VIA INTERNET

July 12, 2022

Dear Interested Party:

The Audit Manual (AM) is a guide for the California Department of Tax and Fee Administration (CDTFA) in administering tax and fee programs. It is available to the public and can be accessed from the CDTFA web page at [https://cdtfa.ca.gov/taxes-and-fees/staxmanuals.htm](https://cdtfa.ca.gov/taxes-and-fees/staxmanuals.htm).

The Business Tax and Fee Division is proposing to revise AM Chapter 5, section 0509.00 which covers evasion penalties, the 40-percent Unremitted Tax Collected penalty and cases involving multiple penalties.

Because of the size of chapter 5, it is being split into four separate sections.

The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed AM revisions, you may contact the CDTFA at [BTFD-BTCT-AM.RevisionSuggestions@cdtfa.ca.gov](mailto:BTFD-BTCT-AM.RevisionSuggestions@cdtfa.ca.gov). Your comments or suggestions must be received by the CDTFA no later than **August 12, 2022** in order to be considered. Thank you for your consideration.

Sincerely,

Aimee Olhiser
Tax Policy Bureau Chief
Business Tax and Fee Division
cc: (via email)
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Ms. Cinnamon Tolan (MIC 47)
FOD-Admin
FOD-Audit Principals
FOD-Compliance Principals
FOD-Mgrs & Sups
BTFD-Mgrs & Sups
EVASION PENALTIES 0509.00

GENERAL 0509.05

In general, penalties for fraud or intent to evade are imposed only in connection with deficiency determinations made by the CDTFA. It is important to remember that the CDTFA has the burden of supporting the imposition of an evasion penalty.

The RTC Sales and Use Tax Law sections that impose evasion penalties are as follows: listed below. See sections 0501.22 and 0501.23 for evasion penalties applicable to special tax and fee laws.

a. RTC sections 6072 and 6094.5 — misuse of resale certificate to evade tax, 10 percent or $500 whichever is greater, for each transaction, 10 percent of the tax due or $500, whichever is greater.

b. RTC section 6485 — fraud or intent to evade tax, 25 percent of determination.

c. RTC sections 6485.1 and 6514.1 — registration of a vehicle, vessel, or aircraft outside of this state for the purpose of evading tax, 50 percent of tax due.

d. RTC section 6514 — fraud or intent to evade tax by failure to file return, 25 percent of tax, in addition to the mandatory RTC section 6511 failure to file penalty of 10 percent.

e. RTC section 6597 — failure to remit sales tax reimbursement or use tax collected, 40 percent of amounts representing sales tax reimbursement or use tax collected and not timely remitted to the CDTFA.

f. RTC section 7155 — failure to obtain valid permit by due date of first return for the purpose of evading tax, 50 percent of tax due before permit obtained, a valid permit prior to the date on which the first tax return is due, for the purpose of evading tax, 50 percent of tax due before a permit is obtained.

g. RTC section 6423(c) - Exemption certificate; Federal excise tax on diesel fuel, for purchases made for personal gain or to evade payment of taxes, a penalty of 10 percent of the tax or five hundred dollars ($500), whichever is greater.

f.h. RTC section 6480.9(f) - Prepayment exemption, diesel fuel resold for agricultural purposes, each certificate issued for personal gain or to evade the payment of taxes, a penalty of one thousand dollars ($1,000).

DEFINITION OF EVASION PENALTIES 0509.10

Fraud may be defined as conduct intended to deprive the state of tax legally due. Intent to evade may be defined as intent to escape the payment of tax through deception or misrepresentation. Although there may be a legal distinction between fraud and intent to evade, the terms will be considered synonymous in this manual, and penalties imposed as a result of such acts will be referred to as evasion penalties.

EVASION VS. NEGLIGENCE PENALTIES 0509.15

Evasion is a step beyond negligence. When negligence penalties are recommended, the facts should indicate that the taxpayer failed to exercise due care in keeping records or preparing returns, or intentionally ignored certain duties or requirements. The evasion penalties are to be applied if it can be shown that the taxpayer not only failed to fulfill certain duties, but such failure was intentional and for the purpose of evading part or all of the true tax liability.
BURDEN OF PROOF

As a matter of law, fraud is never presumed but must be proven and the burden of proof is on the CDTFA. However, the standard of proof is not beyond a reasonable doubt, as in a criminal prosecution. (See Helvering v. Mitchell (1938) 303 U.S. 391). Instead, the standard of proof in civil tax fraud cases is “clear and convincing evidence” (In re Renovizor’s Inc. v. BOE (9th Cir. 2002) 282 F.3d 1233). “Clear and convincing evidence” requires evidence so clear as to leave no substantial doubt as to the truth of an assertion of fraud. That is, there is a high probability that the assertion of fraud is true.

