

410.0900

## Memorandum

To : Mr. Dennis Fox, Supervisor  
Audit Evaluation and Planning Section

Date: June 22, 1995

From : Kelly W. Ching  
Staff Counsel

Telephone: (916) 322-2976  
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Subject: Business and Professions Code Section 16102

This is in response to your memorandum dated March 29, 1995 in which you ask whether Business and Professions Code section 16102 provides an exemption from sales or use taxes. You state:

“An unregistered seller in Hayfork (Trinity County) was investigated by our Redding Branch Office and cited this section as the reason why she is not required to hold a seller’s permit nor charge/collect sales tax.”

Business and Professions Code section 16102, the “veteran’s exemption,” provides:

“Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.”

This section has been interpreted to apply to business license fees only. As Staff Counsel Donald Fillman explained in his July 20, 1994 memorandum to District Principal Compliance Supervisor Richard Martin, some confusion may exist because a comma appears between the words “license” and “tax.” If the comma were removed, the section would read “without payment of any license tax or fee,” and it would be clear that the words “tax” and “fee” both modify the word “license.”

In a court case concerning the interpretation of section 16102, the California Court of Appeal held that the comma between the words “license” and “tax” was insignificant. (Brooks v. County of Santa Clara (1987) 191 Cal. App.3d 750, 756.) The court noted that there was no comma in the phrase in the 1901 enactment, and it assumed that insertion of the comma in section 4041.14 (which was a predecessor to section 16102) was inadvertent. Id.

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The veteran's exemption set forth in section 16102 applies only to business license fees and other business license charges; its application does not extend to state sales taxes. If the taxpayer is required to hold a seller's permit as provided in Revenue and Taxation Code section 6066, the "veteran's exemption" provided in section 16102 of the Business and Professions Code does not exempt her from that requirement. Since there is no fee for a seller's permit, section 16102 is not relevant to the issuance of a seller's permit to a veteran.

If you have further questions, please feel free to write again.

KWC:cl

cc: Santa Rosa District Administrator