

# Sales and Use Taxes: California

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A Q&A guide to sales and use tax law in California. This Q&A addresses key areas of sales and use tax law such as tax scope, multi-state transactions and collecting taxes, and filing returns. Answers to questions can be compared across a number of jurisdictions (see Sales and Use Taxes: State Q&A Tool).

## TAX SCOPE

### 1. Does the state levy sales and use taxes?

California imposes a sales tax on retail sales of tangible personal property. The tax is imposed on the gross receipts of any retailer from all tangible personal property sold at retail in the state. (Cal. Rev. & Tax. Code § 6051.)

In addition, California imposes a state use tax on the storage, use, or consumption in California of tangible personal property purchased from a retailer (Cal. Rev. & Tax. Code § 6202(a)).

The state sales and use tax rate is currently 7.25% (see California Department of Tax and Fee Administration: City & County Sales & Use Tax Rates). However, cities, counties, and special taxing districts may also impose their own sales tax rate. As a result, the total tax rate in California varies from 7.25% to 10.50% depending on the location.

For the most up-to-date listing of tax rates in California, see California Department of Tax and Fee Administration: City & County Sales & Use Tax Rates.

### 2. What is the taxable base or measure of tax?

#### TAX BASE

The California sales tax base is measured by the retailer's gross receipts (Cal. Rev. & Tax. Code § 6051).

"Gross receipts" are the total amount of the sale, lease, or rental price, valued in money without deduction for:

- The cost of property sold, unless the retailer both:
  - paid sales tax on its purchase of the property sold; and
  - resold the property before making any use of it other than retention, demonstration, or display while holding it for resale in the ordinary course of business.
- The cost of materials, labor, or services, interest paid, losses, or any other expense.
- The cost of transportation of the property, unless specifically excluded by law.
- Any gasoline taxes.

(Cal. Rev. & Tax. Code § 6012(a).)

The amount of the sale includes:

- Services that are part of the sale.
- All receipts, cash, credits, and property of any kind.
- Any amount for which credit is allowed by the seller to the purchaser.

(Cal. Rev. & Tax. Code § 6012(b).)

The use tax is imposed on the "sales price" of the property stored, used, or consumed in California (Cal. Rev. & Tax. Code § 6201). "Sales price" has a similar definition to the term "gross receipts" (Cal. Rev. & Tax. Code §§ 6011(a) and 6012(a)).

#### SOURCE OF SALES

California imposes its sales tax if either:

- The sale occurs in California.
- The property is delivered to the purchaser or purchaser's representative in California.

(Cal. Code Regs. tit. 18, § 1620(a)(1), (3)(A).)

Sales tax does not apply if the sales contract requires the retailer to ship the product out of state (Cal. Code Regs. tit. 18, § 1620(a)(3)(B)).

Sales tax also applies when both:

- The sale occurs in California.
- The purchaser sends the order for the property to, or delivery of the property is made by, a:
  - local branch;
  - office;
  - outlet; or
  - other place of business of the retailer in California.

(Cal. Code Regs. tit. 18, § 1620(a)(2)(A).)

### 3. What kinds of transactions are taxable?

California imposes a sales tax on retail sales of tangible personal property (see Question 1). A retail sale is a sale for any purpose other than resale in the regular course of business (Cal. Rev. & Tax. Code § 6007).

A complete list of transactions subject to the California sales tax is provided by Cal. Rev. & Tax. Code § 6006. Generally, any transfer of tangible personal property for a consideration is presumed to be a sale subject to the sales tax (Cal. Rev. & Tax. Code § 6006). Leases of tangible personal property are also subject to sales tax as continuing sales unless certain exceptions apply (Cal. Rev. & Tax. Code § 6006(g); Cal. Code Regs. tit. 18, §§ 1660(b)(2) and 1823(c)).

California also imposes a use tax on any storage, use, or consumption of any tangible personal property (Cal. Rev. & Tax. Code § 6202(a)).

