



**SAN DIEGO STATE
UNIVERSITY**

Research Foundation

SALES AND USE TAX GUIDE

For use by principal investigators and their staff in conducting sponsored projects and campus programs administered by San Diego State University Research Foundation.

I. INTRODUCTION

San Diego State University Research Foundation is subject to sales and use tax imposed by the state of California upon retailers and purchasers conducting business in the state. Administration of these laws is through the State Board of Equalization. The laws have been interpreted through regulations, court cases, hearing reports, opinion letters and annotations.

In California, the base and rate for sales and use tax purposes are the same. District taxes may add to the rate and vary from location to location, generally by county. Sellers must determine whether they collect or accrue sales or use tax on the sale or lease of tangible personal property. 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.

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 the seller collecting taxes?
- 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 property in California at retail. The retailer may be a California retailer or an out-of-state retailer engaged in business in California.

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 California

An “out-of-state retailer engaged in business in California” is an out-of-state retailer who has a physical presence (i.e., business operations or “nexus”) in the state and sells tangible personal property to California consumers.

III. WHAT IS USE TAX?

A. Imposition of Use Tax

Use tax is imposed upon a consumer for the storage, use or other consumption in this state of tangible personal property. The use tax is generally imposed:

- Upon purchase of consumables or capital assets from out-of-state vendors *not* doing business in California.
- Upon purchase of consumables or capital assets shipped from out of state directly in-state by an out-of-state vendor doing business in California. In this case, the use tax is imposed upon the vendor, who generally collects the tax.
- Upon self-consumption of items originally purchased for resale.

SDSU Research Foundation is responsible for self-accruing the use tax in situations 1 and 3. If under situation 2, no tax is collected, SDSU Research Foundation is responsible for self-accruing the use tax. The tax rate applied is based on the tax rate for the location where the goods are delivered. In some cases, the vendor may invoice for the state rate but not the additional district tax added by individual counties. SDSU Research Foundation is responsible for self-accruing any portion of tax not included on the invoice.

B. 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.

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

An out-of-state retailer who has “nexus” in California is required to register with the state of California. The registration requirement generally arises from

an out-of-state company's physical presence (nexus) in the state. Sales of tangible personal property from inventory located in California by an out-of-state retailer engaged in business in California are subject to 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. SDSU Research Foundation will pay use tax to an out-of-state vendor upon receipt from the vendor of a completed W-9 and Seller's Permit.

D. 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 an 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.

Note: Some out-of-state vendors may automatically include the sales tax amount for their respective state on the invoice. It is the responsibility of the SDSU Research Foundation buyer to contact the vendor and indicate that we are not responsible for the payment of the out-of-state tax. The vendor will, either okay a reduction of the invoice and approve for payment as is, or advise that a new invoice will be sent. The new approved amount will be paid to the vendor and California use tax will be calculated, accrued and paid directly to the state of California by SDSU Research Foundation.

Note: It is also a common practice for out-of-state vendors to have property drop shipped directly from their supplier to the end user. If the supplier is located in California, this may actually be a sales tax transaction. Therefore, it is important to review shipping terms or place of origin on packing slips and/or invoices.

IV. 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. 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.

Example: KPBS purchases books and CDs from a local vendor. These items are purchased for resale and will be resold to its customers. SDSU Research Foundation will issue a resale certificate to the local vendor in order to purchase the items without the addition of tax. Absent such resale certificate, the local vendor would be responsible for collecting the sales tax at the time the sale is made. When the items are sold to KPBS customers, sales tax will be added to the sales price.

V. SDSU RESEARCH FOUNDATION AS RECIPIENT OF GRANT/CONTRACT FUNDS

A. United States Government Grants

When SDSU Research Foundation is the recipient of a research grant or other grant from a United States government agency or instrumentality, SDSU Research Foundation may receive money, government property or both for use in fulfilling the grants and contracts objectives. Any property purchased with grant funds are subject to California sales or use tax when SDSU Research Foundation purchases items of tangible personal property to consume in its research or in furtherance of the grant purpose.

B. Grants or Contracts with Non-United States Government Entities

When SDSU Research Foundation conducts research under a contract with the state of California, SDSU Research Foundation 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. SDSU Research Foundation 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.

