, or foot orthoses.
 - (f) Alcoholic beverages.

E. Blood Collection and Pack Units

1. Blood Collection Containers

Sales of human blood and blood plasma are exempt from taxation. Tax does not apply to the sale or use of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives that are exempt from taxation. The exemption applies to containers used to collect or store blood including blood collection units and blood pack units. Blood pack units generally consist of a plastic bag or bags, disposable tubing, and a needle. Blood collection units may include a needle, multiple bags, a bag of saline solution, tubing, filters,

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grommets, a plastic bowl containing a stainless steel centrifuge and a pooling bag. Sales of these blood units, collection or pack, are not taxable even if the tubing, needles, filters, etc. are discarded after the collection of blood or platelets.

Historically, the CA Department of Tax and Fee Administration (“CDTFA”) has limited the exemption for blood collection containers to purchases by blood banks, excluding containers used by a hospital that collect blood for their own use. In July 2011, the CDTFA issued guidance to expand the exemption to purchases by hospitals, medical centers, and clinics of containers used to collect or store blood. The CDTFA has also issued a Private Letter Ruling to define “collect and store” as used in the Regulation. The CDTFA has interpreted “collect and store” as containers that are analogous in function to the blood collection packs and blood collection units. They support such interpretation as consistent with the legislative history of the exemption. The CDTFA initially believed that the exemption was not intended to apply to transactions involving any item on which blood may be stored or temporarily held for other purposes such as testing or lab use; however, a recent decision concluded that vacutainers which are used to “collect and store blood”, even though used temporarily, qualified as exempt blood collection containers. The key determining factors appear to be the item must be a “container” and it must “collect” or “store” the blood.

	*** USER NOTE: Blood collection containers ***	
	<p>Observation: New and emerging technology has changed the methods and supplies used to collect and process blood over time. In addition, the exemption applies to both donor and therapeutic settings. These include apheresis procedures and <u>photopheresis</u> treatments.</p> <p>Exemption Keys: Exemption also applies to blood collection units and blood pack units. They may include a needle, bag(s), tubing, saline solution, filters, grommets, a plastic bowl containing a stainless steel centrifuge and pool bag that must all be connected to the bag</p>	

F. Non-Medical Tangible Personal Property, Services and Related Support

1. See discussion of specific items within **Section 4: University As Purchaser**

G. Equipment and Other Hospital Assets

1. In general
 - (a) Equipment and other fixed assets of the Medical Center are generally subject to CA sales and use tax, including crutches, canes, walkers, and wheelchairs that are normally exempt when sold or furnished to a patient. CA does provide a partial sales and use tax exemption for capitalized property use in qualified Research and Development activities (see Addendum: UC Guidelines – California Partial Sales and Use Tax

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Exemption for more information on the partial sales and use tax exemption when purchasing qualified property used for research and development).

- (b) Intercampus transfers of equipment from one UC Medical Center to another are sales within the same legal entity and ***not subject to tax***. Sales of equipment used in the operation of the Medical Centers to outside organizations are generally ***subject to tax*** unless otherwise exempt, such as sales in interstate commerce or sales for resale.

2. Programmable Drug Infusion Devices

- (a) The exemption for Programmable Drug Infusion Devices applies whether the property is sold or furnished to a resident or patient or maintained by the hospital or other medical service provider.

3. Kidney Dialysis Machines

- (a) The term "ostomy appliances" and "related supplies" includes kidney dialysis machines and is exempt from CA sales/use tax.

4. Continuous Passive Motion Machines

- (a) Electronically powered apparatuses are often worn on the ankle, knee, hip, or finger to stimulate healing of tissues. Since they are designed to assist the functioning of a natural body part, they are not subject to tax

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I. AQUARIUM

A. In General

1. Aquarium as Consumer

The aquarium operated by the Scripps Institute of Oceanography is generally a consumer of property, which it consumes in its operations. As a consumer, the aquarium is subject to the sale or use tax for purchases made by the Aquarium.

The following are examples of situations in which the Aquarium is the consumer of purchases.

- Items provided in conjunction with educational programs carried on by the facility.
- Admission tickets.
- Items purchased and sold at fundraising activities. However, items donated for sale at fundraising activities are not subject to tax.

2. Aquarium as Retailer

Sales of souvenirs or other materials by the gift shop are *taxable sales*.

B. Equipment Deployed To Sea

In certain cases, deployed vessels are sent out to ships in sea in California. In general, anything purchased in California is subject to sales tax.

Any tangible personal property purchased outside of California which is brought into the state for the temporary purpose of installation so the property can be sent to international waters and not returned to California is not subject to California use tax.¹

C. Exemptions from Sales & Use Tax

1. Admissions

The Aquarium's receipts from admissions to the facility are *not subject to sales or use tax*. Consequently, free admissions provided to supporters of the aquarium are *not subject to sales tax*.

2. Newsletter

The newsletter provided to member and friends of the aquarium may qualify as an *exempt* periodical distributed by a non-profit organization if the cost of producing the publication is less than 10% of the membership fee attributable to

¹ See Section 6.VI, Watercraft.

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the membership period. However, any such publications sold by the gift shop are subject to tax.

II. AGRICULTURAL FIELD STATIONS

Sales made by agricultural field stations ***will be subject to the transaction taxes*** that are applicable for the county where the field stations are located or the location where the sales are shipped. These sales must be accounted for separately with respect to the transit district portion.

Example: The Agricultural Field Station located in Sacramento makes a sale of tangible personal property directly from the field station. The transaction tax that applies is the Sacramento transit authority which is currently .05%. UC must segregate these sales from the general sales made by Davis to account for the transit taxes.

III. USE FUEL TAXES

Generally, the vendor of fuel is required to collect and is liable for the amount of excise tax on fuel sold and delivered into fuel tanks of motor vehicles. A vendor is not authorized to collect excise taxes on fuel delivered into a storage container other than a vehicle fuel tank. In this situation, the user becomes liable for the tax when used in situations requiring the payment of tax.

A. Imposition of Use Fuel Tax

The Use Fuel Tax is imposed upon the use of "fuel." "Fuel" is defined as any combustible gas or liquid used in an internal combustion engine for the generation of power to propel a motor vehicle on the highways, except for gasoline, which is administered under the Motor Vehicle Fuel License Tax Law (Section 8604). "Fuel" includes, liquefied petroleum gas and natural gas.

"Use" is defined as either the consumption of fuel to propel a motor vehicle or the placing of fuel into the fuel tank of a motor vehicle. Use does not include the placing of fuel into storage tanks for future use (Section 8607).

A user is ***required to pay*** the tax for each gallon placed into the fuel tank of a vehicle for use on public streets and highways. Fuel placed into the fuel tank of vehicles for off highway use and fuel placed into fuel tanks of machinery and equipment for off highway use is not subject to tax. UC must retain detailed records to support non-taxable uses of fuel.

1. Tax Rate

The ***tax is imposed*** at the rate of-

- eighteen cents per gallon (\$0.18/gal.) for fuels (Section 8651),
- six cents per gallon (\$0.06/gal.) of liquefied petroleum gas (Section 8651.5),
- ten and seventeen hundredth cents for each 6.06 pounds (\$0.1017/6.06 lbs.) of liquid natural gas (Section 8651.6),

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- eight and eighty-seven hundredths cents for each 126.67 cubic feet, or 5.66 pounds (\$0.0887/126.67 cubic feet or \$0.0887/5.66 lbs.) of compressed natural gas (Section 8651.6), measured at standard pressure and temperature, and
- nine cents per gallon (\$.09/gal.)² of ethanol and methanol containing not more than 15 percent gasoline or diesel fuels (Section 8651.8).

The owner or operator of a vehicle propelled by a system using liquefied petroleum gas, liquid natural gas or compressed natural gas may pay an annual flat rate fuel tax based on the type or weight of the vehicle instead of the above tax per gallon (Section 8651.7). The rates are as follows:

- | | |
|--|--------|
| • All passenger cars and other vehicles 4,000 lbs. or less | \$ 36 |
| • More than 4,000 lbs., but less than 8,001 lbs. | \$ 72 |
| • More than 8,000 lbs., but less than 12,001 lbs. | \$ 120 |
| • 12,001 lbs. or more | \$ 168 |

2. Exemptions

The ***use fuel tax does not apply*** to fuel used for purposes other than to propel a motor vehicle in this state on a highway (Section 8653), nor to fuel used to propel a motor vehicle that is used for agricultural purposes which is exempt under the Vehicle Code and are only incidentally operated on the highway (Section 8652).

The ***use fuel tax does not apply*** to fuel used to propel certain construction equipment that is exempt from registration under the Vehicle Code and is only incidentally operated on the highway (Section 8652).

The ***use fuel tax does not apply*** to fuel used to power machinery and equipment for off highway use (Section 8653).

In addition, listed below are four situations where a vendor is ***not required to collect the excise tax*** on fuel delivered into motor vehicles. However, any person falling under any of the four exemptions below is responsible for remitting a tax for the privilege of operating vehicles on state highways and freeways in the amount of one cent per gallon (\$0.01/gal.) of exempt fuel used (Section 8655).

- When operated by the Government of the United States or any instrumentality;
- When operated in interstate commerce and the purchaser holds a use fuel tax permit;

² This rate is one-half the rate prescribed by Section 8651 for each gallon of fuel used.

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- When operated by a user who qualifies for the exemption provided in Section 8655 of the California Revenue and Taxation Code³; and
- When operated exclusively on private property.

B. Discussion

Campus departments using or selling fuel are required to hold either a "Vendor" or "User" permit and to file monthly returns that are due on or before the last day of the month following each quarterly period. Local procedures dictate as to which campus department handles the registration, filing of returns, and remittance of taxes. The return consists of a reconciliation of total fuel purchased, fuel purchased tax paid and fuel purchased ex-tax.

Although the use of fuel off highway is not subject to the Use Fuel Tax, the excise tax applies to purchases of fuel even though the fuel purchased may not be subject to the Use Fuel Tax at the time of purchase.

The Use Fuel Tax is considered a use tax and not an excise tax. Since the Use Fuel Tax is imposed on the use of fuel, the Use Fuel Tax is excluded from the Sales or Use tax base. Therefore, Sales or Use taxable measure does not include the amount calculated for Use Fuel Tax. Sales or Use Tax is not calculated on top of the Use Fuel Tax.

For example, 50 gallons of fuel at \$1.00 per gallon is placed into the tank of a motor vehicle for use on the highway. The total sale price before tax is \$50.00 (50 gallons x \$1.00). The correct Use Fuel Tax for the sale would be \$9.00 (50 gallons x \$0.18 per gallon Use Fuel Tax rate). This results in a Sales or Use taxable measure of \$50.00, not \$59.00. In short, Sales Tax applies to the \$50.00 purchase price but not to the Use Fuel Tax of \$9.00. Based on a Sales or Use Tax rate of 7.25%, the **correct total amount of the sale** would be **\$62.63** (\$50.00 (50 gallons x \$1.00 per gallon) + **\$3.63** (\$50.00 x 0.0725 Sales Tax rate) + **\$9.00** (50 gallons x \$0.18 Use Fuel Tax rate)).

An **incorrect example** of this calculation would result in a higher total amount of sale through the inclusion of the \$9.00 of Use Fuel Tax in the calculation for Sales or Use Tax. An example using the same situation would result in a total amount of sale of **\$63.28** (\$59.00 (\$50.00 sale price from prior example + \$9.00 Use Fuel Tax from prior example) + **\$4.28** (\$59.00 (Sale price + Use Fuel Tax) x .0725 Sales Tax rate)).

The Sales and Use Tax rate ranges between 7.25% and 10.25% depending on the location of the sale. Depending on the sales tax rate, the total sales tax based on the \$50.00 sale price in the above example would be between \$3.63 (\$50.00 x 0.0725 Sales Tax rate) and \$5.13 (\$50.00 x

³ Revenue and Taxation Code §8655 provides an exemption from fuel taxes for transit districts, passenger state corporations and common carriers. Specifically, any school district, community college district or county superintendent of schools owning, leasing, or operating buses for the purpose of transporting pupils to and from school and for other school or college activities involving pupils qualifies for the exemption. This includes but is not limited to field trips and athletic contests.