Pure service providers are generally not considered retailers and are not usually subject to the tax. Rather, they are treated as consumers of tangible personal property which they use incidentally in rendering their service. For pure service providers, sales tax applies to their purchases of property. (Cal. Code Regs. tit 18, § 1501.)

### 4. What are the most common exclusions from the tax base, tax-exempt transactions or tax deductible items?

California's sales and use tax statutes contain many exemptions. The California Department of Tax and Fee Administration has issued a publication which contains a detailed listing of the sales tax exclusions and exemptions, along with citations to the relevant statutes and regulations (see Publication No. 61, Sales and Use Taxes: Exemptions and Exclusions (March 2018)).

Some of the most common exemptions include:

- **Sales for resale.** Sales for resale are not retail sales and are not subject to tax (Cal. Rev. & Tax. Code §§ 6007(a)(1) and 6008). The seller bears the burden of proving that a sale is not a retail sale unless the seller obtains a timely resale exemption certificate from the purchaser (Cal. Rev. & Tax. Code § 6091).
- **Discounts.** Cash discounts allowed and taken on sales are not subject to tax (Cal. Rev. & Tax. Code §§ 6011(c)(1) and 6012(c)(1)).
- **Returns.** The sales price of property returned by the customer is exempt when both:
  - the entire amount is refunded in cash or credit; and
  - the purchaser is not required to purchase other property at a price greater than the amount charged for the returned property.
- (Cal. Rev. & Tax. Code §§ 6011(c)(2) and 6012(c)(2).)
- **Installation labor.** The price received for labor or services used in installing or applying the property sold is exempt (Cal. Rev. & Tax. Code §§ 6011(c)(3) and 6012(c)(3)).
- **Federal taxes.** Certain federal excise taxes are not included in the tax base (Cal. Rev. & Tax. Code §§ 6011(c)(4) and 6012(c)(4)).
- **State and local sales tax.** Sales taxes imposed by a city, county, district, or Indian tribe in California are not included in the tax base (Cal. Rev. & Tax. Code §§ 6011(c)(5), (6), and (12) and 6012(c)(5), (6), and (12)).
- **Delivery.** Reasonable, separately stated charges for transportation from the retailer's location to the purchaser's location are not taxable (Cal. Rev. & Tax. Code §§ 6011(c)(7) and 6012(c)(7)).
- **Finance charges.** If tangible personal property is sold on credit, separately stated insurance, interest, finance, and carrying charges made in the sales contract are not taxable (Cal. Code Regs. tit. 18, § 1641(a)).
- **Bad debts.** Worthless debts that are deductible for federal income tax purposes or under generally accepted accounting principles (if the retailer is not required to file income tax returns) are excluded from sales tax (Cal. Rev. & Tax. Code §§ 6055 and 6203.5).
- **Diesel fuel taxes.** The amount of the California diesel fuel tax is not subject to sales tax (Cal. Rev. & Tax. Code §§ 6011(c)(11) and 6012(c)(11)).
- **Federal sales.** Sales to the US government, its agencies, or the American National Red Cross (including its chapters and branches) are not taxable (Cal. Rev. & Tax. Code § 6381).
- **Out-of-state sales.** Out-of-state sales are exempt if the sales contract requires the property to be shipped to an out-of-state location by common carrier or directly by the retailer (Cal. Rev. & Tax. Code § 6396).
- **Component parts.** Sales of property that will be incorporated into manufactured products for future sale (that is, raw materials) are not subject to tax (Cal. Code Regs. tit. 18, § 1525).
- **Agricultural items.** Sales of agricultural items consisting of animals, feed for animals, seeds and plants to be grown for food, agricultural fertilizer, and disease control drugs or medicine for administration to agricultural livestock are generally exempt (Cal. Rev. & Tax. Code § 6358).
- **Telephone or telegraph lines.** Telephone and telegraph lines, electrical transmission and distribution lines, poles, towers, and conduits are exempt (Cal. Rev. & Tax. Code § 6016.5).
- **Utilities.** Gas, electricity, and water delivered to consumers through mains, lines, or pipes are exempt (Cal. Rev. & Tax. Code § 6353).
- **Food sales.** Food products for human consumption are generally not subject to tax, unless they are:
  - served as meals;
  - consumed at or on the seller's facilities;
  - ordinarily sold for consumption on or near the seller's parking facility;
  - sold for consumption where there is an admission charge, with certain exceptions; or