A taxpayer’s intent to evade the tax is the key element to proving fraud. The mere fact that a taxpayer has a substantial tax liability does not, in and of itself, prove intent. Rather the evidence must support intent. For example, a consistent pattern of underreporting may indicate evasion, particularly if there is no other explanation for the understatement. However, additional evidence (e.g., falsified records) must be provided to support fraud-intent to evade when the underreporting is random. In all cases where a fraud penalty is recommended, the administrator must submit evidence of a substantial nature that the taxpayer knowingly committed specific acts with the intention of defrauding the State of tax which was legally due. (See AM section 0509.750509.40.)

CONDITIONS WARRANTING AN EVASION PENALTY

Before an evasion penalty can be imposed, there must be clear and convincing evidence that an existing tax deficiency is the result of a deliberate intent to evade the payment of tax. Where there is a substantial deficiency, which cannot be explained satisfactorily as being due to an honest mistake or to negligence and where the only reasonable explanation is a willful attempt to evade the payment of tax, the 25 percent evasion penalty should apply. The size of the deficiency in relation to the tax reported should be considered. The probability that a deficiency is due to intent to evade increases as the ratio of understatement as the ratio of understatement increases, when it cannot otherwise be satisfactorily explained.

EVIDENCE OF EVASION

It is very difficult to secure direct evidence that a taxpayer intended to evade a tax liability. In most cases, it is necessary to rely on circumstantial evidence. Certain facts or actions are, by nature, evidence of a deliberate attempt to evade the payment of tax and that an evasion penalty is warranted. Such facts or actions include, but are not limited to:

- Falsified records, especially when more than one set of records is maintained.
- Substantial discrepancies between recorded amounts and reported amounts which cannot be explained.
- Willful disregard of specific advice as to applicability of tax to certain transactions.
- Failure to follow the requirements of the law, knowledge of which requirements is evidenced by permits or licenses held by taxpayer in prior periods.
- Tax or tax reimbursement properly charged, evidencing knowledge of the requirements of the law, but not reported.
- Transferring accumulated unreported tax from a tax accrual account to another income account.
Under the “clear and convincing” standard, any assertion of intent to evade the tax must be supported by as many of the above indicators as possible. These indicators of evasion must be documented. In addition to the findings of substantial discrepancies and proper charging of tax or tax reimbursement, other evidence of evasion must be included in the audit working papers. Such evidence can include copies of falsified records, CDTFA letters providing specific advice, copies of previous permits and applications, and evidence of improper transfers of unreported tax. A summary of the evidence must be provided in the audit working papers. The summary must reference the schedules providing the evidence of evasion and must provide an explanation of how the evidence supports the recommendation for an evasion penalty.

**AMOUNT TO WHICH PENALTY APPLIES**

0509.45 0509.35

The evasion penalties under RTC sections 6485 and 6514, and similar special tax and fee law sections, are imposed if any part of the deficiency is due to fraud or intent to evade. Therefore, the penalty will apply to the **entire amount of the deficiency, for which the deficiency is determined, except in unusual cases.** In unusual cases it may be inequitable to apply the penalty to the entire deficiency. For example, a change in management during an audit period may have resulted in the discontinuance of fraudulent practices, or the reverse. In such cases, two sets of Form CDTFA–414–A or Form CDTFA–414–B should be submitted, one includes the penalty and the other without the penalty, accompanied by a **full statement of the circumstances involved.** Headquarters will make two determinations accordingly the system allows for flexibility for the application of a fraud penalty to apply to only a portion of the audit period and not others.

If an evasion penalty is applied to only a portion of the audit period, an evasion penalty memo is still required. It should include not only an explanation of why the evasion penalty was applied to certain portions of the audit period, but it should also address the reason(s) the evasion penalty was not applied to other portions of the audit period. Note that, if a negligence penalty is also applicable to a portion of the audit deficiency, because the system does not allow a fraud penalty and a negligence penalty to be included in the same audit period (audit case), two audit cases must be completed, resulting in two Notices of Determination being sent to the taxpayer. Generally, this will result in an audit and a Field Billing Order.

Except for the penalties imposed under RTC sections 6485 and 6514, and similar special tax and fee law sections, evasion penalties should be applied only to the portion of the deficiency which was the result of the act or acts that constituted evasion.