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0.1025 Sales Tax rate), resulting in a total bill between \$62.63 and \$64.13 calculated as in the correct example above.

If the use fuel tax was incorrectly included in the sales tax base, the total bill would be between \$63.28 and \$65.05 calculated as in the incorrect example above. Using the correct method of calculation is of significant importance when the use of fuel is at a greater level. **Therefore, records need to reference both gallons as well as dollars for accurate reporting purposes.** This is especially true when UC maintains any bulk storage facilities on the campuses for fuels included under the Use Fuel Tax Law.

IV. DIESEL FUEL TAXES

Since July 1, 1995, the excise tax on diesel fuel has been administered under the Diesel Fuel Tax Law. Prior to this time, the excise tax on diesel fuel was administered under the Use Fuel Tax Law. The Diesel Fuel Tax Law imposes the tax on each gallon of diesel fuel used in the state.⁴

A. Licensing Requirements

California requires that all persons acting as suppliers obtain a license from CDTFA. Terminal operators, refiners, position holders, enterers, through putters and blenders all fall within the definition of "suppliers" (Sections 60131 and 60033).

Licenses are also required for exempt bus operators, government entities, and ultimate vendors. Highway vehicle operators⁵ subject to the backup tax must also obtain licenses. A holder of a supplier license may act as an ultimate vendor (Section 60141 through 60161).

B. Definitions

Terminal - A storage and distribution facility supplied by pipeline or vessel, from which diesel fuel may be removed at a rack.

Rack - A mechanism for delivering diesel fuel from a terminal or refinery into trucks or railroad cars for nonbulk transfer.

Bulk transfer/Terminal system - The distribution system for diesel fuel, comprising refineries, pipelines, vessels, and terminals.

Terminal operator - Any person owning, operating, or otherwise controlling a terminal.

Refiner - Any person owning, operating, or otherwise controlling a refinery.

Position holder - Any person who holds the inventory position in diesel fuel as shown on the records of a terminal operator, through a contract with the terminal operator for use of its facilities. A terminal operator may also be a position holder.

⁴ See Section 4.IV.D.2, Agricultural Machinery and Equipment and Diesel Fuel, for the partial exemption from *sales and use tax* (not the diesel fuel tax) for purchases of diesel fuel used in farming activities or food processing.

⁵ Regulation 60161, effective 1/1/02.

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Enterer - The owner of diesel fuel when it is brought into the state. For imported diesel fuel, the enterer is the person whom federal customs law shows as the importer of record.

Throughputter - A position holder of any other person who owns diesel fuel within the bulk transfer/terminal system.

Blender - Any person producing blended diesel fuel outside the bulk transfer/terminal system.

Ultimate vendor - A person who sells undyed diesel fuel for farming purposes or for use in an exempt bus operation.

Highway vehicle operator/fueler⁶ - Any person, other than a qualified highway vehicle operator, that owns, operates, or otherwise controls a diesel-powered highway vehicle and delivers, or causes to be delivered, diesel fuel or any liquid into the fuel tank of a diesel-powered highway vehicle; or any person who sells diesel fuel on which a claim for refund has been allowed, or who sells and delivers or causes to be delivered in the fuel tank of a diesel-powered highway vehicle dyed diesel fuel or any liquid on which tax has not been imposed.

Qualified highway vehicle operator⁷ - Any person licensed as a qualified highway vehicle operator that owns, operates, or otherwise controls a diesel-powered highway vehicle and delivers, or causes to be delivered, diesel fuel or any liquid into the fuel tank of a diesel-powered highway vehicle and is qualified to use dyed diesel fuel on the highway by the Internal Revenue Service under Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

Supplier⁸ - Any person who is any of the following: (1) Blender, as defined in Section 60012; (2) Enterer, as defined in Section 60013; (3) Position holder, as defined in Section 60010; (4) Refiner, as defined in Section 60011; (5) Terminal operator, as defined in Section 60009; (6) Through putter, as defined in Section 60035.

C. Imposition of Diesel Fuel Tax

The **Diesel Fuel Tax is imposed** on all of the following:

- The removal of diesel fuel from a California terminal if the diesel fuel is removed at the rack. The position holder is responsible for payment of the tax. The terminal operator is jointly and severally liable for the tax if either it or the position holder is unlicensed, or if the terminal operator fails to take or possess in good faith a valid notification certificate from the position holder as required by the IRS (Sections 60051, 60054, 60059 and 60060).
- The removal of diesel fuel from a California refinery if the removal occurs at the refinery rack or if the refiner is not licensed as a supplier. If licensed, the refiner is generally responsible for payment of the tax. If the diesel fuel is removed from the refinery by vessel or pipeline for delivery to a terminal, the tax will be imposed upon

⁶ Regulation 60034, amended effective 1/1/02.

⁷ Regulation 60027, amended effective 1/1/02.

⁸ Regulation 60033.

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removal from the terminal rack as in the paragraph above. In addition, a licensee may transfer diesel fuel from a refinery to a terminal by railroad without tax if it controls both facilities and the refinery is not served by a pipeline or vessel. Again, the tax will be imposed upon removal from the terminal rack as in the paragraph above (Sections 60052(a), 60053 and 60100(a)(3)).

- The entry of diesel fuel into California for use, consumption, sale or warehousing. When licensed, the enterer is responsible for payment of the tax if the entry occurs by means other than a bulk transfer through the use of a vessel or pipeline. When unlicensed, the enterer is responsible for payment of the tax if the entry is by bulk transfer through the use of a vessel or pipeline (Sections 60052(b) and 60061).
- The removal or sale of blended diesel fuel by a blender. The blender is responsible for payment of the tax based on the difference between the number of gallons of blended diesel fuel removed or sold and the number of gallons of previously taxed diesel fuel used in its blending (Sections 60052(d) and 60055).
- The removal or sale⁹ of diesel fuel in California to an unregistered person unless there was a prior taxable removal, entry, or sale of the diesel fuel (Section 60052(c)).

Additionally, the Diesel fuel **tax is imposed** as a backup tax whenever untaxed diesel fuel, dyed diesel fuel, diesel fuel on which a refund has been allowed, or any other liquid that has **not been taxed** under the Motor Vehicle Fuel License Tax or the Use Fuel Tax is delivered into a diesel-powered motor vehicle for highway use. Backup tax is also imposed on the sale of any diesel fuel on which a claim for refund has been allowed and on the sale and delivery into the fuel tank of a diesel-powered highway vehicle of any diesel fuel that contains a dye or any liquid on which tax has not been imposed by this part, Part 2 (commencing with Section 7301), or Part 3 (commencing with Section 8601)¹⁰. The vehicle operator is primarily responsible for payment of the tax and, along with the fuel's end seller, must get a license from the CDTFA (Sections 60058, 60161 and 60057).

Effective January 1, 1996, there is no longer a requirement that the diesel fuel be delivered into the fuel tank in California. Qualified vehicle operators¹¹ must file monthly returns, by the last day of each calendar month for the preceding month, showing total gallons and tax due. Payments must accompany returns (Section 60206).

⁹ Regulation 60052(c); amended effective 1/1/02.

¹⁰ Regulation 60058; amended effective 1/1/02.

¹¹ Regulation 60206; amended effective 1/1/02.

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1. Tax Rate (Section 60050)¹²

The **tax is imposed** at the rate of thirty-six cents per gallon (\$0.36/gal.) of diesel fuel, which is a combination of the tax of sixteen cents per gallon (\$0.16/gal.) under Section 60050(a)(1) plus an additional tax of twenty cents per gallon (\$0.20/gal.) from November 2017 through June 2020 under Section 60050(b). However, if the federal fuel tax is reduced below fifteen cents per gallon (\$0.15/gal.) and the federal financial allocations to California for highway and exclusive public mass transit guideways are reduced or eliminated correspondingly, the state tax rate imposed by Section 60050(a)(1) of sixteen cents per gallon (\$0.16/gal.) shall be increased by an amount so that the combined state rate under Section 60050(a)(1) (\$0.16/gal.) and the federal tax rate per gallon equal what it would have been in the absence of the federal reduction (Section 60050(a)(2)).

2. Exemptions

The **tax does not apply** to the following:

- The removal, entry or sale of diesel fuel indelibly dyed or marked in accordance with IRS or federal Environmental Protection Agency regulations. The terminal operator or other seller must provide notice that the fuel is restricted to nontaxable uses (Sections 60100(a)(1), 60101, 60102 and 60103).
- Bulk transfers among refineries and terminals if all persons involved are licensed (Section 60100(a)(2)).
- Diesel fuel shipped outside California by a supplier in accordance with a contract of sale. The supplier must ship the diesel fuel outside California by use of its own facilities, by delivery to a common or contract carrier, customs broker or forwarder, or by delivery to a vessel leaving a California port destined for a port outside California to satisfy this requirement (Sections 60100(a)(4) and 60100(b)).
- Diesel fuel sold by a supplier to a train operator for railroad use. The train operator must have a permit from the CDTFA and provide the supplier with an exemption certificate (Sections 60100(a)(7), 60106, 60106.1 and 60107).
- Diesel fuel sold to a foreign consular officer by means of special credit card certified by the U.S. Department of State (Section 60100(a)(6)).

¹² Starting on July 1, 2020, and every July 1 thereafter, the state diesel fuel tax rates encompassing Section 60050(a) and Section 60050(b) will be adjusted by increasing the taxes by a percentage amount equal to the increase in the California Consumer Price Index, as calculated by the Department of Finance with the resulting taxes rounded to the nearest one-tenth of one cent (\$0.01). The first adjustment pursuant to this subdivision shall be a percentage amount equal to the increase in the California Consumer Price Index from November 1, 2017, to November 1, 2019. Subsequent annual adjustments shall cover subsequent 12-month periods. The incremental change shall be added to the associated rate for that year. Please see the [CDTFA's Sales Tax Rates for Fuels webpage](#) for the quarterly tax rate updates under the "Diesel Fuel (except Dyed Diesel) Rates by Period" table.

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- Delivery of diesel fuel into the tank of a diesel-powered motor vehicle for **farming use**, other off-highway use, use in an exempt bus operation, and use in a vehicle owned and operated by a government entity, or used by the U.S. and its agencies and instrumentalities. Exempt bus operators must be licensed by the CDTFA. Exempt bus operators include local transit districts and authorities, school bus operations, and certain private carriers regulated by the Public Utilities Commission. Charter operators are not included. Exempt bus operators must file monthly returns with the CDTFA and pay a special tax of one cent per gallon (\$0.01/gal.) of the refunded or exempt diesel fuel used (Sections 60039, 60100(a)(5), 60141, 60205 and 60502.2).

D. Discussion

Suppliers are required to file monthly returns due on or before the last day of the calendar month following the monthly period to which the return relates. The returns must show the total number of gallons of diesel fuel removed, entered, or sold by the suppliers within California, and the amount of tax due. Payment must accompany the return (Section 60201).

The diesel fuel tax is immediately due and payable if an unlicensed person becomes liable for payment. The CDTFA may estimate the tax due and add a penalty of 25% of the tax due or \$500, whichever is greater (Sections 60360 and 60361).

Refunds are available for persons who purchased tax-paid diesel fuel for use in certain exempt uses **except** for farming or exempt bus operations. In the case of diesel fuel sold for farm use or for use in an exempt bus operation, a registered ultimate vendor may obtain a refund of excess taxes paid on the diesel fuel. However, the registered ultimate vendor must return refunded excess taxes paid by customers to those customers (Sections 60501 and 60502).

Purchasers who provide exemption certificates, but later use the diesel fuel for purposes other than farming or exempt bus operations, may be liable for payment of the tax in the same manner as a supplier, a penalty equal to the greater of 25% of the tax or \$500, and criminal penalties. This is considered a misuse of the exemption certificate and such a misuse should be avoided (Section 60503.1).

Although the use of diesel fuel off highway is not subject to the Diesel Fuel Tax, the excise tax applies to purchases of fuel even though the fuel purchased may not be subject to the Diesel Fuel Tax at the time of purchase.