- sold through a vending machine.
- sold as “hot prepared food products.”
- (Cal. Rev. & Tax. Code § 6359.)
- **Prescription drugs.** Prescription medicines are not subject to tax (Cal. Rev. & Tax. Code §§ 6369 and 6369.1).
- **Fuel sold to air common carriers.** Sales and use taxes do not apply to fuel and petroleum products sold for immediate consumption to an air common carrier on a flight whose final destination is a point outside the US (Cal. Rev. & Tax. Code § 6357.5).
- **Occasional sales.** California law contains an extremely narrow exemption for certain occasional sales that only applies in rare circumstances (Cal. Rev. & Tax. Code §§ 6006.5 and 6367). The occasional sale exemption also applies to certain merger and entity reorganization transactions designated by regulation (Cal. Code Regs. tit. 18, § 1595(b)).

## MULTI-STATE TRANSACTIONS

### 5. What types of business activities create “nexus” for sales and use tax liability in the state?

As with other states, nexus considerations in California are limited by the concepts of nexus embodied in the US Constitution’s Due Process Clause and Commerce Clause (Cal. Rev. & Tax. Code § 6203(c); see *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018)). California law specifically imposes a use tax collection obligation on all retailers engaged in business in California and making sales of tangible personal property for storage, use, or other consumption in California (Cal. Rev. & Tax. Code § 6203(a)). Retailers are engaging in business in California if they:

- Maintain, occupy, or use (permanently or temporarily, directly or indirectly) an office, place of distribution, sales or sample room or place, warehouse, or storage place, or other place of business in California.
- Have any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in California under the authority of the retailer or its subsidiary to sell, deliver, install, assemble, or take orders for any tangible personal property.
- Derive rentals from a lease of tangible personal property situated in California.
- In the previous or current calendar year, have total combined sales of tangible personal property for delivery in California by the retailer and all persons related to the retailer that exceed \$500,000.

(Cal. Rev. & Tax. Code § 6203(c).)

Every person desiring to engage in business as a seller in California must apply to the CDTFA for a seller’s permit for each place of business (Cal. Rev. & Tax. Code § 6066(a); see California Department of Tax and Fee Administration: Permits & Licenses).

### 6. Are there special rules for sales and use taxes on multi-state transactions?

The term “retailer engaged in business” applies to any retailer that has constitutional nexus with California under the Commerce Clause (Cal. Rev. & Tax Code § 6203(c)).

California law requires the collection of use tax by any retailer that has total combined sales of tangible personal property for delivery in California exceeding \$500,000:

- In the preceding or current calendar year.
  - By the retailer and all persons related to the retailer.
- (Cal. Rev. & Tax Code § 6203(c)(4)(A).)

California law also recognizes “marketplace nexus”. A “marketplace facilitator” is considered the seller and retailer for each sale facilitated through its “marketplace” for purposes of sales tax registration and collection obligations. A “marketplace” is a physical or electronic place where a seller sells or offers for sale tangible personal property for delivery in California, regardless of whether the property, seller, or marketplace has a physical presence in California, including but not limited to a:

- Store.
- Booth.
- Internet website.
- Catalog.
- Television or radio broadcast.
- Dedicated sales software application.

(Cal. Rev. & Tax. Code § 6041(a).)