**MEMORANDUM FOR APPROVAL OF EVASION PENALTIES**

0509.75 0509.40

When an audit recommends an evasion penalty, a memorandum is required from the Administrator to the Chief, Headquarters Operations Bureau, Deputy Director, Field Operations Division (FOD), for sales and use tax, and the Chief, Audit and Carrier Bureau (ACB), for special taxes and fees. Upon the approval of the Administrator or someone acting on his or her behalf, and after the completion of the audit review, the memorandum—sent electronically to the Chief, Headquarters Operations Bureau—review of the audit, the memorandum is sent electronically to the Deputy Director, FOD or Chief, ACB for approval. or Audit and Carrier Bureau for approval. See AM section 0213.12 for instructions on electronically submitting memorandums and audits recommending evasion penalties. This information is also available on the Headquarters Operations Bureau iCDTFA page under “Approve Fraud Penalty Requests”. A copy of the respective memorandum is also sent to the Deputy Director, Field Operations Division or the Deputy Director, Business Tax and Fee Division. The taxpayer **may not** be furnished a copy of the memorandum until the Chief, Headquarters Operations Bureau, or the Chief, Audit and Carrier Bureau The **taxpayer must not** be furnished a copy of the memorandum until the appropriate authority has approved the evasion penalty.
The memorandum must clearly state the evidence which supports the taxpayer's intent to evade the payment of tax and must identify the elements or indicators of fraud applicable to the specific case. Any confidential evidence that is not included in the audit working papers must be attached to the memorandum. The memorandum must explain why the evasion penalty is appropriate versus the negligence penalty, and how the taxpayer benefited from the evasion. It must not include lengthy comments or comments that are already part of the audit verification comments. If the quarterly reconciliation of the audited and reported amounts supports the recommendation of the evasion penalty, such information should be summarized and not be shown on a quarterly basis. If an audit includes related taxpayer accounts, a separate memorandum must be prepared for each taxpayer for whom the auditor recommends an evasion penalty.

In addition, auditors should consider the following elements when preparing a memorandum recommending an evasion penalty:

The memorandum:

- Should stand alone and include all relevant information for the penalty recommendation. Attach any information, audit schedules, or other documentation (such as letters, emails, or statements) that are referenced in the memorandum.

- Should include the phrase “clear and convincing evidence” when explaining the reason for the evasion penalty recommendation.

- Must specifically describe the evidence staff believe is clear and convincing evidence of the taxpayer’s intent to evade the taxes due.

- Should include a discussion of why the evasion penalty instead of the negligence penalty is appropriate.

- Should include tables, reconciliations, charts, etc., that support the evasion penalty recommendation as these may provide good visual guides to the errors and discrepancies.

Use the term “evade” or “intent to evade” rather than fraud, when possible.

Following are suggested headings and examples of relevant information to include in memorandums recommending an evasion penalty. These suggestions are meant to provide guidance and may be used as an instructional tool. Staff may modify the headings and add any additional information, as needed.

**Introduction** (example of an opening paragraph):

*We recommend application of the 25% penalty per RTC section 6485, for Taxpayer, during the period xx/xx/xx to yy/yy/yy. We believe the evidence described below establishes by clear and convincing evidence that the tax deficiency is the result of a deliberate intent to evade the payment of tax.*

If multiple penalties are recommended, separately list all penalties and the applicable periods. If the penalties have specific requirements, in addition to clear and convincing evidence of an intent to evade the tax, such as the 40% penalty, the opening paragraph should also address those requirements.

**Business Operations**

Summarize the business operations, hours of operations, and any other relevant information.

**Audit Investigation**

Summarize the taxpayer’s recording and reporting method, types of books and records provided,
the audit methodology, and the results of the audit investigation.

Describe the taxpayer’s involvement in the business, for example, if the taxpayer was involved in the day-to-day business operations, placed orders, purchased inventory, paid vendors, recorded transactions, or prepared the sales and use tax returns, etc. Describe the taxpayer’s knowledge of the law and/or reporting requirements; such as, the length of time the taxpayer has been in business, prior permits, prior audits (with or without similar errors), letters to and from the CDTFA, the system documentation of communications with the taxpayer, questionnaires or statements from the taxpayer or others involved with the business, such as employees, bookkeepers, and accountants, and CDTFA publications or other information previously provided to the taxpayer.

**Evidence Supporting Fraud**

The memorandum must clearly describe all the evidence from the audit investigation that supports the taxpayer’s intent to evade the payment of tax (see AM section 0509.10 for the definition of fraud). The evidence should include any direct evidence of fraud and/or circumstantial evidence that indicates a deliberate attempt to evade the payment of tax. In most cases, it will be necessary to rely primarily on circumstantial evidence to show that the taxpayer’s failure to pay was a deliberate attempt to evade the payment of tax. Evidence that may establish the taxpayer’s failure to follow the law was done with the intent to evade the tax may include, but is not limited to:

- Falsified records and/or more than one set of records.
- Substantial and pervasive underreporting.
- Failure to pay substantial tax reimbursement collected from customers.
- Improbable or inconsistent explanations for the underreporting.
- Misrepresentations or other efforts to conceal the correct tax liability.
- Use of multiple bank accounts to conceal income.
- Evidence of improper transfers of unreported tax reimbursement.

