



FEATURE ARTICLE

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WMA Membership

California Use Tax Registration Requirement – Orwell's *Big Brother*?



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California has imposed yet another additional burden on taxpayers doing business in the State of California. It appears as if George Orwell's *Big Brother* is now watching internet purchases, and purchases made over the phone or mail where the seller does not charge California sales tax.

A special notice has been sent to approximately 180,000 businesses alerting them to the new registration and reporting requirements for "qualified purchasers" to report and pay use tax directly to the Board of Equalization (BOE). Letters were sent to businesses that reported more than \$100,000 in gross receipts from a business or rental property (i.e., mobilehome parks) on their 2007 federal return, who have not already registered with the BOE and do not hold a seller's permit. There has been much discussion of computation of income. For mobilehome parkowners, unfortunately it is rental income.

Use tax is not a new tax. It has been a part of the Revenue and Taxation Code since the 1930s. *Only the registration requirement is new under AB x4-18.* California imposes "use" tax on the purchase of tangible personal (non-real estate) property purchased in another state and transported into California for "use"... hence the name "use" tax. For mobilehome parkowners this could mean signage, equipment, supplies, software or other products ordered online (anything purchased from an out of state vendor), basically any item where sales tax was not paid.

According to the BOE, a "qualified purchaser" is a person that meets the following conditions:

1. The person receives at least \$100,000

in gross receipts from business operations per calendar year. Note: Gross receipts is the total of all receipts from both in-state and out-of-state business operations.

2. The person is not required to hold a seller's permit or certificate of registration for use tax (under Section 6226 of the Revenue and Taxation Code).
3. The person is not a holder of a use tax direct payment permit as described in Section 7051.3 of the Revenue and Taxation Code.
4. The person is not otherwise registered with the BOE to report use tax.

Businesses that receive the letter must complete the information and mail it to the BOE. If the taxpayer does not respond to the letter, the BOE will register them automatically. BOE will then set up a use tax account and taxpayers must electronically file their 2009 use tax return by April 15, 2010, even if there is zero liability. The BOE has also requested that taxpayers must file 2007 and 2008 use tax returns, again even if there is no use tax liability. If the business comes forward, files back returns and pays taxes, the look-back period is only to 2007 and the BOE will likely abate penalties. However, if no return is filed, the BOE will make an estimate, based on available information, of the total purchases subject to use tax, "based on income" and add a penalty equal to 10% of the estimated tax. As usual, a disclaimer, this is general information – seek advice from your accountant or tax lawyer. For more information about use tax, visit the State Board of Equalization's website at www.boe.ca.gov, or call 800.400.7115. ■