

EXEMPTION CERTIFICATE AND STATEMENT OF DELIVERY IN INDIAN COUNTRY

NOTE TO SELLER AND PURCHASER

Sales tax does not apply when a retailer transfers ownership of merchandise (tangible personal property), including a vehicle, vessel, or aircraft to an Indian purchaser in Indian country, provided the Indian lives in Indian country. The Indian purchaser is not required to live on the specific reservation where ownership transfers.

Retailers located outside Indian country may sell to Indian purchasers who request delivery in Indian country. For a sale to qualify as a transfer of title (ownership) in Indian country, both of the following conditions must be met:

- The contract of sale or other sales agreement cannot transfer ownership of the item to the purchaser before it is delivered in Indian country; and
- The purchaser or purchaser’s agent cannot take possession of the item before delivery in Indian country.

In addition, the retailer generally must deliver the product by:

- Using the retailer’s vehicle or other facilities of the retailer; or
- By mail, common carrier (UPS, FedEx, etc.), or contract carrier (a shipping, trucking, or transport company), when both of the following requirements are met:
 - o The contract of sale or sales invoice must include a statement specifically requiring delivery in Indian country (for example, F.O.B. name of Indian reservation); and
 - o The goods are in fact delivered to the purchaser in Indian country.

When delivery does not take place as described above, ownership of the item being sold or purchased generally transfers to the purchaser outside Indian country. *Please note:* This is a general description of transfers of ownership in Indian country. Specific rules may apply to certain types of sales and leases.

This document may be used to document that the sale was to an Indian purchaser residing in Indian country and/or to document that delivery occurred in Indian country. The section labeled “Exemption Certificate” may be used to document that the property was sold to an Indian purchaser residing in Indian country. Completion of this section in full by an Indian purchaser will provide the retailer with sufficient documentation that the property was sold to an Indian residing in Indian country. Additional documentation showing transfer of ownership and delivery of the property to the Indian purchaser in Indian country must also be obtained. If the property is delivered by facilities of the retailer, proper completion of the Statement of Delivery and Notary Statement may serve as documentation that transfer of ownership and delivery of the property to an Indian purchaser occurred in Indian country. If the property is delivered via common carrier or contract carrier, completion of the Statement of Delivery and Notary Statement is not required. Instead, the retailer should retain a bill of lading or other documents showing delivery in Indian country along with a contract of sale or other sales agreement specifically showing title passing to the Indian purchaser in Indian country.

For California sales and use tax purposes, an “Indian” is a person who is both of the following:

- An individual of American Indian descent, and
- Eligible to receive services as an Indian from the United States Department of the Interior.

EXEMPTION CERTIFICATE

(to be completed by purchaser)

When accepted in good faith, this exemption certificate may be used for the purchase of a vehicle, vessel, aircraft, or other tangible personal property. Please provide a complete description of the property purchased. If the property is a vehicle, vessel, or aircraft, please provide the year, make, model and identification number of the vehicle, vessel, or aircraft in addition to a description of the property purchased. If you intend to use this certificate as a blanket exemption certificate to cover multiple transactions, please indicate this by including “all tangible personal property” in the description of the property purchased field below. The use of a blanket exemption certificate for multiple transactions will require proof of delivery of the property in Indian country for each transaction.

I hereby certify that the property described below is being purchased for use in Indian country and I am:

- An Indian residing in Indian country; or An Indian organization in Indian country.

DESCRIPTION OF PROPERTY PURCHASED

YEAR	MAKE	MODEL	VIN/LIC NUMBER	
NAME OF PURCHASER <i>(please print)</i>		DRIVER LICENSE NUMBER OR OTHER STATE ID	DAYTIME TELEPHONE NUMBER	
STREET ADDRESS		CITY	STATE	ZIP CODE
PURCHASER'S SIGNATURE			DATE	

NOTICE TO PURCHASER

Use tax is due when the Indian purchaser who lives in Indian country does both of the following:

- Takes ownership and delivery of an item in Indian country; and
- Uses the item outside Indian country more than one-half of the time in the first 12 months after the sale.

If use tax applies, you must pay it directly to the Board of Equalization (BOE).

- A reservation, including rights-of-way and easements running through a reservation;
- A rancheria; and
- Any land held by the United States in trust for any Indian tribe or Indian individual (also known as “trust land”).

Please note: Not all portions of a facility housing an Indian gaming establishment may be located in Indian country. For example, some portions of a facility containing a gaming establishment (like a parking lot) may be located on land adjacent to Indian country. Transactions occurring on land adjacent to Indian country, may not meet the exemption requirements.

Exemption certificate

The Sales and Use Tax Law presumes that all gross receipts are subject to tax until the contrary is established. This presumption may be overcome by the seller timely obtaining an exemption certificate from the purchaser.