Since the diesel fuel tax is imposed on the use of diesel fuel, the diesel fuel tax is excluded from the sales or use tax base. Therefore, sales or use taxable measure does not include the amount calculated for diesel fuel tax. Sales or use tax is not calculated on top of the diesel fuel tax. An example of this is shown at the end of the preceding section relating to use fuel tax (Regulation 1598).

The CDTFA has issued [Form CDTFA-608, Certificate of Farming Use](#), which should be provided to a supplier when diesel fuel is being purchased for use in farming activities (IRS Treasury Regulation 48.6427-9(e)(2)).

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V. HOTELS, BOARDING HOUSES AND SIMILAR ESTABLISHMENTS

A "boarding house" is considered to be any establishment regularly serving meals on the average of five or more paying guests. An establishment furnishing meals on the average to fewer than five paying guests during the calendar quarter is not considered to be engaged in the business of selling meals at retail (Regulation 1603).

A. Tangible Personal Property Other Than Food

Generally, unless exempt as sales for resale, sales in interstate commerce or sales to the U.S. Government, sales of other tangible personal property by hotels, boarding houses or similar establishments are **subject to sales tax**. Other tangible personal property includes souvenir type items such as articles of clothing, stuffed animals or novelty items; general merchandise type items such as toiletries, bug sprays or over-the-counter medicines; arts and craft supplies and similar items.

B. Meals and Hot Prepared Food Products

Sales tax applies to the sales of meals or hot prepared food products furnished by hotels, boarding houses and similar establishments whether served on or off the premises. Service charges for delivering meals or hot prepared food products to, or serving them in, the rooms of guests **should be included in the measure of tax** along with the charge for the meals or hot prepared food products **whether or not the charges are separately stated**.

An establishment operating on the American Plan furnishes both meal and lodging to guests for a single, stipulated rate or price. Breakfast, lunch and dinner are included in the price of the room for such establishments. In the case of American Plan hotels and boarding houses, **a reasonable segregation must be made** between the charges for rooms and the charges for meals or hot prepared food products. **Sales tax applies** to charges for meals or hot prepared food products (Regulation 1603).

See Section 2.VI for more information on University food service operations.

VI. WATERCRAFT (REGULATION 1594)

Generally, sales and use taxes do not apply to the sale of nor to the storage, use, or other consumption of watercraft which are used, leased to a lessee for use, or sold to persons for leasing to lessees for use either in interstate or foreign commerce, in commercial deep sea fishing, or in transporting persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state. Tax does not apply if the watercraft for which the exemption is claimed is used either exclusively in interstate or foreign commerce involving the transportation of persons or property for hire or both in interstate or foreign commerce and in intrastate commerce provided the principal use of the watercraft is transportation for hire in interstate or foreign commerce. The exemption may apply to watercraft which operates between termini within California, such as ferry boats or barges operating entirely within California if they are principally used to transport interstate passengers or cargo and tugs that operate entirely within the state and are principally used to convoy or aid the departure or arrival of vessels to or from points outside the state.

Section 6: Campus Specific Issues

Sales and use taxes do not apply with respect to tangible personal property becoming a component part of watercraft in the course of constructing, repairing, cleaning, altering or improving that watercraft. To be considered a "component part" of a watercraft for purposes of the exemption the property must be an integral part of the watercraft, affixed or attached thereto in a substantial manner when in use. The following examples are illustrative only, and do not constitute a complete list:

- The hull and all affixed property constituting an integral part thereof.
- All property affixed or attached to the structure of the watercraft used while thus affixed or attached for navigation or operation, such as; radio transmitters, receivers and other radio equipment, radar equipment, intercommunication systems, winches, anchors, lifeboats, engines, generators, switchgear, compasses, indicators, levers, control and signal systems, lamps, chains and cables.
- All property affixed or attached to the structure of the watercraft used while thus affixed or attached for the comfort or convenience of the passengers and crew, such as; built-in bunks, furniture attached by bolts, screws or otherwise, including counters, shelves, stools, railing, stairs, partitions, doors, windows, window shades and curtains, awnings, hardware, stoves, sinks and other plumbing fixtures, and paint.

Property is ***not*** considered a component part of a watercraft for purposes of the exemption if it is a kind commonly treated as expense items and is not affixed or attached to the watercraft in a substantial manner when in use. The following examples are illustrative only, and do not constitute a complete list:

- Portable equipment, furniture, devices and other property, such as; chairs, deck chairs, table or floor radios, table or floor lamps, dishes and other utensils, tables, bedding, linen, mattresses, cots, athletic or recreational equipment (not affixed or attached), pictures, fire extinguishers (portable), tools, brooms, mops, rags, towels, oil, grease, soap, cleaning materials and other consumable supplies.

Purchasers of watercraft or component parts of watercraft may be exempt from sales and use taxes by providing a [watercraft exemption certificate](#) to the vendors in good faith.

Section 6: Campus Specific Issues

CDTFA-230-A-1 REV. 1 (12-17)

EXEMPTION CERTIFICATE WATERCRAFT

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Regulation 1594

Regulation 1594 provides that for the purposes of the proper administration of the sales and use tax and to prevent the evasion of the sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. This presumption may be rebutted by the seller as to any sale of watercraft or component parts of watercraft by establishing to the satisfaction of the California Department of Tax and Fee Administration that the gross receipts from the sale are not subject to the tax or by timely taking a watercraft exemption certificate substantially in the form set forth below. The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.

I HEREBY CERTIFY: That the watercraft identified below will be used

- ☐ In the transportation by water of persons or property for hire in interstate or foreign commerce;*
- ☐ In commercial deep sea fishing operations and the watercraft is used outside the territorial waters of this state;*
- ☐ In transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state;

That all tangible personal property which I shall purchase from

NAME OF VENDOR

described on purchase orders, or invoices, as tax exempt under section 6368 of the Sales and Use Tax Law and Regulation 1594 consists of watercraft or tangible personal property becoming a component part of watercraft in the course of constructing, repairing, cleaning, altering, or improving the same, which watercraft will be used principally in the operation checked above.

**Note: Revenue and Taxation Code section 6368 (b) creates a rebuttable presumption that you are not regularly engaged in commercial deep sea fishing if your gross receipts from such operations are less than twenty thousand dollars (\$20,000) a year. Revenue and Taxation Code section 6368 (c) creates a rebuttable presumption that the watercraft is not regularly used in interstate or foreign commerce if your yearly gross receipts from such operations do not exceed 10 percent of the cost of the watercraft or twenty-five thousand dollars (\$25,000), whichever is less.*

DATE CERTIFICATE GIVEN

PURCHASER / COMPANY NAME

ADDRESS (street, city, state, zip code)

SIGNATURE OF AUTHORIZED PERSON

NAME (print or type)

TITLE (owner, partner, purchasing agent, etc.)

SELLER'S PERMIT NO. (if any)

AND/OR FISH AND GAME LICENSE NO.

Names of Watercraft for which certifying purchaser will be making purchases:

CLEAR

PRINT

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Section 7: Compliance

I. RETURN PREPARATION

A. Local Taxes

The city and county tax of 1.25% of gross receipts is imposed upon retailers from the sale of all tangible personal property sold by that person at retail in each California county (Section 7202). Although the rate does not vary, the retailer must segregate sales by the city in which they are made so that the CDTFA may allocate tax receipts to the proper county and city. The allocation of the Local Tax (1%) as part of the return is achieved through Schedule B and Schedule C. Schedule B for a single location taxpayer assigns all local tax to the City of Registration. When a taxpayer has multiple locations, each location with taxable retail sales must be registered as a sub-location and thereafter it will appear on Schedule C during the online return process.

- For sales and purchases made from a sub-location the local tax should be reported on Schedule C for that location (or city).
- For purchases (use tax) to be reported for a location without retail sales, the local tax should be reported on Schedule B.

Example: UC Davis makes sales within the city of Davis and Sacramento. The total sales for the quarter are \$15,000. Davis sales are \$10,000 while Sacramento's are \$5,000. Accordingly, both locations must be registered as sub-locations and on Schedule C of the California sales and use tax return, in which \$5,000 will be reported for Sacramento and \$10,000 for Davis.

Addition of New Sales Location

Additionally, when a UC campus adds a retail location where sales will be made intermittently or on an ongoing basis, the CDTFA should be informed. The closest CDTFA office may be notified by telephone and the information will generally be taken over the phone. UC may also be able to perform this addition online. The CDTFA will update Schedule C to reflect the new location. If sales are made only once or a limited number of times from the additional location, the CDTFA should not be contacted. The location can be added manually on Schedule C to report the sales.

Example: UC Santa Barbara decides to sell sweatshirts as a concessionaire at the Ventura County Fair. The fair will last five days. Afterwards, UC will discontinue making sales from this location. Therefore, the CDTFA does not need to be contacted. The sales can be manually added to Schedule C.

Example: UC Santa Barbara decides that a retail store should be set up in San Luis Obispo. The sales from the store will be reported with UC's return. The CDTFA should be contacted and informed that retail sales are being made out of San Luis Obispo.

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B. Transaction Taxes

Transaction taxes are taxes imposed at the district level. District means any county, transit district, rapid transit district, the Los Angeles County Transportation Commission, or the Orange County Transportation Commission authorized to impose transaction and use taxes (Section 7252). Transaction taxes are in addition to the state, local, and county taxes.

1. Responsibility for Payment

For transaction taxes, a provision similar to the local tax may be imposed. For the privilege of selling tangible personal property at retail, a tax may be imposed upon every retailer in the district at increments of one-quarter of one percent of the gross receipts from the sale of all tangible personal property sold by that person at retail in the district (Section 7261). The retailer is responsible for remitting the local and transit taxes that apply for all retail sales of tangible personal property in that locality and transit district. If the retailer is not engaged in business in the transit district, they are not responsible for the collection of the transit taxes. However, the retailer may elect to collect the transaction taxes on behalf of the customer, but they are not required to do so by law.

2. Point of Sale

Transaction taxes are destination taxes. They are applicable where the point of sale occurs. In situations where the item is shipped by common carrier or by facilities of the retailer to a location outside of the county, the point of sale occurs at the location to where the item was shipped to. In other words, the location where the item is physically received by the customer is the point of sale for purposes of reporting transaction taxes.

Example: A customer orders an item from UCLA over the telephone. The customer phones in the order from his home in Sacramento and has it shipped to Sacramento by the United Postal Service. The applicable tax rate is Sacramento's rate which is currently **8.75%**. The breakdown is 6.00% for the state, 0.25% for Sacramento County, 1.00% for the City of Sacramento, 1.00% for the City of Sacramento's voter-approved Measure U general tax for municipal purposes, and 0.50% for the Sacramento County Transportation Authority.¹

C. Preparation of Return

California imposes a sales tax on the retail sale, storage, use, or consumption of tangible personal property in the state. The California sales and use tax return is the reporting mechanism by which a permit holder reports its sales and use tax liability.

Returns are filed annually, quarterly or monthly based on the sales and use tax liability of a company. Below are line-by-line directions for completing the return. In addition, a

¹ See Section II.D, UC Transaction/District Tax Responsibility For Sales Outside Its District for changes made by AB 147.

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copy of the return is presented in Section 9.I, State, Local & District Sales & Use Tax Return.

1. Line 1: Total Sales

Total sales are comprised of nontaxable and taxable sales. This amount is entered on LINE 1 of the California sales and use tax returns.

UC's method of calculating total sales is to back into the figure by using the sales and use tax accruals. Total sales are calculated by dividing the sales tax accruals by the state, local, county and transit rates.

2. Line 2: Purchases Subject to Use Tax

LINE 2 should include the purchase price of tangible personal property self-consumed by UC for which sales tax was not paid due to the following reasons: the seller was given a resale card or other exemption certificate, the purchase was made from an out-of-state retailer who did not collect California use tax, or a purchase was made from an unlicensed retailer. Taxable purchases from out-of-state for which sales or use tax was not paid to the seller should be included in LINE 2. However, a credit for the tax paid to the other state may be taken on LINE 20.