Any assertion of an intent to evade the tax must be supported by as many of the above indicators as possible. Any indicator of evasion must be documented to the extent possible. Findings of substantial discrepancies and proper charging of tax or tax reimbursement are generally not, in and of themselves, enough to establish an intent to evade. Other evidence of a taxpayers’ intent to evade the tax must be included in the memorandum.

Intent to evade must generally be established by evidence that the taxpayer knew that the taxes at issue were due and that the taxpayer’s failure to pay was deliberate and for the purpose of evading the tax (as opposed to the only reason being a lack of funds). Evidence that may be used to establish knowledge of the law includes, but is not limited to:

- Taxpayer’s length of time in business.
- Taxpayer’s prior operation of other, similar businesses as evidenced by prior permits held by the taxpayer.
- Prior audits, letters, or other written advice received from the CDTFA.
- Taxpayer’s personal involvement in the day-to-day operation of the business, including but not limited to, the preparation of returns.
- Accurate calculation of tax on taxable sales, including charging the correct amount of district taxes.
• Otherwise accurate recordkeeping of sales.
• Accurate reporting of sales on returns filed with other agencies, such as income tax returns.
• Prior statements by the taxpayer or other employees regarding knowledge of the applicable tax laws.
• Evidence of communications with accountants or bookkeepers regarding the correct reporting of taxable sales.

Always ask the taxpayer for an explanation of the errors/discrepancies that led to the recommendation of the evasion penalty and include the taxpayer’s explanation in the memorandum. As explained above, an improbable or inconsistent explanation may be evidence of the taxpayer’s intent to evade the tax. If the taxpayer has no explanation for the errors, document this in the memorandum, as well.

The memorandum should always include an explanation of how the taxpayer benefited by evading the payment of tax. For example, by not reporting all recorded taxable sales, the taxpayer has benefited monetarily by retaining the tax collected from their customers. Or, by evading the payment of tax, the taxpayer was operating at a competitive advantage over others in the same business.

Include any tables, reconciliation, charts, etc., in the memorandum that support the penalty recommendation. Attach copies of all documents that are referenced in the memorandum. Documentation that may support an evasion penalty include audit schedules, copies of falsified records, prior audit reports, CDTFA letters or other publications providing specific advice, copies of previous permits and applications, evidence of improper transfers of unreported tax, and letters or notes between the taxpayer and its employees or agents.

Summary and Recommendation

Summarize why the evasion penalty is recommended and include a discussion of why the imposition of the evasion penalty is appropriate instead of a negligence penalty.

For example, prior business experience and/or otherwise accurate recordkeeping, combined with substantial, repeated, and unexplained error rates and/or understatements, improbable and/or inconsistent explanations, falsified records, etc., all are evidence of an attempt to evade that is not merely the result of negligence.

The following provides an example of a concluding paragraph:

The taxpayer was aware of the laws regarding the proper reporting of taxable sales as evidenced by his/her prior business experience, advice received in prior audits, and otherwise accurate recordkeeping of sales, including the correct calculation of tax on taxable sales. Despite this knowledge, the taxpayer had consistent and material underreporting of taxable sales throughout the reporting period. The taxpayer failed to report substantial amounts of tax reimbursement collected on taxable sales. In addition, the taxpayer was personally responsible for the preparation of the sales and use tax returns and provided inconsistent and improbable explanations for the underreporting. The foregoing is evidence that the taxpayer’s underreporting cannot reasonably be concluded to have been an act of mere negligence. The foregoing establishes by clear and convincing evidence that taxpayer failed to report the taxes due with the intent to evade tax and therefore the conduct is not merely negligent, but fraudulent.

In those cases where criminal tax evasion is suspected and potential prosecution is contemplated, the case should be referred to the Investigations Division Section through the Deputy Director, Field Operations Division or the Deputy Director, Business Tax and Fee Division. Criminal prosecution
comments should be made only on the copy to the appropriate Deputy Director.

**STATUTE OF LIMITATIONS FOR EVASION PENALTIES**

The application of evasion penalties can extend determinations beyond the three or eight-year statute of limitations set forth in RTC section 6487, and similar special tax and fee law sections, or ten-year statute of limitations set forth in RTC section 7073 (d). Therefore, tax can be assessed and penalties imposed for prior periods in which the taxpayer intentionally understated the tax liability. However, proof that the taxpayer intentionally understated the tax liability, within the otherwise applicable statute of limitations (three, eight or ten years), is not by itself sufficient to support an evasion penalty for periods outside the statutory period. Ideally, evasion should not be asserted for periods outside the applicable statutory period (three, eight or ten years), unless records for the expired periods are available, and such records establish an actual tax liability and support the assertion of fraud.