VI. PURCHASING DISBURSEMENTS

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

- 1) Policy for Vendors Not Charging Tax

Vendors will generally charge sales tax to SDSU Research Foundation on sales of tangible personal property. The following are instances where vendors will not charge sales tax:

- SDSU Research Foundation is purchasing items for resale and issues a resale certificate to the vendor.
- The vendor is not engaged in business in California and is 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 vendor. **In the event that the vendor accidentally or intentionally omits the sales tax on the invoice, receipt, or sales agreement/contract, SDSU Research Foundation does not have a legal liability to remit the tax to the State.** (Note that this applies only to the state tax rate and *not* to the various district taxes required in many California counties.) Additionally, 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. Consequently, if the retailer wishes to obtain reimbursement for a sales transaction after the fact, it does not have any legal right to collect the tax from the purchaser in the absence of a sales agreement allowing for the collection of tax.

2) Consumed Items Purchased Without Tax

Items purchased under a resale certificate that are used or consumed prior to reselling the item are subject to use tax. SDSU Research Foundation must accrue the use tax on these items. Certain uses such as for demonstration and display or scrapping leftover or obsolete inventory are not taxable use.

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

When an individual makes a purchase with his/her personal funds from an out-of-state vendor who does not charge sales or use tax, and subsequently requests reimbursement from SDSU Research Foundation, it is SDSU Research Foundation's responsibility to accrue the use tax.

Example: A professor requires a textbook for research purposes and orders the book from an out-of-state distributor and uses his personal charge card. The company is not registered in California. Therefore, use tax is not charged on the purchase. The professor then submits the charge slip and requests a reimbursement for expenses. SDSU Research Foundation must accrue the use tax due on the purchase made by the professor.

4) Transaction Taxes

Occasionally, items will be purchased from California vendors or out-of-state vendors engaged in business in California, that are not engaged in business in the county to which the purchases are delivered.

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 use tax. The use tax is complementary to the sales tax and imposed upon the storage, use or other consumption in the district of tangible personal property purchased from any retailer for storage, use or other consumption in the district.

Example: A project located on the Imperial Valley campus of SDSU purchases supplies from a vendor located in San Diego County. The vendor is solely engaged in business in San Diego County. Consequently, the vendor is responsible for collecting the base state tax rate only and not the district taxes imposed by Imperial County. SDSU Research Foundation must self accrue and report the applicable district taxes.

B. Purchase of Tangible Personal Property

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

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

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

- 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.
- 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.

C. Purchase of Services and Labor

The definition of sale for California sales/use tax purposes generally does not include services. Accordingly, services are not subject to the California sales/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 objects of the contract. If the service is the true object of the contract, the transaction is not subject to tax.

D. Purchases for Resale

To prevent sales/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. A certificate accepted by a seller that denotes that the item is being purchased for resale ***will relieve the seller of any liability for the sales tax***. As a result, if SDSU Research Foundation gives a resale certificate to a vendor, the liability for the tax will rest with SDSU Research Foundation.

E. Interstate and Foreign Commerce

1) In-Bound Transactions

If tangible personal property is shipped from an out-of-state location to a California location, use tax is due. The method of transportation is irrelevant to the determination of use tax. However, transportation by common carrier directly to the customer is not included in the amount subject to tax.

2) Out-Bound Transactions

If tangible personal property is shipped directly by the vendor (using a common carrier) to an out-of-state location, the transaction is exempt from sales/use tax. Note: the tangible personal property cannot be “picked up” by the purchaser and taken out-of-state; nor generally, can the vendor deliver it in his or her own truck.

3) Interstate Exemption Rule – 90-Day Test

- If tangible personal property is delivered to an out-of-state location and first used out-of-state for 90 days, no California use tax is due.
- First functional use must be out-of-state.
- Storing the property at an out-of-state location while waiting for the 90 days to pass does not count.
- Transit time to return the property to California does not count.
- If brought to California on day 91 (or after), the presumption is that it was purchased for use out-of-state unless it is used outside of the state for more than 50% of the first six months after entering the state (Regulation 1620).