To calculate LINE 2 purchase amounts, the use tax accruals are divided by the use tax combined rate used to accrue the tax, including state, local, county and transit/district rates. Generally, most UC campuses maintain separate use tax accounts for each of the varying combined rates, such that the account's combined rate may be used to compute the purchase amounts.

3. Line 3: Total

Combine LINE 1 and LINE 2

4. Line 4-10: Deductions

Total sales are computed net of the nontaxable portion. Therefore, there will not be any deductions in this section.

5. Line 11: Total Deductions

LINE 11 equals the totals of LINES 4 through 10. Therefore, this line will be left blank.

6. Line 12: Transactions Subject to State Tax

This will be equal to LINE 3.

7. Line 13: State Tax

Multiply LINE 12 by the state tax rate. It is currently 6%. Line 13 of the sales and use tax return will always show the current rate for taxable sales.

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8. Line 14: Transactions Subject to County Tax

Total taxable sales are subject to the county tax. The only items that may potentially alter this amount are purchases that are exempt under the manufacturing or R&D exemption.² However, any purchases subject to the partial sales and use tax rate will be reported in SECTION C: Current Period Partial Tax Exemptions or SECTION D: Current Period Partial Tax Exemption for Manufacturing and Research and Development Equipment. These Sections provide calculations to adjust the portions of the combined rate that are exempt.

Multiply LINE 12 by the county tax rate. The county rate is currently uniformly 0.25%. The applicable county rate will be given on LINE 14.

9. Line 15: Transactions Subject to Local Tax

Multiply LINE 12 by the state tax rate. It is currently 1%. The applicable local rate will be given on LINE 15.

10. Line 16: Transactions Subject to District Tax

LINE 16 must be completed if the UC engages in business in a transactions and use tax district. If the transaction(s) occur in more than one taxing jurisdiction (higher than the current state tax rate), the campus must complete CDTFA-531-A2, Schedule A2, Computation Schedule for District Tax - Long Form.

Instructions are included with the schedule. Schedule A2 details all the transaction taxes and the applicable rates.

As a starting point for computing the taxes, LINE 12 - Transactions Subject to State Tax should be used. This amount is input on LINE A1 of Schedule A2. Enter purchases of items purchased for use in a location where no district tax is in effect on LINE A2/A3 (these transactions are only subject to the overall state tax rate of 7.25% calculated in LINES 13, 14, and 15).

Example: The Davis Campus makes sales of \$10,000 that are subject to the state tax (LINE 12). Sales of \$7,000 are made at the Davis Campus, which does not have a transaction tax. The remaining \$3,000 are in Sacramento County which has a transaction tax. Schedule A will be completed in the following manner to this point:

² See Addendum: UC Guidelines – California Partial Sales and Use Tax Exemption to determine whether the property qualifies for the partial sales and use tax exemption for research and development activities.

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A1	AMOUNT ON WHICH LOCAL TAX APPLIES	\$10,000
A2/A3	DEDUCT - SALES MADE FROM LOCATIONS INSIDE OR OUTSIDE DISTRICTS AND DELIVERED TO ANY POINT (1) AT A LOCATION WHERE NO DISTRICT TAX IS IN EFFECT OR (2) IN A DISTRICT WHERE THE UC IS NOT "ENGAGED IN BUSINESS" AND DID NOT COLLECT THE DISTRICT TAX	\$ 7,000
A4	AMOUNT OF DISTRICT TRANSACTIONS	\$ 3,000

The transaction taxes must now be allocated to the transit districts in which the sales and purchases occurred. For the sales tax, UC separates the sales into the respective counties where the sales were made. For use taxes, the transaction tax accruals do not designate to what district the accruals pertain. Therefore, the accruals must be traced back to the source documents to allocate the purchases to the proper district. It is recommended that a spreadsheet be used to make the preliminary calculations as supporting detail.

The total allocations calculated from the general ledger grossed up to sales and purchases should equal LINE A4 of Schedule A. The allocations should be entered in column A5 of Schedule A. This amount is the taxable portion. Therefore, it can be simply duplicated in Column A8. Column A6/A7 should be adjusted for the transit district tax accruals only, and Column A7 should be blank. If there are adjustments for one or more districts, enter amounts in this column. Entries in this column will increase or decrease the amount of tax distributed to districts for which there adjustments. Enter the following adjustments by district. (No entry in column A5 is required to enter an adjustment in column A6/A7.)³

The next step is to calculate the tax in Column A10. Column A8 should be multiplied by the applicable rate for the county located in Column A9. These rates are current and should only be relied on if the form is current. The total of Column A10 is then carried to LINE 16 of the return.

³ Note: Please attach an explanation of any adjustments to Schedule A2.

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11. Line 17: Total State, County, Local, and District Tax
Add LINES 13, 14, 15, and 16.
12. Line 18: Excess Tax Collected
Enter excess tax collected, if any.
13. Line 19: Total Tax Amount
Add LINES 17 and 18.
14. Line 20a: Credit for Current Period Partial Tax Exemptions
Enter the total from Section D, Line 4 on page 2.
15. Line 20b: Credit for Prior Period Tax Recovery
Enter the Total Prior Period Tax Recovery Amount from [CDTFA-531-Q, Schedule Q – Tax Recovery](#).
16. Line 20c: Credit for Tax Paid to Other State(s)
A credit for tax legally due in another state may be taken for purchases made in other states, where the vendor charges the tax for that state. Enter the credit as calculated from [CDTFA-531-P, Schedule P – Tax Paid to Other State\(s\)](#).
17. Line 21: Net Tax
Subtract LINES 20(a,b,c) from LINE 19 to arrive at the new tax.
18. Line 22: Less Prepayments
UC is required to make two prepayments on their quarterly returns. The prepayments should be added together and entered on LINE 22.
19. Line 23: Remaining Tax
The remaining tax equals LINE 21 less the prepayment from LINE 22.
20. Line 24: Penalty
If the payments and/or returns are made after the due dates, a 10% penalty applies to the amount on LINE 23 and should be calculated on this line.
21. Line 25: Interest
The interest applies to returns that are delinquent. Therefore, if the penalty applies, the interest will apply as well. The interest rate is printed next to LINE 25.

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22. Line 26: Total Amount Due and Payable

This amount equals LINE 23 plus any amounts in LINES 24 & 25.

II. TAX CALENDAR

A. Due Dates of Returns

1. Quarterly Filers

Campuses that file quarterly returns are due on the following deadlines (Section 6452)⁴:

Quarter	Time Period	Due Date
Quarter 1	Jan 1 - Mar 31	April 30
Quarter 2	Apr 1 - Jun 30	July 31
Quarter 3	Jul 1 - Sep 30	October 31
Quarter 4	Oct 1 - Dec 31	January 31

2. Monthly Filers

The monthly returns are due on the last day of the following month. The chart details the due dates for the first quarter (Section 6455):

Month	Time Period	Due Date
January	Jan 1 - Jan 31	Feb 28 or 29
February	Feb 1 - Feb 28, 29	March 31
March	Mar 1 - Mar 31	April 30

Failure to file by the due date results in a 10% penalty plus interest charges.

B. Electronic Funds Transfer (EFT)

EFT is defined as any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, computer or magnetic tape that instructs a financial institution to debit or credit an account. EFT will be accomplished by an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Section 6479.5).

Persons Required to Pay by EFT

Any person whose estimated sales and use tax liability averages \$10,000 or more per month must remit their payment of taxes by electronic funds transfers. The method of calculation is determined by the State (Section 6479.3).

⁴ For more information, please visit the [CDTFA website for Filing Dates for Sales & Use Tax Returns](#).

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Any person whose estimated tax liability averages less than \$10,000 per month may still elect to transfer funds electronically with approval by the State.

Any person remitting taxes by EFT must timely file a return for the manner and form prescribed by the State. Failure to file a timely return results in a penalty of 10% of the amount of taxes due, exclusive of prepayments.

Any person required to remit taxes electronically who fails to do so will be assessed a 10% penalty for the amount of taxes remitted incorrectly (Section 6479.3).

C. Prepayments

1. Computation of Prepayments

Upon written notification by the CDTFA, any person whose estimated measure of tax liability under this part averages \$17,000 or more per month, as determined by the CDTFA, must, without regard to the measure of tax in any one month, make prepayments using one of the two following procedures (Section 6471):

(a) Reporting Procedure A

- In the first, third, and fourth calendar quarters, UC must prepay 90% of the amount of state and local tax liability for each of first two monthly periods of each quarterly period.⁵

Example: UC Davis' total sales tax liability for the month of January is \$50,000. On February 24th (see prepayment due date chart) UC Davis owes \$45,000 for the first monthly prepayment.

- In the second calendar quarter, UC must prepay on May 24th, 90% of the state and local tax liability for April. The second prepayment due on June 15 may be paid by one of the following methods:
 - 90% of the amount of state and local tax liability for May, plus 90% of the amount of state and local tax liability for the first 15 days June. This method is generally only used by new businesses.
 - 90% of the amount of state and local tax liability for May plus 50% of 90% of the amount of the liability for May.

(b) Reporting Procedure B

- In the first, third, and fourth calendar quarters, UC must prepay an amount equal to one-third of the measure of tax liability reported on the return or returns filed for that quarterly period of the preceding

⁵ Section 6471; amended effective 1/1/00.

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year multiplied by the state and local tax rate in effect during the month for which the prepayment is made.

- UC may satisfy their prepayment requirement for the second calendar quarter by making a first prepayment of an amount equal to one-third of the measure of tax liability reported in the second quarter of the previous year, and a second prepayment of an amount equal to one-half of the measure of tax liability reported in the second quarter of the previous year, multiplied by the state and local tax rate in effect during the month for which the prepayment is made.

Prepayments are made during the quarterly period designated by the State and during each succeeding quarterly period until further notified in writing by the State.

2. Due Dates of Prepayments

Quarter	First Prepayment Due Date	Second Prepayment Due Date	Quarterly Return	Yearly Reporting (Jan. to Dec.)
1	February 24	March 24	April 30	January 31
2	May 24	June 24	July 31	
3	August 24	September 24	October 31	
4	November 24	December 24	January 31	

3. Penalty for Late Prepayments

Any person required to make a prepayment who fails to make it timely, but makes the prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due, will be penalized 6% of the amount of prepayment due (Section 6476).

4. Penalty for Failure to Prepay When Timely Quarterly Return Filed

Any person required to make a prepayment, who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and remits payment for the quarterly period will be subject to a penalty of 6% of the amount equal to 90%⁶ of the tax liability as prescribed by each period during the quarterly period for which a required prepayment was not made (Section 6477). Note and caution: Certain EFT payments could be credited to the next business day if completed after 3pm PST.

⁶ Section 6477, amended effective 1/1/00.

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Section 8: Definitions

I. DEFINITIONS

A. Business (Section 6013)

Business includes any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit or advantage, either direct or indirect.

B. Common Carrier (Regulation 1621)

Common carrier means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons. These services must be offered indiscriminately to the public or some portion of the public. With respect to water transportation the term includes any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce. This includes "ocean tramps," "trampers," and "tramp vessels".

C. Ex-Tax¹

Ex-tax is the term used to describe purchases of tangible personal property which have been purchased without the addition of sales or use tax.

D. Food Products (Section 6359)

The following are included in the definition of food products:

- Cereal products, margarine, meat products, fish products, egg products, vegetable products, fruit products, spices, salt, sugar products, candy, gum, confectionery, coffee, coffee substitutes, tea, and cocoa products.
- Milk products, milkshakes, malted milks, and any similar beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.
- Fruit and vegetable juices, and other beverages, whether liquid or frozen, including bottled water, but **excluding** spirituous, malt, or vinous liquors or carbonated beverages.

E. Forwarding Agent (Section 6396)

Forwarding agent means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment.

¹ *Yamaha Corporation of America v. State Board of Equalization*, 19 Cal 4th 1, 960 P2d 1031, 78 Cal Rptr 2d 1, August 27, 1998.