Where evasion was not disclosed in the audits of prior periods but discovered in a subsequent audit, the prior periods will be included in the subsequent audit if the following conditions are met:

- Evasion was present during the periods previously audited, and
- Such evasion was not discovered during the prior audits because information necessary to its detection was concealed from the auditors who made the previous audit(s) or because of some other act(s) or fraud by the taxpayer.

**EVASION BY AGENT, PARTNER OR EMPLOYEE**

Auditors should recommend the RTC section 6485, section 25 percent penalty when a taxpayer’s agent, partner, or employee has acted with intent to evade tax payment, even though the attempted evasion occurred without the taxpayer’s knowledge or consent. This is because the fraud of the agent is imputed to the principal, except when the principal taxpayer is defrauded by the agent or employee. For example, when tax has been understated to cover up money or property stolen from the taxpayer, such an evasion will not be imputed to the taxpayer and the penalty should not apply. Generally, if a taxpayer has not benefited from the intent to evade, the evasion penalty should not apply.

**KNOWINGLY OPERATING WITHOUT A PERMIT**

Sellers engaged in business at more than one location must hold a permit for each location, or a subpermit for each location under a consolidated account.

RTC section 7155 imposes a 50 percent penalty of the tax due when a person engaged in business in this state as a seller, for the purpose of evading the payment of tax, knowingly fails to obtain a seller’s permit. This penalty may be assessed when all of the following factors are present:

- The taxpayer was engaged in business in this state as a seller.
- The taxpayer did not obtain a permit prior to the date the first tax return was due.
- The taxpayer, while operating without a permit, knew a permit was required.
- The average measure of tax liability during the period in which the taxpayer operated without a permit was more than $1,000 per month.

In addition, the Section 7155 penalty may apply when a person is engaged in business at more than one location but knowingly fails to obtain a permit or subpermit for each location, hold a valid permit for each location.
MISUSE OF A RESALE CERTIFICATE

RTC section 6072 imposes a penalty of 10 percent or $500, whichever is greater, for each transaction when a purchaser, for personal gain or to evade the payment of tax, knowingly issues a resale certificate while the person is not actively engaged in business as a seller. RTC section 6094.5 imposes the same penalty when the purchaser knowingly issues a resale certificate for personal gain or to evade the payment of tax, for the property which the purchaser knows at the time of the purchase will not be resold in the regular course of business. The normal statute periods apply to RTC section 6094.5 penalty – three years for taxpayers who have permits and file returns; eight years for taxpayers who do not file returns; ten years for eligible amnesty reporting periods (RTC section 7073 (d)). a reporting period for which the taxpayer filed a return and eight years for a reporting period for which the taxpayer did not file a return. The misuse of a resale certificate penalty generally applies in the following situations:

- The purchaser, who does not hold a seller’s permit, issues a resale certificate with an erroneous seller’s permit number or gives the valid number of a permit held by another person, or
- The purchaser’s permit was closed out prior to the date of purchase, or
- The purchase, regardless of amount, is one of a series of purchases which were not intended to be resold by the taxpayer in the regular course of business, or
- The purchaser knowingly issued a resale certificate for personal gain or to evade the payment of the tax. In these cases, the penalty should normally be applied regardless of the amount of the purchase and whether or not the purchase is one of a series of intentional misuses of the purchaser’s seller’s permit privileges, or
- The purchaser has been advised either through prior audit(s) or other contact with CDTFA staff on the proper use of resale certificates and/or the application of tax to purchases made for their own use.

The penalty generally does not apply in the following situations:

- The dollar amount of the purchase is very small, the purchase does not appear to be one of a series of intentional misuses of the seller’s permit privileges by the purchaser, and there is no indication that the purchaser has knowingly issued a resale certificate for personal gain or to evade the payment of the tax, or
- The purchaser has purchased business supplies or similar items and it appears to be due to a misunderstanding of the law rather than an intentional misuse, or
- The item purchased has been reported on the purchaser's sales and use tax return(s).

It is the act of misusing a resale certificate, without regard to the amount, which warrants the imposition of the misuse of a resale certificate penalty. Therefore, the penalty applies in those instances where there is a pattern of intentional misuse by the purchaser, even though the amounts involved may be small. However, if the facts in question do not clearly support a finding that a resale certificate has been misused, then the penalty for misuse of a resale certificate does not apply.

In those instances where a number of small purchases from the same vendor are noted, a single, rather than multiple, penalty of $500 or 10 percent (whichever is greater) generally applies unless the purchaser has been previously advised of the consequences of misusing a resale certificate.