A “marketplace facilitator” is one who operates a marketplace, while a “marketplace seller” is one who sells through a marketplace (Cal. Rev. & Tax. Code § 6041(b), (c)). Essentially, marketplace nexus operates to shift the tax collection and remittance liability off an individual seller participating in an online marketplace and onto the company that operates the marketplace website.

## COLLECTING TAXES AND FILING RETURNS

### 7. Who has a duty to collect and pay sales and use taxes?

California’s sales tax is imposed on the retailer for the privilege of engaging in business in the state (see Question 1). As a result, the retailer is primarily responsible for remitting sales tax to the state. Likewise, out-of-state retailers engaged in business must collect and remit use tax on their sales to California customers. (Cal. Rev. & Tax. Code § 6203; see Question 5 and Question 6.)

A person may be personally liable for any unpaid taxes, interest, and penalties due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, if:

- The business is terminated, dissolved, or abandoned.
- The person is an officer, member, manager, partner, or person who:
  - has control or supervision of the filing of returns or tax payments;
  - is responsible for the filing of returns or tax payments; or
  - is under a duty to act for the business in complying with tax requirements.
- The person willfully fails to pay, or cause to be paid, any taxes that the business owes.

(Cal. Rev. & Tax. Code § 6829(a).)

### 8. Do out-of-state sellers have a duty to collect sales and use taxes?

Out-of-state sellers engaged in business in California have a duty to collect use tax on sales to California customers (see Question 7).

### 9. What is the last day payment of sales and use tax can be made without incurring a penalty and to whom is payment made?

Sales and use taxes are generally reported on California's State, Local, and District Sales and Use Tax Return, Form CDTFA-401-A and filed with the California Department of Tax and Fee Administration (CDTFA). The CDTFA assigns a filing frequency (quarterly prepay, quarterly, monthly, fiscal yearly, yearly) based on the taxpayer's reported sales tax or its anticipated taxable sales at the time of registration. A schedule of filing dates based on the taxpayer's filing frequency is available on the CDTFA's website. (Cal. Rev. & Tax Code §§ 6451 to 6459; see California Department of Tax and Fee Administration: Online Services—File a Return.)

Persons whose estimated sales and use tax liability averages \$10,000 or more per month must remit amounts due by electronic funds transfer (Cal. Rev. & Tax. Code § 6479.3(a)). However, persons issued a seller's permit for a medical cannabis dispensary who would otherwise fall under the Cal. Rev. & Tax. Code § 6479.3(a) requirement to pay by electronic funds transfer may remit the amount due by means other than electronic funds transfer until January 1, 2022 (Cal. Rev. & Tax. Code § 6479.3(k)). Persons whose estimated sales and use tax liability averages less than \$10,000 per month may elect to remit amounts owed by electronic funds transfer with approval of the CDTFA (Cal. Rev. & Tax. Code § 6479.3(b)).

In general, returns are due on a quarterly basis. However, on written notification by the CDTFA, any person whose estimated tax liability averages \$17,000 or more per month must make prepayments of tax (Cal. Rev. & Tax. Code § 6471(a)). The taxpayer must make the prepayment as follows:

- **First, third, and fourth calendar quarters.** The taxpayer must prepay at least 90% of the tax liability for each of the first two months of each quarterly period.
- **Second calendar quarter.** The taxpayer must make a first prepayment of 90% of the total tax liability for the first monthly period of the quarterly period and a second prepayment of either:
  - 90% of the amount of the tax liability for the second monthly period plus 90% of the tax liability for the first 15 days of the third monthly period in the quarter; or
  - 90% of the tax liability for the second monthly period plus an additional 50% of 90% of the liability for the second monthly period.

(Cal. Rev. & Tax. Code § 6471(a).)