Example: A biology professor purchases a piece of equipment and the vendor delivers the equipment directly to a research site in Alaska. The equipment will be used by the research team and returned to San

Diego at the end of the summer research season. If the project has a reasonable expectation that they will meet the requirements of the 90-day test, the transaction will be exempt from California sales/use tax.

Note: Although the equipment is exempt from California sales/use tax, there may tax due in the destination state. In this case, Alaska does not have a general state sales tax, but does have local sales tax. Each purchase of this nature will need to be researched to determine the appropriate tax status.

The Interstate Exemption Rule may be declared provided the following actions are taken:

- a) The project will indicate on the requisition that no sales tax is required because the Interstate Exemption Rule applies.
- b) The project will attach a short memo to the requisition indicating anticipated arrival date of tangible personal property at the out-of-state location, location of property, dates the property will be used, and the anticipated date the equipment will be shipped to California. The duration of time between arrival and departure dates of equipment must be more than 90 days.
- c) When the equipment has been returned to California, the project is responsible for sending a copy of the shipping/packing invoices that provide proof of the arrival and departure dates of the property at the out-of-state location to the SDSU Research Foundation Buyer. This documentation will provide proof for audit purposes.
- d) The SDSU Research Foundation Buyer will maintain a file and follow up with the project to ensure that appropriate documentation is received. If no action is taken by the project to provide the documentation, the Buyer will work with Accounts Payable to accrue use tax on the purchase.

4) Exports

Sales tax does not apply when all of the following conditions are met:

- The tangible personal property is intended for a foreign destination.
- The sales contract is irrevocably committed to the process of exportation at the time of sale.
- The property is delivered to the foreign location prior to any use.

VII. TAXABILITY BY PRODUCT DESCRIPTION - TABLE

The following table provides a listing of some of the more commonly used products purchased by SDSU Research Foundation project/departments. The tax status indicates whether the item is generally taxable or not. This tax may come in the form of sales tax or use tax depending on the status of the vendor.

Description	Tax Status	Comments
Accommodations	NO	
Accountants	NO	
Advertising - Newspaper	NO	
Air Filters	YES	
Airfare	NO	
Animal Cages	YES	
Animal Feed for Food Animals	NO	
Animal Feed – In General	YES	
Animal Feed – Medicated In General	YES	Medicated feed for animals that are normally consumed by humans is exempt.
Animals – Laboratory, Non Food Animals	YES	
Animals – Laboratory, Food Animals	NO	
Appliances	YES	
Appliances-Mandatory Warranties	YES	See Section VIII, AA, Warranties. (Generally included in selling price of item purchased.)
Appliances-Optional Warranties	NO	See Section VIII, AA, Warranties.
Art Supplies	YES	
Art Work	YES/NO	See Section VIII, A.
Athletic/Recreational Equipment/Supplies	YES	
Audio Visual Equipment and Supplies	YES	
Audio Visual Service	YES	See Section VIII, B.
Automotive Parts and Accessories	YES	
Automotive Repair and Services	NO	
Aviation Parts and Supplies	YES	
Aviation Services	NO	
Awards, Plaques, Trophies	YES	
Bags, Backpacks, and Similar Products	YES	
Bar Coding Equipment	YES	
Bar Coding Supplies	YES	
Batteries	YES	
Binder/Book Binders	YES	
Biochemical and Biological Products	YES	
Blueprinting Services	NO	
Blueprinting Supplies	YES	
Boiler and Steam Plant Services	NO	
Books and Educational Materials	YES	
Building and Ground Services	NO	
Calligraphy and Design Services	YES/NO	See Section VIII, C.
Cargo/Storage Containers	YES	
Cartographic Services	YES	
Cash Protection and Cash Handling	NO	
Catering/Food Services	YES	
Chemicals and Chemical Products	YES	
Chemicals, Radioactive	YES	
Clocks and Timing Devices	YES	
Clothing	YES	
Communications Equipment and Supplies	YES	
Compact Discs (CDs)	YES/NO	No, if for resale.
Compressed Gases	YES	