If the misuse involves large amounts with the intent of evading the tax, the 25 percent fraud penalty under RTC section 6485 for intent to evade the tax should be considered, if the evidence exists to support the imposition of the penalty.
Multiple $500 penalties may be warranted in cases where there is an established pattern of misuse of resale certificates for material amounts with multiple vendors.

Exhibit 1 is a sample letter to be issued to a purchaser who is purchasing tangible personal property that is unusual for the type of business the purchaser is engaged in. If we are not requesting that the purchaser provide support for a specific transaction, we should make our intent clear. As this letter is addressed to purchasers whom we suspect may be misusing a resale certificate, the tone must be explanatory.

Exhibit 2 is a sample letter that may be sent to purchasers when we have enough information to impose the misuse of a resale certificate penalty.

Investigations and Audits

Leads regarding suspected misuses of resale certificates are to be treated as priority assignments. An auditor should investigate the purchaser to determine whether a misuse of a resale certificate has occurred. In those instances where the purchaser states that the merchandise was resold, the auditor must verify this statement by tracing the sale(s) to the taxpayer’s sales invoice(s), sales journals, general ledgers, sales tax returns, and/or other related books and records.

If the taxpayer states, or the auditor’s examination discloses, that the merchandise was not resold, the auditor must expand the examination of the purchasers’ records to determine whether other misuses have occurred. If misuse of a resale certificate is confirmed, and the person is engaged in business, consideration should also be given to performing an audit of sales activity to ensure that all sales have been properly reported and exemptions properly claimed. Staff should close out accounts when the purchaser is not required to hold a permit.

The Administrator will be responsible for approving recommendations to impose the misuse of a resale certificate penalty and whether or not prosecution should be sought. In every instance where the RTC section 6072 or 6094.5 penalty is recommended, Form CDTFA-414-A or Form CDTFA-414-B must be accompanied by a memorandum signed by the Administrator, addressed to the Chief, Deputy Director, POD or BTFD ACB Chief, as appropriate, Headquarters Operations Bureau (see AM section 0509.75-0509.40) should be attached in the system. In addition to penalty comments, comments on whether prosecutions are recommended should be made on Form CDTFA-414-A or Form CDTFA-414-B in the Verification Comments on the Audit springboard.

OUT-OF-STATE REGISTRATION OF VEHICLE, VESSEL OR AIRCRAFT

RTC sections 6485.1 and 6514.1 provide a 50 percent penalty on a purchaser who registers a vehicle, vessel, or aircraft outside of California (i.e., in another state or foreign country), for the purpose of evading the tax. The standards of proof for this penalty are similar to those for fraud in general.

The penalty under RTC sections 6485.1 and 6514.1 may not be asserted in conjunction with a penalty under RTC section 7155 (failure to obtain a permit) or section 6485 or 6514 (fraud or intent to evade). However, this penalty may be asserted in conjunction with penalties under RTC section 6511 (failure to file) or RTC section 6072 or 6094.5 (misuse of resale certificate).

The penalty will generally be applicable when the purchaser is a California resident who purchased a vehicle, vessel, or aircraft for use in California and is unable to provide convincing evidence for registration out of state and a valid explanation why the vehicle, vessel, or aircraft was registered out of state.

FAILURE TO REMIT SALES TAX REIMBURSEMENT OR USE TAX (RTC 6597)
**RTC Section 6597, Penalty**

RTC section 6597 imposes a 40 percent evasion penalty on any person who knowingly collects sales tax reimbursement or knowingly collects use tax, and fails to timely remit that sales tax reimbursement or use tax (tax) to the CDTFA. If recommending the 40 percent evasion penalty under RTC section 6597, in addition to establishing, by clear and convincing evidence, the taxpayer’s intent to evade tax, staff should state and explain how all conditions listed in AM section 0509.65 for applying the 40 percent penalty are met. The inclusion of a table of quarterly tax collected and tax reported to illustrate that the conditions listed in AM section 0509.65 are met is recommended.

Staff should also include the following information (if applicable) in the memorandum when recommending the 40 percent penalty:

- A description of the activity (including any unusual activity) in the taxpayer’s tax accrual account that would indicate an intent to evade the tax.
- Detail of the debits/credits from the tax accrual account including dates and amounts.
- If the taxpayer does not maintain a tax accrual account, then an explanation from the taxpayer as to what happened to the tax collected is **required**.
- Any additional information obtained that supports the 40 percent penalty.

Revenue and Taxation Code (RTC) section 6597, **Penalty; tax reimbursement collected and not timely remitted**, imposes a 40 percent evasion penalty on any person who knowingly collects sales tax reimbursement (Regulation 1700, **Reimbursement for Sales Tax**) or knowingly collects use tax, and fails to timely remit that sales tax reimbursement or use tax (tax) to the CDTFA.