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F. Gross Receipts (Section 6012)

1. Gross receipts mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:
 - (a) The cost of the property sold, except in accordance with any rules and regulations as the CDTFA may prescribe. For example a deduction may be taken if the retailer has purchased property for a purpose other than resale, has reimbursed a vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to the vendor with respect to the sale of the property.
 - (b) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense.
 - (c) The cost of transportation of the property, except as excluded by other provisions of Section 6012.
 - (d) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of CA Revenue & Taxation Code, Division 2.
2. The total amount of the sale or lease or rental price includes all of the following:
 - (a) Any services that are a part of the sale.
 - (b) All receipts, cash, credits and property of any kind.
 - (c) Any amount for which credit is allowed by the seller to the purchaser.
3. Gross receipts *do not include* any of the following:
 - (a) Cash discounts allowed and taken on sales.
 - (b) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For purposes of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

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- (c) The price received for labor or services used in installing or applying the property sold, unless the labor or services are for fabrication (see Section 4.IV.AAA, Labor - Fabrication).
- (d) The following from Section 6012(c)(4):
 - (1) The amount of any tax (not including, however, any manufacturer's or importer's excise tax, except as provided in Section 6012(c)(4)(B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.
 - (2) The amount of manufacturers' or importers' excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he is entitled to either a direct refund or credit against the income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5. (Regulation 1617²).
- (e) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.
- (f) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.
- (g) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.³
- (h) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

² Section 6012, as amended effective 1/1/01.

³ See Section 4.IV.TT.1 (b), Shipment Made By The Retailer for more information.

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- (i) The amount of any motor vehicle, mobile home, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobile home, or commercial coach.
- (j) The following from Section 6012(c)(10) on technology transfer agreements:
 - (1) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.
 - (2) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.
 - (3) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.
 - (4) For purposes of this paragraph, "technology transfer agreement"⁴ means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.
- (k) The amount of any tax imposed upon diesel fuel pursuant to CA Revenue & Taxation Code, Part 31 (commencing with Section 60001)⁵.

For purposes of the sales tax, if the retailer establishes to the satisfaction of the CDTFA that the sales tax has been added to the total amount of the sale price and has not been absorbed by the retailer, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

⁴ See discussion of Technology Transfer Agreements in Section 2.XII.B.

⁵ Section 6012, as amended effective 1/1/01.

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G. Hot Prepared Food Products (Regulation 1603)

"Hot prepared food products" means those products, items, or components that have been prepared for sale in a heated condition and which are sold at any temperature that is higher than the air temperature of the room or place where they are sold. If the sale is intended to be of a hot food product, the sale is of a hot food product regardless of cooling which incidentally occurs.

H. In this State (Section 6017)

In this State or in the State means within the exterior limits of the State of California (extending three miles offshore) and includes all territory within these limits owned by or ceded to the United States of America.

I. Liability for Tax (Section 6202)

Every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer is liable for the tax. This liability is not extinguished until the tax has been paid to this State except that a receipt from a retailer engaged in business in this State or from a retailer who is authorized by the CDTFA, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purposes of this part relating to the use tax, regarded as a retailer engaged in business in this State, given to the purchaser, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

J. Marketplace (Section 6041(a))

"Marketplace" means a physical or electronic place, including, but not limited to, a store, booth, internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property for delivery in this state regardless of whether the tangible personal property, marketplace seller, or marketplace has a physical presence in this state.

K. Marketplace Facilitator (Section 6041(b))⁶

"Marketplace facilitator" means a person who contracts with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a marketplace operated by the person or a related person and who does both of the following:

1. Directly or indirectly, through one or more related persons, engages in any of the following:
 - (a) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller.

⁶ See Section 1.II.C, Out-of-State Retailer Engaged in Business in California for the marketplace facilitators' responsibility to collect and remit California sales and use tax on California sales made by their third-party marketplace sellers under the provisions of Cal. Rev. & Tax. Cd. Section 6049.5.

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- (b) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together.
 - (c) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller.
 - (d) Software development or research and development activities related to any of the activities described in paragraph (2), if such activities are directly related to a marketplace operated by the person or a related person.
- 2. Directly or indirectly, through one or more related persons, engages in any of the following activities with respect to the marketplace seller's products:
 - (a) Payment processing services.
 - (b) Fulfillment or storage services.
 - (c) Listing products for sale.
 - (d) Setting prices.
 - (e) Branding sales as those of the marketplace facilitator.
 - (f) Order taking.
 - (g) Providing customer service or accepting or assisting with returns or exchanges.

L. Marketplace Seller (Section 6041(c))

“Marketplace seller” means a person who has an agreement with a marketplace facilitator and makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by a marketplace facilitator, even if that person would not have been required to hold a seller's permit or permits, or required to collect the tax imposed pursuant to Revenue and Taxation Code Chapter 3 (commencing with Section 6201), had the sale not been made through that marketplace.

M. Medicine (Regulation 1591(b))⁷

The term "medicines" means and includes:

- 1. Preparations and Similar Substances. Preparations and similar substances intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which are commonly recognized as a substance or preparation intended for such use qualify as medicines.

⁷ Section 1591, amended effective 3/1/00, 4/12/01.

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"Preparations and similar substances" include, but are not limited to, drugs such as penicillin, and other antibiotics, "dangerous drugs" (drugs that require dispensing only on prescription); alcohol (70% solution) and isopropyl; aspirin; baby lotion, oil, and powder; enema preparations; hydrogen peroxide; lubricating jelly; medicated skin creams; oral contraceptives; measles and other types of vaccines; topical creams and ointments; and sterile nonpyrogenic distilled water. Preparations and similar substances applied to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease qualify as medicines.

"Preparations and similar substances" also include Total Parenteral Nutrition (also called TPN), Intradialytic Parenteral Nutrition (also called IDPN), and food provided by way of enteral feeding, except when the TPN, IDPN, or food provided by enteral feeding qualifies as a meal under Regulation 1503. For purposes of this regulation, TPN, IDPN, and enteral feeding are means of providing complete nutrition to the patient; TPN and IDPN are provided in the form of a collection of glucose, amino acids, vitamins, minerals, and lipids, TPN being administered intravenously to a patient who is unable to digest food through the gastrointestinal tract and IDPN being administered to hemodialysis patients as an integral part of the hemodialysis treatment; enteral feeding is the feeding of the patient directly into the gastrointestinal tract.

2. Permanently Implanted Articles. Articles permanently implanted in the human body to assist the functioning of, as distinguished from replacing all or any part of, any natural organ, artery, vein or limb and which remain or dissolve in the body qualify as medicines. An article is considered to be permanently implanted if its removal is not otherwise anticipated. Tax does not apply to the sale or use of articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve in the body when such articles are sold or furnished under one of the conditions provided in Regulation 1591(d)(1) through (d)(6).

Permanently implanted articles include, but are not limited to, permanently implanted artificial sphincters; bone screws and bone pins; dental implant systems including dental bone screws and abutments; permanently implanted catheters; permanently implanted hydrocephalus devices and their implanted pressure regulating components; implanted defibrillators and implanted leads; pacemakers; tendon implants; testicular gel implants; and ear implants. Sutures are also included whether or not they are permanently implanted. A non-returnable, nonreusable needle fused or prethreaded to a suture is regarded as part of the suture.

Implantable articles that do not qualify as "permanently" implanted medicines include, but are not limited to, Chemoport implantable fluid systems; Port-a-Cath systems used for drug infusion purposes; disposable urethral catheters; temporary myocardial pacing leads used during surgery and recovery; a defibrillator programmer and high voltage stimulator used with an implanted defibrillator; and tissue and breast expanders. The sale or use of these items is subject to tax.

3. Artificial Limbs and Eyes. Artificial limbs and eyes, or their replacement parts, including stump socks and stockings worn with artificial legs and intraocular lenses for human beings, qualify as medicines as provided by Revenue and Taxation Code Section 6369(c)(5). Tax does not apply to the sale or use of these

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items when sold or furnished under one of the conditions provided in Regulation 1591(d)(1) through (d)(6).

4. **Orthotic Devices.** Orthotic devices and their replacement parts, designed to be worn on the person of the user as a brace, support or correction for the body structure are medicines as provided under Revenue and Taxation Code Section 6369(c)(3). The sale or use of orthotic devices and their replacement parts is not subject to tax when sold or furnished under one of the conditions provided in Regulation 1591(d)(1) through (d)(6). Orthotic devices and their replacement parts do not need to be furnished by a pharmacist, within the meaning of Regulation 1591(d)(1), to be considered dispensed on prescription provided the devices are furnished pursuant to a written order of a physician or podiatrist. For the purposes of this regulation, orthotic devices furnished pursuant to a written order of a physician or podiatrist by, but not limited to, medical device retailers, clinics, physical therapists, device suppliers, intermediate care facilities, or other such persons, are deemed to be dispensed on prescription within the meaning of Regulation 1591(d)(1).

Orthotic devices worn on the body of the person include, but are not limited to, abdominal binders and supports, ace bandages, ankle braces, anti-embolism stockings, athletic supporters (only for patients recovering from rectal or genital surgery), casts, and cast components, cervical supports, neck collars, cervical traction devices, clavicular splints, post-surgical corsets, elbow supports, head halters, pelvic traction devices, post-operative knee immobilizers and braces, legging orthoses, rib belts and immobilizers, rupture holders, sacral belts, sacro-lumbar back braces, shoulder immobilizers, slings, stump shrinkers, sternum supports, support hose (and garter belts used to hold them in place), thumb and finger splints, trusses, and wrist and arm braces. All of the above must be worn on the body of the person and act as a brace, support or correction for body structure to qualify as a medicine. If any part of the orthotic device is not worn on the person, the device is not a medicine for the purposes of this regulation.

Orthopedic shoes and supportive devices for the foot do not qualify as medicines unless they are an integral part of a leg brace or artificial leg or are custom-made biomechanical foot orthoses. "Custom-made biomechanical foot orthosis" means a device that is made on a positive model of the individual patient's foot. The model may be individually constructed from suitable model material such as plaster of Paris, stone, or wax, and may be manually constructed or fabricated using electronic technology.

"Custom-made biomechanical foot orthosis" do not include:

- (a) any pre-made or pre-molded foot orthosis or shoe insert even if it has been modified or customized for an individual patient by the practitioner regardless of the method of modification;
- (b) any foot orthosis fabricated directly on the patient's foot regardless of the method and materials used and regardless of its individual character; or

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- (c) any foot orthosis fabricated inside of the patient's shoe regardless of the method of manufacture and materials used and regardless of its individual character.

- 5. **Prosthetic Devices.** Prosthetic devices and their replacement parts designed to be worn on or in the patient to replace or assist the functioning of a natural part of the human body are medicines as provided under Revenue and Taxation Code Section 6369(c)(4). The sale or use of prosthetic devices and their replacement parts is not subject to tax when sold or furnished under one of the conditions provided in Regulation 1591(d)(1) through (d)(6). Prosthetic devices and their replacement parts do not need to be furnished by a pharmacist, within the meaning of Regulation 1591(d)(1), to be considered dispensed on prescription provided the devices are furnished pursuant to a written order of a physician or podiatrist. For the purposes of this regulation, prosthetic devices furnished pursuant to a written order of a physician or podiatrist by, but not limited to, medical device retailers, clinics, physical therapists, device suppliers, intermediate care facilities, or other such persons, are deemed to be dispensed on prescription within the meaning of Regulation 1591(d)(1). For purposes of this regulation only, prosthetic devices include bags and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, each of which is used to dispense enteral feeding to the patient, including: gastrostomy tubes (also called G tubes) which are used to deliver the nutrition directly into the stomach; jejunostomy tubes (also called J tubes) which are used to deliver the nutrition directly into the intestinal tract; and nasogastric tubes (also called NG tubes) which are used to deliver the nutrition directly through the nasal passage to the stomach. For purposes of this regulation only, prosthetic devices also include needles, syringes, cannulas, bags, and tubing, as well as filters, locks, tape, clamps, and connectors which are integral to the tubing, each of which is used to dispense TPN or IDPN to the patient, provided each of these items is used primarily to dispense the TPN or IDPN.