Description	Tax Status	Comments
Compressed Gases, Demurrage/Cylinder Charges	NO	
Computer Hardware and Peripherals	YES	
Computer Repair Services – Not Under Warranty	YES/NO	See Section VIII, D
Computer Services	NO	
Computer Software and Peripherals	YES	See Section VIII, E. Software received via download or modem is exempt.
Computer Supplies and Peripherals	YES	
Computer Systems	YES	
Construction and Building Materials	YES	
Consultants	NO	
Copy Machines	YES	
Copy Supplies	YES	
Controlled Substances – Used on Testing Animals	YES/NO	Yes, if purchased from a chemical vendor. No, if purchased as a pharmaceutical prescription.
Data Collection/Research Services	NO	
Data Processing Equipment and Supplies	YES	
Delivery/Courier Services	NO	
Dictating and Transcribing Machines	YES	
Discounted Purchases: Not Trade-Ins	NO	See Section VIII, F. The amount of the discount taken is exempt.
Duplicating and Copying Services	YES	
Editorial Services	NO	
Electrical Supplies and Equipment	YES	
Electronic Components	YES	
Emblems	YES	
Employment Services	NO	
Engineering and Architectural Services	YES/NO	See Section VIII, G
Engineering and Architectural Services – Blueprints	NO	
Engineering and Architectural Services – Calibration	NO	
Equipment	YES	
Fabrication Labor	YES	See Section VIII, H
Fabrication Supplies	YES	
Facility Leases	NO	
Fasteners	YES	
Fence Equipment and Supply	YES	
Filing System, Supplies	YES	
Films, Video Tapes: Processed	YES/NO	See Section VIII, Z, Video Production Services. Motion picture production services may be exempt.
Financial Leasing	YES/NO	See Section VIII, T, Rentals/Leasing. Depends on circumstances. Tax paid on acquisition, lease is exempt.
Flags/Banners/Maps	YES	
Floor Covering and Carpeting	YES	
Florist	YES	
Food/Meat Products for Animal Consumption	YES	

Description	Tax Status	Comments
Food/Meat Products for Human Consumption	NO	Food for animals that are normally consumed by humans is exempt.
Food Service Equipment/Supplies	YES	
Freight/Shipping/Handling	YES/NO	See Section VIII, I.
Furniture	YES	
Furniture Refurbishing – Fabrication Labor	YES	
Furniture Refurbishing – Materials and Parts	YES	
Furniture Refurbishing – Repairing and Application Labor	NO	
General Transportation Services; Bus, Taxi	NO	
Generators, Alternators	YES	
Gifts	YES	
Glass, Auto/Window and Miscellaneous	YES	
Graphic Design Services	YES/NO	See Section VIII, J.
Graphic Design Services – Preliminary Art	NO	See Graphic Design Services above.
Handing/Shipping/Freight	YES/NO	See Section VIII, I.
Hardware and Abrasives	YES	
Hauling/Freight Services	NO	
Herbicides, Pesticides	YES	
Household Moving & Storage	NO	
HVAC Equipment Supplies	YES	
Ice Charges	YES	
Industrial Equipment & Supplies	YES	
Installation Labor	NO	See Section VIII, K.
Instructional Services	NO	
Instructional Training Aids	YES	When separately billed by vendor.
Interior/Office Design – Associated with Tangible Property	YES	
Interior/Office Design – Professional Services	NO	
Irrigation Systems and Supplies	YES	
Janitorial and Cleaning Services	NO	
Janitorial Equipment and Supplies	YES	
Laboratory Analysis	NO	
Laboratory/Scientific Equipment/Supplies	YES	
Labor – Fabrication	YES	
Lamps and Lighting Fixtures	YES	
Landscaping Equipment/Supplies	YES	
Landscaping Services	NO	
Laundry Services	NO	
Leases, Rentals	YES/NO	See Section VIII, T.
Linen and Textile Supplies	YES	
Locks and Locksmiths	YES	
Lumber, Millwork, Plywood and Veneer	YES	
Machine Shop Services and Equipment	YES	
Mailing Labels	YES	
Mailing Lists	YES	
Mailing Lists Restricted to One Time Use	NO	Includes lists transferred by magnetic tape or similar devise.
Mailing Services	NO	See Section VIII, L.
Maintenance Agreements	YES/NO	See Section VIII, M.
Materials Handling Equipment	YES	