An exemption certificate is any written document that includes the following:

- Date;
- Signature of the purchaser, purchaser’s agent, or the purchaser’s employee;
- Name and address of the purchaser;
- 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;
- Description of the property purchased under the certificate; and
- Statement of the manner in which or the purpose for which the property will be used so as to make the sales and/or use tax inapplicable to the sale.

Please see Documenting Exempt Transactions for more information regarding documenting exempt transactions. Additionally, **sample exemption certificates** are contained at the end of this publication.

Sales tax and use tax: what’s the difference?

Sales tax

California sales tax generally applies to the retail sale in California of tangible personal property (for example, physical items) such as goods, merchandise, vehicles, vessels, aircraft, and other physical products. Sales are taxable unless they are specifically exempt or excluded by law. As noted in the Preface there is no general exemption from the sales tax for sales to Indians.

If you make retail sales of tangible personal property in this state, you are required to hold a California seller’s permit. This is true even when most or all of your sales are not taxable, or qualify as exempt. (*Exception:* You are not required to hold a seller’s permit if all of your sales are made exclusively in interstate or foreign commerce or if you are an Indian retailer making sales only in Indian country.) For more information, see publication 107, *Do You Need a California Seller’s Permit?*

Use tax

California use tax generally applies to the storage, use, or other consumption of tangible personal property in California. California use tax is a companion to the sales tax. Persons or businesses generally owe use tax when they use, store, give away, or consume physical products in California if they did not pay California sales tax on their purchase. Use tax generally applies to untaxed purchases made from out-of-state sellers. It may also apply to certain untaxed purchases made in Indian country. The use tax rate for a California location is the same as the sales tax rate.

Retailers who are required to collect use tax, but not pay sales tax, are required to hold a Certificate of Registration—Use Tax. You can apply online for a permit or license using eRegistration (eReg) available on our website at www.boe.ca.gov. eReg is also available in our field offices. Please contact our Taxpayer Information Section for assistance at 800-400-7115.

Claimed exempt sales to Indians require documentation

Retailers

When you make an exempt sale to an Indian purchaser as explained previously in this publication, you should keep copies of documents that BOE auditors can use to verify your sale is exempt. This generally requires documentation that you transferred title to the property in Indian country and that the sale of the property was to an Indian purchaser. For example, you may obtain documentation such as the following:

- One or more documents that show the purchaser is an Indian, such as a copy of the purchaser's tribal ID card, a letter from a tribal council, or a letter from the U.S. Department of the Interior.
- Documents to show that ownership of the merchandise transferred to the buyer in Indian country and delivery occurred there, such as contracts of sale, invoices, bills of lading, delivery receipts, and freight invoices.

To help you document exempt sales you may obtain an exemption certificate from the Indian purchaser. As discussed in more detail below, the exemption certificate should state that the Indian purchaser lives in Indian country. The exemption certificate will serve as support that the property was sold to an Indian. Therefore, if you obtain an exemption certificate, you will not need to obtain any additional documentation showing the purchaser is an Indian such as a tribal ID card. You will still need to retain documentation showing transfer of title and delivery of the property to the Indian in Indian country.

The BOE-146-RES, *Statement of Delivery in Indian Country*, is available at the end of this publication. The BOE-146-RES contains all of the required elements of an exemption certificate. Additionally, it contains a section that may be completed by a notary public to document delivery of the property in Indian country. A notarized BOE-146-RES may be used to document delivery of the property when delivery is made by facilities of the retailer. The retailer is not required to obtain a notarized statement of delivery, but the retailer is required to obtain documentation demonstrating the property was delivered to the Indian purchaser in Indian country. If you obtain a properly completed and notarized BOE-146-RES, you do not need to obtain any additional documentation showing the property was delivered directly to the purchaser in Indian country. If the property is delivered by a common carrier or contract carrier, freight invoices or bills of lading will generally qualify as sufficient documentation of delivery to the Indian purchaser in Indian country.

If a state-licensed notary public is not readily available to document delivery of the property by facilities of the retailer in Indian country, please note that certification of delivery in Indian country by tribal council officers or their authorized representatives is also acceptable to document delivery of the property in Indian country.

Purchasers

If you are an Indian who lives in Indian country, you will need to provide documentation to the retailer that you qualify for the tax exemptions explained in this publication. Generally, you will need to provide the retailer with a signed exemption certificate stating that you live in Indian country. In lieu of providing the retailer with an exemption certificate, you may provide the retailer with documentation showing you are an Indian, such as a tribal ID card, a letter from your tribal council, or a letter from the U.S. Department of the Interior, and documentation that you reside in Indian country.

If you are an Indian organization, you must also provide documents to prove that you qualify for the tax exemptions explained in this publication. For example:

- If your organization is a partnership, you should provide the retailer with documents that show all of your partners are Indians, such as partnership agreements.
- Documents showing that your organization is an Indian tribe or tribal organization.
- If your organization is a corporation, you should provide the retailer with documents that show it is organized under tribal authority and wholly owned by Indians, such as the organization's articles of incorporation.
- An "exemption certificate" containing certain other required content (see next section).