Prosthetic devices that are considered medicines when worn on or in the patient include, but are not limited to, acetabular cups, atrial valves, cervical cuffs, dacron grafts, heart valves, orbital implant, nerve cups, rhinoplasty prosthesis, neuromuscular electrical stimulators, transcutaneous nerve stimulators, urinary incontinent devices, and wigs and hairpieces prescribed by a physician or podiatrist.

Prosthetic devices that do not qualify as medicines include, but are not limited to, air compression pumps and pneumatic garments; noninvasive, temporary pace makers; and vacuum/constriction devices used to treat male impotency; auditory, ophthalmic and ocular devices or appliances; and dental prosthetic devices and materials such as dentures, removable or fixed bridges, crowns, caps, inlays, artificial teeth, and other dental prosthetic materials and devices. Sales of such items are subject to tax in the same manner as any other sale of tangible personal property.

- 6. **Drug Infusion Devices.** Programmable drug infusion devices to be worn on or implanted in the human body which automatically cause the infusion of measured quantities of a drug on an intermittent or continuous basis at variable dose rates and at high or low fluid volume into the body of the wearer of the

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device qualify as medicines under Revenue and Taxation Code Section 6369(c)(6). The sale or use of the qualifying infusion device is not subject to tax when the device is sold or furnished under one of the conditions provided in Regulation 1591(d)(1) through (d)(6).

N. Mobile Transportation Equipment (Section 6023)

Mobile transportation equipment includes equipment such as railroad cars and locomotives, buses, trucks (except "one-way rental trucks"), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. "Mobile transportation equipment" does not include passenger vehicles as defined in Section 465 of the Vehicle Code, trailers and baggage containers designed for hauling by passenger vehicles, or "one-way rental trucks."

O. Occasional Sale (Regulation 1595)

Tax applies to all retail sales of tangible personal property including capital assets whether sold in one transaction or in a series of sales, and held or used by the seller in the course of an activity or activities for which a seller's permit or permits is required or would be required if the activity or activities were conducted in this state. Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller's permit regardless of whether the sales are at retail or are for resale. A person who makes a substantial number of sales for relatively small amounts is also required to hold a seller's permit.

Tax does not apply to the sale of property held or used by the seller in the non-selling endeavors that do not require the holding of a permit provided that the seller makes less than three sales for substantial amounts in period of 12 months.

P. Person (Section 6005)

Person includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

Q. Pharmacist (Regulation 1591(a)(5))

"Pharmacist" means a person to whom a certificate has been issued by the California State Board of Pharmacy, under the provisions of Section 4200 of the Business and Professions Code, except as specifically provided otherwise in chapter 9 of the Pharmacy Law.

R. Prescription (Regulation 1591(a)(7))

"Prescription" means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist or podiatrist licensed in this state and given individually for the person or persons for whom ordered. The order must include all of the following:

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- The name or names and addresses of the patient or patients.
- The name and quantity of the drug or device prescribed and the directions for use.
- The date of issue.
- Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or license classification, and his or her federal registry number, if a controlled substance is prescribed.
- A legible, clear notice of the conditions for which the drug is being prescribed, if requested by the patient or patients.
- If in writing, signed by the prescriber issuing the order.

S. Purchase (Section 6010)

Purchase means and includes:

1. Any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession" includes only transactions found by the CDTFA to be in lieu of a transfer of title, exchange, or barter.
2. When performed outside this state, or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.
3. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price.
4. A transfer for a consideration of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.
5. Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of:
 - (a) Motion pictures or animated motion pictures, including television, films and tapes.
 - (b) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.
 - (c) Household furnishings with a lease of the living quarters in which they are to be used.

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- (d) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.
- (e) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property. For purposes of this paragraph, "transferor" shall mean the following:
 - A person from whom the lessor acquired the property in a transaction described in Revenue and Taxation Code Section 6006.5(b).
 - A decedent from whom the lessor acquired the property by will or the laws of succession.
- (f) A mobilehome, as defined in Sections 18008 and 18211 of the Health and Safety Code, other than a mobilehome originally sold new prior to July 1, 1980, and not subject to local property taxation.
- (g) Sections 8.I.O.5(a) and (e) above and Revenue and Taxation Code Section 6094.1 shall not apply to rentals and leases of video-cassettes, videotapes, and videodiscs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the videocassette, videotape, or videodisc.

T. Resale Certificate (Section 6093, Regulation 1668)

Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to a sale of tangible personal property described in the document containing all of the following:

- The signature of the purchaser, the purchaser's authorized representative, or employee of the purchaser.
- The name and address of the purchaser.
- The number of the permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable (e.g., food products for human consumption) or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.
- A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale". The use of phrases such as "non-taxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

Section 8: Definitions

- Date of execution of document.⁸

U. Retail Sale (Section 6007)

A retail sale is defined as a sale in the regular course of business for any purpose other than resale.

V. Retailer (Section 6015)

1. A retailer includes:
 - (a) Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.
 - (b) Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.
2. When the CDTFA determines that it is necessary for the efficient administration of this section to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, or employers the CDTFA may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for purposes of Part 1 of the Revenue and Taxation Code.

W. Retailer Engaged in Business (Section 6203)⁹

A “retailer engaged in business in this state” as used in Sections 6202 and 6203 means any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty. “Retailer engaged in business in this state” specifically includes, but is not limited to, any of the following:

1. Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business (Section 6203(c)(1)).
2. Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing,

⁸ An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.

⁹ See Section 1.II.C, Out-of-State Retailer Engaged in Business in California and Section 1.II.D, UC Transaction/District Tax Responsibility For Sales Outside Its District for more information about California's economic nexus laws for sales and use tax purposes under AB 147.

Section 8: Definitions

assembling, or the taking of orders for any tangible personal property (Section 6203(c)(2)).

3. As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state (Section 6203(c)(3)).
4. Any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property for delivery in this state by the retailer and all persons related to the retailer that exceed five hundred thousand dollars (\$500,000) (Section 6203(c)(4)(A)). A person is related to another person if both persons are related to each other pursuant to Internal Revenue Code Section 267(b) and the regulations thereunder (Section 6203(c)(4)(B)).

A retailer is not a “retailer engaged in business in this state” under Revenue and Taxation Code Section 6203(c)(2) (Section 8.I.W.2 above) if that retailer's sole physical presence in this state is to engage in convention and trade show activities as described in Internal Revenue Code Section 513(d)(3)(A), and if the retailer, including any of the retailer's representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Internal Revenue Code Section 513(d)(3)(A), is a “retailer engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

X. Retailer Further Defined (Section 6019)

Every individual, firm, co-partnership, joint venture, trust, business trust, syndicate, association or corporation making more than two retail sales of tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, shall be considered a retailer for purposes of the sales and use tax.

Y. Sale (Section 6006)

1. A sale is defined as:
 - (a) Any transfer of title or possession, exchange, or barter, conditional or otherwise of tangible personal property for a consideration. “Transfer of possession,” includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.
 - (b) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

Section 8: Definitions

- (c) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.
- (d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.
- (e) A transfer for consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or any publication.
- (f) Any lease of tangible personal property for a consideration, except a lease of --
 - (1) Motion pictures or animated motion pictures, including television, films, and tapes.
 - (2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.
 - (3) Household furnishings with a lease of the living quarters in which they are to be used.
 - (4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.
 - (5) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property.

Z. Sales for Resale (Section 6091)

A sale for resale is a sale of tangible personal property that is not sold at retail, i.e., the item being purchased from a seller is to be resold by the purchaser to a consumer. The sale by the seller to the purchaser is exempt from tax. The purchaser will charge sales tax when the item is ultimately sold to the consumer. However, the burden of proof is upon the seller to establish a sale for resale, and may be satisfied by obtaining a valid resale certificate from the purchaser.

AA. Sales in Interstate or Foreign Commerce (Section 6387, 6396)

A sale is a sale in interstate commerce if the tangible personal property sold is shipped to a point outside this state by means of facilities operated by the retailer, or delivered by the retailer to a common carrier, customs broker or forwarding agent to be shipped to a point outside this state.

Section 8: Definitions

BB. Seller (Section 6014)

Seller includes every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

For the purposes of this section, the phrase "tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax" includes all tangible personal property of a kind the gross receipts from the retail sale of which is, or would be, required to be included in the measure of the sales tax if sold at retail, whether or not the tangible personal property is ever sold at retailer is suitable for sale at retail.

CC. Storage (Section 6008)

Storage includes any keeping or retention in this State for any purpose except sale in the regular course of business or subsequent use solely outside this State of tangible personal property purchased from a retailer.

DD. Storage and Use Exclusion (Section 6009.1)

"Storage" and "use" do not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the State, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used solely outside the State.

EE. Tangible Personal Property (Section 6016)

Tangible personal property means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.

FF. Use (Section 6009)

Use includes the exercise of any right or power over tangible personal property incident to the ownership of that property, and also includes the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease, except that it does not include the sale of that property in the regular course of business.

GG. United States Construction Contractor (Regulation 1521)

A United States construction contractor is a construction contractor who performs a construction contract for the United States Government.

Section 9: Exhibits

Section 9: Exhibits

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Section 9: Exhibits

I. STATE, LOCAL & DISTRICT SALES & USE TAX RETURN

[STATE, LOCAL & DISTRICT SALES & USE TAX RETURN – CDTFA-401-A](#) (Includes Schedule A2)¹

II. FORMS

Vending Machines (Regulation 1574)

Persons operating vending machines dispensing food products at retail for more than 15 cents must obtain permits to engage in the business of selling tangible personal property. One permit is sufficient for all machines of one operator. A statement in substantially the following form must be affixed upon each vending machine in a conspicuous place:

"This vending machine is operated by

Name of Operator

Address of Operator
who holds Permit No. _____
issued pursuant to the Sales and Use Tax Law"

III. EXEMPTION CERTIFICATES

A. Animal Feed (Regulation 1587)

I hereby certify that all of the feed which I shall purchase
from _____ will
be purchased for use as feed for food animals or for non-food animals which are being
held for sale in the regular course of business. This certificate shall be considered a part
of each order which I give unless such order shall otherwise specify. This certificate shall
be good until revoked in writing.

Signature _____

Address _____

Occupation _____

Seller's Permit No. (if any) _____

¹ See Section 7.I.C, Preparation of Return.

Section 9: Exhibits

B. Medicated Animal Feed (Regulation 1587)

I hereby certify that the drugs or medicines which I shall purchase
from_____ will be purchased

[] as an additive to feed or drinking water for food animals or for non-food animals
being held for sale in the regular course of business,

[] for administration directly to a food animal, or

[] for oxygen administered to a food animal.

This certificate shall be considered a part of each order which I give unless such order
shall otherwise specify. This certificate shall be good until revoked in writing.

Signature_____

Address_____

Occupation_____

Seller's Permit No. (if any)_____

Section 9: Exhibits

C. Periodical Exemption Certificates (Regulation 1590)

1. Certificate A - Sales of tangible personal property for incorporation into a newspaper or periodical for sale.

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for incorporation into a newspaper or periodical for sale.

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY

Initial one of the following:

_____ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.

_____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase from

(Name of Vendor)

will become a component part of the newspaper or periodical <*>

and sold as a component part of the application.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

Date: _____

(Signature of Purchaser or Authorized Agent)

(Title)

<*> Insert name and type of newspaper or periodical

Section 9: Exhibits

2. Certificate B - Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed without charge.

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed without charge

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

_____ I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.

_____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing <*>

_____ which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from

_____ (Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose, I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased:

Date: _____

_____ (Signature of Purchaser or Authorized Agent)

_____ (Title)

<*> Insert name and type of newspaper or periodical

Section 9: Exhibits

3. Certificate C - Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code Section 501(c)(3).

Certificate C California Sales Tax Exemption Certificate

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

_____ That the purchaser holds valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.

_____ That the purchaser does not hold a permit issued pursuant to the Sales and Use Tax Law.
The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing <*>

which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

(Name of Vendor)

will be resold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

☐ The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organizations' contributors.