Description	Tax Status	Comments
Measuring and Testing Instruments	YES	
Medical Equipment and Supplies	YES	
Medical and Scientific Illustration Services	YES	Finished art is taxable.
Memberships	NO	
Metal Fabrication	YES	
Metals	YES	
Microfilm, Equipment and Supplies	YES	
Microfilming Services	YES	
Miscellaneous Equipment	YES	
Miscellaneous Services	YES/NO	See Section VI, C.
Modular Furniture Systems	YES	See Section VIII, N. Generally limited to 90% of the retail price.
Modular Office buildings	YES	See Section VIII, N. Limited to 40% of the retail price.
Motion Picture Production	NO	See Section VIII, Z, Video Production Services.
Musical Instruments/Sheet Music	YES	
Office Equipment and Supplies	YES	
Office Equipment, Repair and Services	YES/NO	See Section VIII, U, Repairs.
Packing Materials	YES	Exempt if sold with a product.
Paper Products	YES	
Partitions	YES	See Section VIII, N.
Permit Fees	NO	
Pest Control Services	NO	
Pest Control Supplies	YES	
Petroleum Products	YES	Including related Federal excise tax
Photographic Equipment and Accessories	YES	
Photographic Services	YES/NO	See Section VIII, O.
Plastic Bags, Boxes, and Containers – For Consumption	YES	
Plumbing Services	NO	
Prescription Medicines/Pharmaceutical Services	NO	
Printed Materials - Brochures	YES	See Section VIII, P.
Printed Materials – Copies	YES	
Printed Materials – Charges from Graphic Artists	YES	See comments under Printed Materials – Brochures.
Printing Services and Supplies	YES	
Publishing	NO	See Section VIII, Q.
Publishing – Fees Paid to Designers and Art Directors	YES/NO	See Section VIII, R.
Publishing – Production Functions	YES/NO	See Section VIII, S.
Pumps and Compressors	YES	
Registration Fees	NO	
Rentals/Leases	YES/NO	See Section VIII, T.
Repairs	YES/NO	See Section VIII, U.
Restocking Fees	YES/NO	See Section VIII, V.
Safety Equipment and Supplies	YES	
Secretarial Services/Employment Agency	NO	
Security Services	NO	
Security Systems and Devices	YES	

Description	Tax Status	Comments
Shipping/Freight/Handling	YES/NO	See Section VIII, I
Signs	YES	
Software Licenses – Canned Programs	YES/NO	See Section VIII, E.
Software Licenses – Custom Programs	NO	See Section VIII, E.
Software Licenses – Electronically Transmitted Software	YES/NO	See Section VIII, E.
Software Maintenance/Upgrade Contracts	YES/NO	See Section VIII, W.
Stationary Supplies	YES	
Storage Facility Rental	NO	
Subscriptions	NO	See Section VIII, X.
Surveying Equipment Supplies	YES	
Surveying Services	NO	
Theatrical Equipment and Supplies	YES	
Tools/Hand Tools	YES	
Trade-In Allowance on Tangible Personal Property	YES	See Section VIII, Y.
Trailers/Parts for Trailers	YES	
Transcription Services	NO	
Transcription Services – Copies of Transcripts	YES	
Translation Services	NO	
Travel Agencies	NO	
Typewriters	YES	
Utilities	NO	Applicable taxes are charged by the utility companies.
Vehicles	YES	
Veterinary Equipment and Supplies	YES	
Video Equipment and Accessories	YES	
Video Production Services	NO	See Section VIII, Z.
Video Tapes	YES/NO	No, if for resale.
Warranties	YES/NO	See Section VIII, AA.
Waste Removal Services	NO	
Waste Removal Supplies	YES	
Water Treatment Services	NO	
Welding Equipment and Supplies	YES	
Window Coverings	YES	
Wines and Liquor	YES	
Word Processing Equipment and Supplies	YES	
Word Processing Services	NO	See Section VIII, BB.

