

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1668. RESALE CERTIFICATES.

References: Sections 6012.8, 6012.9, 6072, 6091-6095, 6241-6245, Revenue and Taxation Code.
Automobile Dealers, effect of accepting from nondealer retailer, see Regulation 1566.
Construction Contractors, use by, see Regulation 1521.
Demonstration and Display, use of property purchased under resale certificates for, see Regulation 1669.
Drapery hardware installers accepting, see Regulation 1521.
Newspapers and Periodicals, for component parts of, see Regulation 1590.
Salt used by food processors, giving for, see Regulation 1525.
Vending machine operators furnishing, see Regulation 1574.

(a) EFFECT OF CERTIFICATE.

(1) The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes a certificate from the purchaser that the property is purchased for resale. If timely taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be 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.

(2) If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. The use tax must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. The purchaser cannot retroactively rescind or revoke the resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

(b) FORM OF CERTIFICATE.

(1) 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 the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser or an agent or employee of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser, or 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, an appropriate notation to that effect in lieu of a seller's permit number.

(D) 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.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in (1) above is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the following form:

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:

Date: 19.....
(Signature of Purchaser or Authorized Agent)

.....
(Title)

Under "Description of property to be purchased" there may appear:

(A) Either an itemized list of the particular property to be purchased for resale, or

(B) A general description of the kind of property to be purchased for resale. (A certificate, thus describing
the property is good until revoked in writing.)

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 should make an appropriate notation to that effect on the certificate in lieu of a seller's
permit number.

(3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the
items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered
by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However,
the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the
seller or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using
the procedure described in subsection (b)(4) below.

(4) If a purchaser wishes to designate on each purchase order that the property is for resale, the seller
should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a
description of the property to be purchased. Each purchase order must then specify whether the property
covered by the order is purchased for resale or whether tax applies to the order. If each purchase order does not
so specify, it will be assumed that the property covered by that purchase order was purchased for use, and not
for resale. If the purchase order includes both items to be resold and items to be used, the purchase order must
specify which items are purchased for resale and which items are purchased for use. For example, a purchase
order issued for produced parts for resale and also for tooling used to produce the parts should specify that the
parts are purchased for resale and that the sale of the tooling is subject to tax.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax
reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that
the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving
the sale was for resale.

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(c) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. However, a resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the specific property sold:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Has been used or consumed by the purchaser and the purchaser has paid the use tax directly to this State.

(d) GOOD FAITH. A seller 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.

(e) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(f) MOBILE TRANSPORTATION EQUIPMENT. Any person, not exempt from use tax pursuant to Section 6352 of the Revenue and Taxation Code, who leases mobile transportation equipment and who is the consumer thereof, may issue a resale certificate to the equipment vendor for the limited purpose of reporting use tax on the fair rental value of the mobile transportation equipment.

(g) IMPROPER USE OF CERTIFICATE. Except when a resale certificate is issued in accordance with the terms of subdivisions (e) or (f):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. Such improper use of a certificate also may cause the purchaser to become liable for penalties called for by Sections 6072, 6094.5, 6484, or 6485.

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(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate.

History: Effective July 1, 1939.

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

Amended June 20, 1967, effective July 1, 1967.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended April 6, 1977, effective July 1, 1977. Added new method of proof for resale, detailed what is adequate proof for resale, and clarified effect of purchase for use on a resale certificate.

Amended December 7, 1977, effective January 19, 1978. In (e) added the tax that would be due.

Amended July 28, 1982, effective June 26, 1983. Added new (e) and (f), renumbered (g) and (h), and added reference to Section 6072 to (g).

Amended April 9, 1985, effective June 27, 1985. In subdivision (9), amended to specify that the penalty provisions are also applicable to any officer or employee of a corporation who gives a resale certificate for property which he or she knows at the time of purchase will be used rather than resold. Added a reference to Section 6094.5 of the Revenue and Taxation Code with respect to the type of penalties a purchaser may be liable for if the purchaser makes an improper use of a resale certificate. Deleted subdivision (h) since it pertained to the effective date of amendments to the regulation which occurred in 1977.

Amended April 9, 1986, effective July 5, 1986. In subdivision (e), amended explanation under which mobilehome retailers may issue resale certificates to mobilehome vendors.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.