☐ The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased: _____

Date: _____

(Signature of Purchaser or Authorized Agent)

(Title)

<*> Insert name and type of newspaper or periodical

Section 9: Exhibits

4. Certificate D - Sales of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations.

Certificate D California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

_____ That the purchaser holds valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.

_____ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in the business of selling or publishing <*>

_____ which is regularly issued at average intervals not exceeding three months.

The tangible personal property described herein which I shall purchase from

(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of property to be purchased: _____

Date: _____

(Signature of Purchaser or Authorized Agent)

(Title)

<*> Insert name and type of newspaper or periodical

Section 9: Exhibits

D. Resale Certificate (Regulation 1668) California Resale Certificate

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY: That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law; that I am engaged in the business of selling _____ ;

That the tangible personal property described herein which I shall purchase from:

will be resold by me in the form of tangible personal property; provided, however, that in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property or other authorized amount.

Description of property to be purchased:

I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code Section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10% of the tax or \$500, whichever is more.

Date: _____ 20 _____

(Signature of Purchaser or Authorized Agent)

(Title)

Section 9: Exhibits

CDTFA-230 – General Resale Certificate

CDTFA-230 REV. 1 (8-17)

GENERAL RESALE CERTIFICATE

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

California Resale Certificate

I HEREBY CERTIFY:

1. I hold valid seller's permit number:

2. I am engaged in the business of selling the following type of tangible personal property:

3. This certificate is for the purchase from
listed in paragraph 5 below.

[Vendor's name]

of the item(s) I have

4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.

5. Description of property to be purchased for resale:

6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

NAME OF PURCHASER

SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE OR AUTHORIZED REPRESENTATIVE



PRINTED NAME OF PERSON SIGNING

TITLE

ADDRESS OF PURCHASER

TELEPHONE NUMBER

DATE

Section 9: Exhibits

E. Concessionaire Certificate of Permit (Regulation 1699)

Certificate of Permit -- Concessionaires

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the CDTFA.

Name of retailer on whose premises I operate my business: _____

Location of premises: _____

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier's Signature: _____ Date _____

Certifier's Printed Name: _____

Certifier's Seller's Permit Number: _____

Certifier's Business Name and Address*: _____

Certifier's Telephone Number: _____

*Please Note: The certifier must be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.

Section 9: Exhibits

[CDTFA-230-M-1 - Certificate of Permit Concessionaires](#)

CDTFA-230-M-1 REV. 1 (9-17)

**CERTIFICATE OF PERMIT
CONCESSIONAIRES**

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Regulation 1699

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the California Department of Tax and Fee Administration:

NAME OF RETAILER ON WHOSE PREMISES I OPERATE MY BUSINESS

LOCATION OF PREMISES

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

CERTIFIER'S SIGNATURE

DATE

CERTIFIER'S PRINTED NAME

CERTIFIER'S SELLER'S PERMIT NUMBER

CERTIFIER'S BUSINESS NAME AND ADDRESS*

CERTIFIER'S TELEPHONE NUMBER

* PLEASE NOTE: The certifier *must* be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.

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Section 9: Exhibits

F. Partial Sales and Use Tax Exemption Certificates for Qualified Properties Used in Research and Development

[CDTFA-230-M, Partial Exemption Certificate for Manufacturing, Research and Development Equipment](#)²

CDTFA-230-M REV. 3 (2-18)

PARTIAL EXEMPTION CERTIFICATE FOR MANUFACTURING, RESEARCH AND DEVELOPMENT EQUIPMENT

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF
TAX AND FEE ADMINISTRATION

Section 6377.1

This is a partial exemption from sales and use taxes at the rate of 4.1875 percent from July 1, 2014, to December 31, 2016, and at the rate of 3.9375 percent from January 1, 2017, to June 30, 2022. You are not relieved from your obligations for the remaining state tax and local and district taxes on this transaction. This partial exemption also applies to lease periods occurring on or after July 1, 2014, and before July 1, 2022, for leases of qualified tangible personal property even if the lease agreement was entered into prior to July 1, 2014.

I hereby certify that the tangible personal property described below and purchased or leased from:

SELLER'S/LESSOR'S NAME

SELLER'S/LESSOR'S ADDRESS (street, city, state, ZIP code)

is qualified tangible personal property and will be used by me primarily (please check one):

1. ☐ for manufacturing, processing, refining, fabricating, or recycling;
2. ☐ for research and development;
3. ☐ to maintain, repair, measure, or test any property being used for (1) or (2) above; or
4. ☐ as a special purpose building and/or foundation.

Description of qualified tangible personal property purchased or leased¹

If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased. If you want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file.

I, as the undersigned purchaser, hereby certify I am primarily engaged in manufacturing, processing, refining, fabricating, or recycling as described in codes 3111 to 3399 in the North American Industry Classification System (NAICS)² or I am primarily engaged in biotechnology, or physical, engineering, and life sciences research and development as described in codes 541711 and 541712 of the NAICS.

I understand that by law, I am required to report and pay the state tax (calculated on the sales price/rentals payable of the property) at the time the property is purchased, removed, converted, or used if:

- the purchase exceeds the \$200 million limitation;
- the property is removed from California within one year of the date of purchase or lease;
- the property is converted for use in a manner not qualifying for the exemption; or
- the property is used in a manner not qualifying for the partial exemption.

NAME OF PURCHASER	SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE, OR AUTHORIZED REPRESENTATIVE
PRINTED NAME OF PERSON SIGNING	TITLE
ADDRESS OF PURCHASER	
PERMIT NUMBER (if you are not required to hold a permit, explain why)	TELEPHONE NUMBER ()
EMAIL ADDRESS OF PERSON SIGNING	DATE

¹ See Regulation 1525.4 (b)(9) for a description of what is included and excluded from "qualified tangible personal property."

² Official 2012 US NAICS Manual, U.S. Office of Management and Budget, 2012 edition.

² See Part X, Addendum: UC Guidelines – California Partial Sales and Use Tax Exemption for more information.

Section 9: Exhibits

CDTFA-230-MC, Construction Contracts - Partial Exemption Certificate For Manufacturing, Research and Development Equipment³

CDTFA-230-MC REV. 3 (2-18)

CONSTRUCTION CONTRACTS—PARTIAL EXEMPTION CERTIFICATE FOR MANUFACTURING, RESEARCH AND DEVELOPMENT EQUIPMENT

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF
TAX AND FEE ADMINISTRATION

Section 6377.1

This is a partial exemption from sales and use taxes at the rate of 4.1875 percent from July 1, 2014, to December 31, 2016, and at the rate of 3.9375 percent from January 1, 2017, to June 30, 2022. You are not relieved from your obligations for the remaining state tax and local and district taxes on this transaction.

I hereby certify that the tangible personal property described below and purchased from:

SELLER'S/LESSOR'S NAME

SELLER'S/LESSOR'S ADDRESS (street, city, state, ZIP code)

is qualified tangible personal property and will be used by me in the performance of a construction contract for a qualified person who will use that property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with those processes.

Description of qualified tangible personal property purchased¹

If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased. If you want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file.

I further certify I am performing a construction contract for a qualified person primarily engaged in manufacturing, processing, refining, fabricating, or recycling as described in codes 3111 to 3399 in the North American Industry Classification System (NAICS)² or primarily engaged in biotechnology, or physical, engineering, and life sciences research and development as described in codes 541711 and 541712 of the NAICS.

I understand that if I use the property for any purpose other than indicated above, I am required to report and pay the state tax measured by the sales price of the property to me.

NAME OF PURCHASER	SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE, OR AUTHORIZED REPRESENTATIVE
PRINTED NAME OF PERSON SIGNING	TITLE
ADDRESS OF PURCHASER	
PERMIT NUMBER (if you are not required to hold a permit, explain why)	TELEPHONE NUMBER ()
EMAIL ADDRESS OF PERSON SIGNING	DATE

¹ See Regulation 1525.4 (b)(9) for a description of what is included and excluded from "qualified tangible personal property."

² Official 2012 US NAICS Manual, U.S. Office of Management and Budget, 2012 edition.

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³ See Part XI, Addendum: UC Guidelines – California Partial Sales and Use Tax Exemption for more information on providing CDTFA-230-MC to construction contractors.

Section 9: Exhibits

IV. ANNOTATION 415.0300 (UC AS A SINGLE LEGAL ENTITY)

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799 SACRAMENTO, CALIFORNIA 95808)
(916) 445-8485

415.0300



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Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

RICHARD NEVINSr
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

July 9, 1985

Mr. A--- S. B---
Financial Manager
California State University, Sacramento
6000 J Street
Sacramento, CA 95819-2694

Dear Mr. B---:

This is in response to your letter of March 29, 1985. You wondered whether "sales" of video tapes, slides, and computer program tapes by California State University, Sacramento campus, to other state university and college campuses, community colleges, and private colleges are subject to sales tax.

"Sale" is defined in Sales and Use Tax Law to include a transfer of title to tangible personal property for a consideration (Rev. & Tax. Code §6006(a)). Sales at retail in California are subject to sales tax measured by gross receipts (Rev. & Tax. Code §§6012, 6051). In order for title to pass and tax to apply, the transfer must be between separate legal entities. Here, such taxable transfers would occur between the California State University Sacramento campus and the community and private colleges (see Rev. & Tax. Code §6005) but would not occur between the Sacramento campus and its other sister campuses in the State College and University system since together these campuses comprise a single legal entity (See Cal.Educ. Code §§66,600 et.seq.).

Very truly yours,

E. Leslie Sorensen, Jr.
Tax Counsel

ELS:rar

cc: Donald J. Hennessy

Section 10: Addendum - UC Guidelines California Partial Sales and Use Tax Exemption

I. What change was made to California's Partial Sales and Use Tax Exemption?

Effective from July 01, 2014 through June 30, 2030, California's Partial Sales and Use Tax Exemption includes research and development (R&D) activities under the California Department of Tax and Fee Administration's (CDTFA's) Cal. Rev. & Tax. Cd. § 6377.1 and Regulation 1525.4, *Manufacturing and Research & Development Equipment*. The R&D activities must either be in (1) biological sciences (NAICS code 541711), or (2) physical science (NAICS code 541712). Please note that the NAICS codes refer to the activities described in the 2012 edition.

II. What types of property are “qualified activity”?

A "qualified person" is an organization primarily engaged (50% or more) in a "qualified activity". A "qualified person" may be "primarily engaged" either as a legal entity or as an "establishment" within a legal entity. "Qualified activity" means using "qualified property" primarily (more than 50%) in manufacturing, processing, fabricating, refining or recycling of tangible personal property, research and development, and generating, producing, storing, or distributing electric power, anywhere in California. "Qualified activity" also includes using "qualified property" primarily to maintain, repair, measure, or test any qualified tangible personal property described in the previous sentence. The qualified activity can be found in the business activities described in 2012 North American Industry Classification System (NAICS) codes 3111-3399, or 541711 and 541712.

III. What types of property are “qualified property”?

Qualified property includes machinery and equipment with a useful life **greater than one year** that is used in a "qualified activity".

Qualified property also includes-

- a. Qualified property that is being leased;
- b. Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures;
- c. Equipment and devices used or required to operate, control, regulate, or maintain the machinery (e.g. computers, data-processing equipment, computer software, etc.) in conjunction with all repair and replacement parts with a useful life of one or more years (even if the equipment and devices are purchased separately or in conjunction with the repair and replacement parts);
- d. Special purpose buildings and foundations including but not limited to clean rooms, climate controlled facilities, wind tunnels, linear accelerators;

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- e. Non-depreciable property like leased computers used more than 50% for qualified activities, and catalysts.
- f. Depreciable property used to generate, produce, store or distribute electric power.

Qualified property **does not** include-

- a. Consumables with a useful life of less than one year;
- b. Tangible personal property of less than \$5,000 that is expensed immediately rather than depreciated over more than one year;
- c. Tangible personal property used primarily for administration, general management, or marketing;
- d. Furniture, inventory, and equipment used in the extraction process; or
- e. Equipment used to store finished products that have completed the manufacturing, processing, refining, fabricating, or recycling process.