VIII. TAXABILITY BY PRODUCT DESCRIPTION - EXPANDED DESCRIPTION

A. Art Work

Photographs, drawings, paintings, hand lettering and other artwork are generally subject to tax. 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.

B. Audio Visual Service

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, are subject to tax.

Motion picture productions are not subject to tax.

C. Calligraphy and Design

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, and therefore not taxable. Hand addressing envelopes may not be taxable if part of an exemption claimed for “printed sales messages.” See section VIII, M.

D. Computer Repair Services Not Under Warranty

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 sale price of the tangible personal property.

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.

E. Computer Software and Peripherals

Computers, printers, and other related hardware are all tangible personal property, the sale of which is subject to tax.

Installation

Reasonable labor or service charges for installation are exempt from tax. Although installation charges are generally exempt, to avoid complications in an audit the charges should be separately stated.

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. If the program is transferred entirely by download or modem, it is exempt from sales tax. If a hard copy, a CD, a written instruction manual or any other tangible property is provided in conjunction with the transfer, the entire price of the program will be subject to tax.

Optional Software Maintenance/Upgrade Contract

If the purchaser is not required by the vendor to obtain a maintenance contract as a condition of the sale of tangible personal property, the maintenance contract is not subject to tax.

Required Software Maintenance/Upgrade Contract

If the purchaser is required by the vendor to purchase a software maintenance contract as a condition of the sale, 50% of the contract is treated as taxable.

F. Discounted Purchases

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.

G. Engineering and Architectural Services – In General

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. A service is not taxable when the transfer of tangible personal property is only incidental to the services rendered.

If the contract calls for phases where the purchaser can terminate the work at any time during a phase without an obligation to purchase tangible personal property, only the phase where tangible personal property will be sold is subject to tax.

H. Fabrication Labor

Fabrication is considered to be work done in creating, producing, or assembling a product. Modifying an item or system as part of a sale is also considered fabrication. Charges for fabrication labor are generally taxable, whether the labor charges are itemized or included in the price of the product. Examples of fabrication labor include:

- Manufacturing a new piece of machinery
- Shooting custom photographs or slides
- Altering a customer's cutting die so that it will produce a new and different item
- Cutting metal or lumber provided by a customer

Fabrication labor charges are not taxable if related to a nontaxable transaction such as a sale for resale.

I. Freight/Shipping/Handling

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 only when;

1. They are separately stated, and
2. The shipment is made directly to the purchaser, and
3. The shipment is made by a common carrier (Postal Service, UPS, freight company)

In the case where shipment is made by means of the retailer, the charges are generally subject to tax.

Handling Charges

Handling charges are not exempt from tax unless charged in conjunction with exempt property.

Lump Sum Charges for Shipping and Handling

Charges for shipping must be separately stated from handling charges to keep the exemption for shipping costs intact. SDSU Research Foundation will accrue use tax on lump sum charges for shipping and handling. However, tax should only be accrued if the property purchased is subject to sales tax.

J. Graphic Design Services

Tax applies to the entire amount charged by commercial artists or designers for items of tangible personal property such as drawings, paintings, designs or sketches transferred to the client, whether or not the property is suitable for display or is useful for actual reproduction by photo-mechanical or other processes. Recent court case (Preston v SBE) exempts purchases of copyright interests or the right to reproduce works of art or photographs.

Preliminary Art

Tax does not apply to charges for **preliminary art**. Preliminary art may be rough visualizations, layouts, and comprehensives, title to which does not pass to the client. Its purpose is generally for 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 by the agency, commercial artists or design to its client. However, tax will apply to charges for preliminary art if it is not required to be prepared before entering into the contract or before obtaining approval of the finished art.

K. Installation Labor

Installation charges are generally exempt from tax whether or not they are 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.

L. Mailing Services

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 clasp 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.

M. Maintenance Agreements (Other than Software Contracts)

Optional Equipment Maintenance Contract

If the purchaser is not required by the vendor to obtain a maintenance contract as a condition of the sale of tangible personal property, the maintenance contract is not subject to tax. (See separate rules for optional software maintenance/upgrade contracts).