The penalty may only be applied when both of the thresholds listed below are met:

1) The liability for the unremitting sales tax reimbursement or use tax averages over $1,000 per month for the reporting period, and

2) The total unremitting tax exceeds five percent of the total amount of tax liability for which tax reimbursement was collected in the same reporting period in which the tax was due.

**APPLYING THE SECTION 6597 PENALTY 0510.05**

RTC section 6597 provides that any person who knowingly collects sales tax reimbursement or use tax and fails to timely remit the tax to CDTFA shall be liable for a penalty of 40 percent of the amount not timely remitted.

**NOTE:** Pursuant to RTC section 6597, sales tax reimbursement also includes any sales tax that is advertised, held out, or stated to the public or to any customer, directly or indirectly, as being assumed or absorbed by the retailer.

The penalty applies when **all** of the following conditions are met:

- The unremitting tax averages over $1,000 per month for the reporting period,

- The total unremitting tax exceeds five percent of the total amount of tax liability for which tax reimbursement was collected for the period in which the tax was due, and

- The person’s failure to timely remit the tax is not due to a reasonable cause or circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and
the absence of willful neglect.

For purposes of section 6597, reasonable cause or circumstances beyond the person’s control that caused a person’s failure to make a timely remittance, includes, but is not limited to:

- A death or serious illness of the person or person’s next of kin.
- An emergency as defined in section 8558 of the Government Code.
- A natural disaster or other catastrophe directly affecting the business operations of the person.
- CDTFA failed to send returns or other information to the correct address of record, that caused the person’s failure to make a timely remittance.
- The person’s failure to make a timely remittance occurred only once over a three-year period, or once during the period in which the person was engaged in business, whichever is shorter.
- The person voluntarily corrected errors in remitting tax that were made in previous reporting periods and remitted payment of the liability owed as a result of those errors prior to being contacted by CDTFA about the possible errors or discrepancies.

Accordingly, when the statutory thresholds are met, and the taxpayer does not establish that the failure to timely remit the tax was due to reasonable cause or circumstances beyond the person’s control, the penalty shall be applied.

Below is a sample table of both the $1,000 per month and the five percent thresholds being met.

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Total Sales Tax Collected</th>
<th>Sales Tax Reported</th>
<th>Unremitted Sales Tax Collected</th>
<th>% Unremitted</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>4Q-17</td>
<td>$10,925</td>
<td>$3,224</td>
<td>$7,701</td>
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<td>$6,046</td>
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<td>$2,602</td>
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<td>$2,565</td>
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<td>2Q-20</td>
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<td>63.42%</td>
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<tr>
<td>3Q-20</td>
<td>$11,229</td>
<td>$3,903</td>
<td>$7,326</td>
<td>65.24%</td>
<td>$2,442</td>
</tr>
</tbody>
</table>

The following examples illustrate whether the UTC-section 6597 penalty may be applicable, based on the necessary thresholds being met.

**Example 1**

During a quarterly reporting period, a taxpayer’s total tax collected is $10,000, as determined by an audit investigation. The taxpayer remits $7,500 of the tax collected. The total unremitted tax is $2,500. The average monthly unremitted tax is $833 ($2,500 ÷ 3 months), which does not exceed
$1,000 per month. Since the average monthly unremitted tax is less than $1,000 per month, the 40 percent penalty imposed pursuant to section 6597 does not apply.

**Example 2**

During a quarterly reporting period, a taxpayer’s total tax collected is $500,000, as determined by an audit investigation. The taxpayer remits $480,000 of the tax collected. The total unremitted tax is $20,000. The average monthly unremitted tax is $6,666 ($20,000 ÷ 3 months), which exceeds $1,000 per month. However, five percent of the total amount of tax collected in the same quarter in which the tax was due is $25,000 ($500,000 x .05), which is more than the total unremitted tax of $20,000. Since the unremitted tax amount ($20,000) does not exceed 5 percent ($25,000) of total tax reported in the same quarter in which the tax was due, the 40 percent penalty does not apply.

**Example 3**

During a quarterly reporting period, a taxpayer collected $22,000 in tax but remitted only $10,000, as determined by an audit investigation. The total unremitted tax is $12,000. The average monthly unremitted tax is $4,000 ($12,000 ÷ 3 months), which exceeds $1,000 per month, and five percent of the total tax collected in the same quarter in which the tax was due is $1,100 ($22,000 x .05). Since the average monthly unremitted tax ($4,000) exceeds both the $1,000 per month and the five percent of the total tax collected in the same quarter in which the tax was due ($1,100), the 40 percent penalty may be applied to the $12,000 liability, unless the failure to remit the tax when due was due to reasonable cause or circumstances beyond the person’s control. (i.e., CDTFA lacks clear and convincing evidence that the person’s otherwise reasonable explanation for failing to remit the tax is false). See Exhibit 3 for examples that illustrate whether the 40 percent penalty applies.