IV. Does this partial sales and use tax exemption apply to local and district taxes?

No. Effective from January 01, 2017 to June 30, 2030, the partial exemption is now 3.9375% (Cal. Code Regs. 1525.4). And Proposition 30, *Temporary Taxes to Fund Education*, expired after December 31, 2016, which resulted in the reduction of California's state portion of sales tax to 7.25% (from 7.50%). So a partial sales tax reduction of 3.9375% that started on January 01, 2017 will continue to result in the sales tax rate of 3.3125% (7.25% post-Prop 30 statewide rate - 3.9375% partial exemption), plus any applicable local and district sales taxes.

V. How much is exempt from California's sales and use tax each calendar year under the new R&D?

Up to \$200 million per calendar year in qualifying purchases made by a single taxpayer or reporting unit is exempt from California's sales and use taxes. For calendar year 2014, the full \$200 million was exempt (not prorated), even though the exemption only occurs from July 01, 2014 through December 31, 2014. Please note that any amounts unused will not carry forward to future years.

VI. Can the University use the Partial Exemption for R&D?

Yes. As long as the "qualified property" is used in California for R&D purposes in either biological sciences or physical sciences for first 12 months of the qualified property's use, the partial exemption for R&D may apply to the UC, specifically to Departments or other establishments engaged in qualifying R&D activities.

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VII. Is the \$200 million annual limit for each campus?

Currently no. The \$200 million annual limit will only apply to the University system-wide.

However, this requires obtaining formal written guidance from the CDTFA to clarify if this annual limit applies for each campus or only the University system-wide. If the CDTFA rules that this annual limit applies to each campus, then a refund can be requested.

VIII. What must the University system do to keep track of this exemption?

Keeping track of this exemption is important because the University system will be held liable for the full sales tax amount on purchases exceeding the \$200 million exemption limit. Some implementation considerations include developing accounting and tracking systems. Analysis may be required to determine if a fund on award may qualify as an “establishment”.

Establishments are locations or combinations of locations designated as a “cost center” or “economic unit” by the campus where a qualified activity is performed and for which the campus **maintains separate books and records** that reflect revenue, costs, number of employees, wages or salaries, property and equipment, job costing, or other financial data pertaining to the qualified activity.

The “cost center” is important because establishment has to show any one of the following:

- i. Person derives 50% or more gross receipts from qualified activities;
- ii. Person expends 50% or more of operating expenses in qualified activities; or
- iii. For UC, 50% or more of a campus’s qualified activity.

IX. What if campuses share ownership of qualified property with other parties (including other campuses)?

Each cost center must determine how much of the qualified property should be allocated to each party based on use. It is important to make sure that the partial sales and use tax exemption is not over claimed.

Section 10: Addendum - UC Guidelines California Partial Sales and Use Tax Exemption

X. Does the University have to issue exemption certificates to its vendors?

Yes. The campus must provide an exemption certificate ([CDTFA-230-M](#)) to-

- a. the vendors of equipment and machinery, and
- b. the construction contractors and subcontractors of special purpose buildings and foundations.

These partial exemption certificates must contain the following:

- the signature of the purchaser, the purchaser's agent, or the purchaser's employee;
- the name, address, and telephone number of the purchaser
- the purchaser's seller's permit number, or if the purchaser is not required to hold a seller's permit, a notation to that effect and the reason;
- the purchase order or sales invoice number in the description of qualified personal property purchase or leased;
- a description of the property purchased in the description of qualified personal property purchase or leased; and
- the date of execution of the document.

Please see **Appendix A** for an example of CDTFA-230-M (exemption certificate for equipment). In the example, John Smith is the Procurement Manager who will sign the exemption certificates for the fictional University of California, Campus A. UC Campus A's seller's permit number is 12345. The use of the qualified properties begin January 31, 2019 (date of execution). The purchase order number is 01-234.

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XI. For the construction of special purpose buildings, should the University have separate contracts with the contractors and subcontractors?

Yes. When the University gives the contractors and subcontractors the exemption certificate ([CDTFA-230-MC](#)), the exemption certificate indicates that the partial sales tax exemption for the materials and fixtures installed in the special purposes buildings belongs to the University and counts toward the University's annual cap. The contractors and subcontracts provide a different exemption certificate to their vendors indicating that the materials and fixtures will be installed in special purpose buildings that have a partial sales tax exemption, but the exemption still belongs to the University.

Thus, the University should have separate contracts with the different contractors and subcontractors to keep track of the materials and fixtures that count toward the University's annual \$200 million partial sales tax exemption cap.

XII. For the construction of special purpose buildings, how should the partial sales tax savings be passed on to the University?

The savings from the partial sales tax exemption should be built into the contract between the University and the contractors & subcontractors.

XIII. If special purpose buildings require more than one year to build, how should the Partial Sales Tax Exemption be allocated in different years for the University's \$200 million cap?

The allocation of the partial sales tax exemption depends on when the contractors and subcontractors depends on when the materials and fixtures are installed, not when the contractors and subcontractors purchase the materials and fixtures with the partial sales tax exemption.

For example, assume a contractor begins work on a special purpose building in November 2017 and finishes in July 2018. The special purpose building has \$1,000,000 in materials and fixtures that the contractor obtained a partial sales tax exemption for the University. The contractor purchases \$800,000 of the exempted materials and fixtures in 2017 and the other \$200,000 in 2018, but the contractor installs \$400,000 of the exempted materials and fixtures in the building in 2017 and the other \$600,000 in 2018. Because of the requirement that the exemption depends on when the contractors install the materials and fixtures to the special purpose building, the 2017 cap will apply to the \$400,000 of exempted materials and fixtures installed in 2017, and the 2018 cap will apply to the other \$600,000 of exempted materials and fixtures installed in 2018.

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XIV. If an exemption for qualified property was not previously claimed, can the University system seek a refund?

As long as the University system did not use its entire \$200 million exemption for the year in which a qualified property sales or use tax exemption was not claimed, then an individual campus can still file for a refund for any remaining qualifying purchases within the \$200 million cap. The statute of limitations for refunds is 3 years after the filing date. Please note that sales tax refunds must be claimed with the vendors and use tax refunds/credits can be claimed through vendors that have collected use tax or by the Campus directly with the CDTFA.

For example, assume Campus A placed equipment worth \$15 million that is qualified property into service on August 01, 2016 but did not claim the sales tax exemption. In 2018, Campus A realized it did not claim the exemption on the equipment and will file for a refund on the state sales tax during 2018. The UC System had used \$190 million of the 2016 \$200 million exemption. Campus A can request that the vendor file for a refund on behalf of the campus of the sales tax charged on only \$10 million of the equipment instead of the entire \$15 million. The reason is because Campus A had already claimed state sales tax exemptions on \$190 million worth of qualified property in 2016, which left Campus A with only \$10 million that could qualify for the exemption.

XV. If you do not know whether you will meet the partial sales tax exemption requirements at the time of purchase, can the University system still issue a partial exemption certificate?

If the campus anticipates that the partial exemption requirements will be met within one year after the purchase date, a partial exemption certificate may be issued. However, if the requirements are not met within that one year period, the University system will be liable for the unpaid sales or use tax, including applicable interest.

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XVI. Key Terms and Definitions

A. Qualified activities

1. Business activities described in 2012 North American Industry Classification System (NAICS) codes 3111-3399, or 541711 and 541712

B. Qualified person

1. An organization primarily engaged (50% or more) in a qualified activity described in 2012 NAICS codes 3111-3399, or 221111 to 221118, 221122, 541711 and 541712
2. A “qualified person” may be “primarily engaged” either as a legal entity or as an “establishment” within a legal entity

C. Manufacturing

1. NAICS codes 3111-3399 are the general manufacturing codes
2. A qualified person will not be precluded from qualifying when there is no six digit NAICS code to describe their business, provided their business activities are described in a qualified 4 digit industry group

D. Research and development in biotechnology, physical engineering, and life sciences

1. NAICS code 541711, Biotechnology and other life science research
2. NAICS code 541712, Research and development categorized by industry (i.e., agriculture, biology, botany, chemical, guided missile and space vehicles, industrial)

E. Qualified property

1. Includes machinery and equipment with a useful life greater than one year, used “primarily” (more than 50%) in manufacturing, processing, fabricating, refining or recycling of tangible personal property, as well as research and development, anywhere in California
2. Qualified property also includes
 - a. Qualified property that is being leased
 - b. Special purpose buildings and foundations including but not limited to clean rooms, climate controlled facilities, wind tunnels, linear accelerators
 - c. Non-depreciable property like leased computers used more than 50% for qualified activities, and catalysts

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F. Establishment

1. Multiple or single physical locations (including any portion or portions thereof)
2. Locations or combinations of locations designated as a “cost center” or “economic unit” by the University where a qualified activity is performed and for which the University maintains separate books and records that reflect revenue, costs, number of employees, wages or salaries, property and equipment, job costing, or other financial data pertaining to the qualified activity
 - a. “Cost center” important because establishment has to show any one of the following:
 - i. Person derives 50% or more gross receipts from qualified activities;
 - ii. Person expends 50% or more of operating expenses in qualified activities; or
 - iii. For UC, 50% or more of UC’s qualified activity
3. Campuses may have “establishments” that do “qualified activities” that are manufacturing (e.g. printing and circulation)
 - a. **Key Lesson:** just because the UC may not have the NAICS Code, its “establishments” may qualify under other NAICS Codes

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CDTFA-230-M REV. 3 (2-16)

PARTIAL EXEMPTION CERTIFICATE FOR MANUFACTURING, RESEARCH AND DEVELOPMENT EQUIPMENT

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF
TAX AND FEE ADMINISTRATION

Section 6377.1

This is a partial exemption from sales and use taxes at the rate of 4.1875 percent from July 1, 2014, to December 31, 2016, and at the rate of 3.9375 percent from January 1, 2017, to June 30, 2022. You are not relieved from your obligations for the remaining state tax and local and district taxes on this transaction. This partial exemption also applies to lease periods occurring on or after July 1, 2014, and before July 1, 2022, for leases of qualified tangible personal property even if the lease agreement was entered into prior to July 1, 2014.

I hereby certify that the tangible personal property described below and purchased or leased from:

SELLER/LESSOR'S NAME

Microscopes, Inc.

SELLER/LESSOR'S ADDRESS (street, city, state, ZIP code)

123 Test Center Street, Springfield, CA 98765

is qualified tangible personal property and will be used by me primarily (please check one):

1. ☐ for manufacturing, processing, refining, fabricating, or recycling;
2. ☒ for research and development;
3. ☐ to maintain, repair, measure, or test any property being used for (1) or (2) above; or
4. ☐ as a special purpose building and/or foundation.

Description of qualified tangible personal property purchased or leased¹

Purchase Order Number: 01-234

Electron microscope to research the effects of anti-cancer chemical compounds on human tissue

If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased. If you want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file.

I, as the undersigned purchaser, hereby certify I am primarily engaged in manufacturing, processing, refining, fabricating, or recycling as described in codes 3111 to 3399 in the North American Industry Classification System (NAICS)² or I am primarily engaged in biotechnology, or physical, engineering, and life sciences research and development as described in codes 541711 and 541712 of the NAICS.

I understand that by law, I am required to report and pay the state tax (calculated on the sales price/rentals payable of the property) at the time the property is purchased, removed, converted, or used if:

- the purchase exceeds the \$200 million limitation;
- the property is removed from California within one year of the date of purchase or lease;
- the property is converted for use in a manner not qualifying for the exemption; or
- the property is used in a manner not qualifying for the partial exemption.

NAME OF PURCHASER

University of California, Campus A

PRINTED NAME OF PERSON SIGNING

John Smith

ADDRESS OF PURCHASER

1234 Kerr Drive, Springfield, CA 98765

PERMIT NUMBER (if you are not required to hold a permit, explain why)

12345

EMAIL ADDRESS OF PERSON SIGNING

john.smith@campusa.edu

SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE, OR AUTHORIZED REPRESENTATIVE

TITLE

Procurement Manager

TELEPHONE NUMBER

(123) 456-7890

DATE

January 31, 2019

¹ See Regulation 1525.4 (b)(9) for a description of what is included and excluded from "qualified tangible personal property."

² Official 2012 US NAICS Manual, U.S. Office of Management and Budget, 2012 edition.

CLEAR

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