Required Equipment Maintenance Contract

If the purchaser is required by the vendor to purchase a maintenance contract as a condition of the sale of tangible personal property, the maintenance contract is subject to tax.

N. Modular Furniture Systems

Tax applies to the entire contract price less reasonable charges for installation. The invoice should separately state the price of installation labor such as labor to fasten panels to the building and labor to fasten fully constructed components to fully constructed panel systems or other components. Charges for fabrication labor, such as labor to attach, connect or fabricate panel systems or components and labor to attach or connect one panel to another to form workstations or cubicles are subject to tax.

If the labor costs are not separately stated, ten percent (10%) of the total contract price, (excluding charges attributable to furniture and other property not attached to panels or realty) will be presumed to be a charge for labor to install the property.

Modular Office Buildings

Tax applies to 40% of the sales price at which factory-built housing or school buildings are sold to a consumer.

O. Photographic Services

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.

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.

P. Printed Materials - Brochure

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 (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 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. SDSU Research Foundation must accrue use tax on these purchases, unless purchased from a California retailer or purchased under a resale certificate, where SDSU Research Foundation intends to resell the brochure.

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), and other binding operations.

Printed Sales Messages

There is an exemption for printed sales messages per regulation 1541.5. Printed sales messages are limited to catalogs, letters, circulars, brochures, and pamphlets printed for the purpose of advertising and promoting goods or services. Sales tax does not apply to the sale or use of printed sales messages that meet all of the following conditions:

- Material advertises a product or service and is printed to the special order of the customer;
- Material is mailed or delivered by the seller, the seller's agent or mailing house acting as the agent for the purchaser, through the U.S. mail or other common carrier; and
- Material is distributed at no cost to third parties that become owners of the printed material.

Q. Publishing

The transfer to a publisher 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.

R. Publishing – Fees Paid to Designers and Art Directors

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. However, photographs, drawings, paintings, hand lettering and other artwork are generally subject to tax

S. Publishing – Production Functions

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 art until after such functions are completed, then such functions are nontaxable.

T. Rentals/Leases

Generally, rentals and leases 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 tax was paid on the purchase price, no use tax is due on the rental receipts. This should be clearly stated on the invoice.

If the owner/lessor did not pay sales tax on the property, it is the responsibility of SDSU Research Foundation to accrue use tax on the rental/lease of that property.

U. Repairs

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

- 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 of labor. If a segregation is not made, the Board of Equalization will estimate the retail value of the parts and materials during an audit.

Generally, the repairperson will be located in California. SDSU Research Foundation does not need to accrue taxes for purchases from California retailers, even when the transaction is taxable, unless SDSU Research Foundation issues a resale certificate to the retailer.

- 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. SDSURF is not required to accrue or pay any taxes for these purchases.

V. Restocking Fees

When restocking fees exceed the average cost of restocking and returning items to inventory, the credit for returns from customers is disallowed and the entire charge becomes taxable. However, this penalty is imposed on the retailer and not the consumer. SDSU Research Foundation will not accrue tax on restocking fees.

W. Software Maintenance/Upgrade Contracts

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.

Optional maintenance contracts are taxable as follows:

- If no personal property whatsoever is transferred to the customer during the period of the maintenance contract, tax does not apply to any portion of the maintenance 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 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.

X. Subscriptions

Tax does not apply to the subscription of a periodical, including a newspaper, which appears, at least four, but not more than 60 times a year. The periodical must be sold by subscription and delivered by mail or common carrier.

Y. Trade-In Allowances

Trade-In allowances on 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.

Z. Video Production Services

Tax does 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 education 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.

AA. Warranties

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

Mandatory Warranty

Warranties that must 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”. As a result, mandatory warranties when sold in connection with tangible personal property are **subject to sales tax**.

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 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.

BB. Word Processing Services

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 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.

IX. CONCLUSION

California sales and use tax laws can be quite daunting. The material presented in this guide is offered as a general discussion of the most frequent types of transactions processed through SDSU Research Foundation. If your specific question(s) has not been answered, you may contact Nancy Monaghan, Payment Services Manager for clarification at (619) 594-1074 or nmonaghan@foundation.sdsu.edu.