### 10. What are the penalties for failure to comply with the sales and use tax statute(s)?

California imposes several penalties for failure to comply with sales and use tax statutes, including:

- **Late filing or payment.** A taxpayer who fails to file a timely return is subject to both a 10% penalty and an interest assessment. A taxpayer who pays the tax amount owed late is also subject to a 10% penalty. A taxpayer who both files the return late and pays the amount of tax owed late is subject to a combined penalty of 10% and an interest assessment. (Cal. Rev. & Tax. Code § 6591.)
- **Late prepayment.** A taxpayer required to make sales and use tax prepayments who fails to do so is subject to a penalty of 6% of 90% of the tax liability if a prepayment is made after the prepayment due date but before the quarterly return is due (Cal. Rev. & Tax. Code § 6477). This penalty can be increased to 10% if the California Department of Tax and Fee Administration (CDTFA) determines the prepayment was late due to negligence or intentional disregard (Cal. Rev. & Tax. Code § 6478).
- **Failure to file a return.** A taxpayer faces a 10% penalty if the taxpayer failed to file a required sales and use tax return (Cal. Rev. & Tax. Code § 6511). An additional 25% penalty applies if the deficiency is due to fraud or an intent to evade taxes (Cal. Rev. & Tax. Code § 6514).
- **Negligence/intentional disregard penalty.** A penalty of 10% is added to any deficiency where the taxpayer's deficiency was due to negligence or an intentional disregard of the tax laws (Cal. Rev. & Tax. Code § 6484). If the CDTFA finds that the tax was not reported because of fraud or an intent to evade the tax, an additional 25% penalty applies (Cal. Rev. & Tax. Code § 6485).
- **Failure to pay by electronic funds transfer.** A taxpayer required to pay by electronic funds transfer who does not pay electronically (for example, pays by check) is subject to a 10% penalty for tax payments or a 6% penalty for prepayments. However, if the taxpayer is also subject to penalties for late filing or payment, the cumulative penalty may not exceed 10% for taxes and 6% for prepayments. (Cal. Rev. & Tax. Code § 6479.3(e), (h), and (i).)
- **Failure to remit tax collected from customers.** Subject to some exceptions, a taxpayer who fails to remit sales or use taxes collected from customers on time is liable for a penalty of 40% of the amount not timely remitted (Cal. Rev. & Tax. Code § 6597(a)).
- **Improper use of a resale certificate.** A penalty of the higher of either \$500 or 10% of the tax due applies to each improper use of an exemption certificate, with additional potential penalties for failure to report and pay use tax on the improperly purchased property. Criminal penalties also apply. (Cal. Code Regs. tit. 18, § 1668(d).)
- **Amnesty penalty.** Additional and increased penalties may also apply for failure to participate in previous tax amnesty programs offered by the state of California (Cal. Rev. & Tax. Code §§ 7073 and 7074).

### 11. Is the purchaser, transferee, or assignee of the assets of a business liable for the seller's unpaid sales tax?

If a person liable for sales or use tax sells their business or stock of goods or quits the business, California law requires any successors

or assigns to withhold a sufficient amount from the purchase price to cover the amount of any unpaid taxes until the previous owner produces either:

- A receipt from the California Department of Tax and Fee Administration (CDTFA) showing that the tax has been paid.

- A certificate stating that no amount is due.

(Cal. Rev. & Tax. Code § 6811.)

The purchaser may request a tax clearance certificate from the CDTFA. When the request is made, the CDTFA determines the amount of taxes, penalties, and interest due by the business. The CDTFA must respond to requests for tax clearance certificates within 60 days of the latest of the following:

- When it receives the written request from the purchaser.
  - The date of the sale of the business or stock of goods.
  - The date the former owner's records are made available for audit.
- (Cal. Rev. & Tax. Code § 6812(b).)

If the purchaser intentionally fails to withhold the amount of tax due from the purchase price, then the purchaser is personally liable for the previous owner's unpaid taxes to the extent of the purchase price (Cal. Rev. & Tax. Code § 6812(a)). The CDTFA's failure to respond to a request for a tax clearance certificate releases the purchaser's obligation to withhold the tax from the purchase price of the business (Cal. Rev. & Tax. Code § 6812(c)).

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