The following examples illustrate whether the (UTC) penalty may be applicable, based on the necessary thresholds being met.

The 40 percent penalty applies only to the unremitted tax established on an actual basis for the reporting periods where the taxpayer knowingly collected and failed to remit the tax. As with other evasion penalties, the application of the 40 percent penalty can extend the time for which determinations can be made beyond the otherwise applicable statute of limitations (AM section 0509.70).

The 40 percent penalty applies only when it is established, by a preponderance of evidence, that the taxpayer knowingly collected and failed to remit the tax. Auditors should make every attempt to obtain the records on an actual basis to establish that the taxpayer knowingly collected and failed to remit the tax. When the auditor is unable to apply the 40 percent penalty on an actual basis, they may, under limited circumstances, establish that the taxpayer knowingly collected and failed to remit the tax by the preponderance of evidence (more likely than not) standard. If the auditor is unable to support the application of the 40 percent penalty by a preponderance of evidence, then it should not be assessed.

Situations in which the penalty may be imposed based on the preponderance of evidence standard may include, but are not limited to, the following:

- The taxpayer provides records for all but one quarter. The review of available sales invoices and summaries establishes that tax was collected. The taxpayer indicated that there was no change to the business operations and accounting system during the audit period. The preponderance of evidence shows that tax was likely collected in the quarter in which the records are missing because the invoices examined by the auditor for the other quarters disclose that an amount for tax was collected, and there was no change to the business operations and accounting system in the audit period.
The taxpayer provides records for years 1 and 3 of the three-year audit period. The sales invoices for these years demonstrate that an amount for tax was collected. For year 2, the taxpayer claimed a tax-included deduction on their federal income tax return. The taxpayer indicated there was no change to the management team in year 2, and the tax returns for year 2 were prepared by the same accountant who prepared the returns for years 1 and 3. The preponderance of evidence shows tax was likely collected in year 2 because the invoices provided for years 1 and 3 disclosed that tax was collected. In addition, there was no change to the business operations or the management team, and the accountant prepared tax returns for all three years of the audit period.

REVIEW FOR POSSIBLE EVASION 0510.07

Although not all audits that warrant a section 6597 penalty are fraud audits, failing to remit tax collected, under circumstances where the section 6597 penalty applies, may be indicative of a taxpayer’s intent to evade the tax, for example, it may be indicative of a taxpayer’s dishonesty and an intent to evade tax in other reporting areas. Therefore, when an audit discloses unremitted sales tax reimbursement or use tax collected that warrants the 40-percent penalty, auditors should also make a careful review to determine if an intent to evade the tax is evident.

MEMORANDUM FOR APPROVAL OF SECTION 6597 PENALTY 0510.10

A memorandum for approval of a section 6597 penalty, from the Administrator of the office recommending the imposition of the penalty to the Deputy Director, FOD, or their designee, is required. This memorandum is to ensure that the section 6597 penalty is consistently applied and meets the statutory requirements (i.e., the liability exceeds $1,000 per month, the liability exceeds five percent of the total liability in the same reporting period, and there is no reasonable cause for the underreporting). The Administrator shall prepare a memorandum to the Deputy Director, FOD, with a copy to the Chief, Headquarters Operations Bureau (HOB) when recommending the imposition of the section 6597 penalty. The memorandum shall include the following information:

- A statement, and the basis upon which it is founded, that the taxpayer knowingly collected sales tax reimbursement or use tax, including any supporting documentation, such as specific audit schedules, audit comments, letters, emails, etc.,
- The actual amounts of the unremitted sales tax reimbursement or use tax collected that is assessed in the audit and a comment that these amounts meet the requirements per section 6597. This information shall be included as a table or schedule illustrating the quarterly amounts of the tax collected and reported,
- Any additional information to support the penalty recommendation, and
- The Administrator’s evaluation of the taxpayer’s explanation for their failure to remit the tax, or if no explanation was provided, a comment stating so.

When seeking approval of the section 6597, 40-percent penalty, auditors may use CDTFA-659, Recommendation for Section 6597 40-Percent Approval Form. This form contains fields for all the required information and may be used in lieu of drafting a formal memorandum. Please note, you may not use the CDTFA-659 approval form if failure to remit tax is due to fraud. Instead, the Administrator must prepare a fraud memorandum and also include all relevant elements for recommending the section 6597 penalty as explained above. Until the system function to submit approval recommendations is available, offices making the audit (OMAs) should submit the fraud memorandum or section 6597 penalty approval form via email. As a reminder, do not provide a
copy of the fraud memorandum or section 6597 penalty approval form to the taxpayer until the Deputy Director, FOD has approved the penalty recommendation.

In cases when only some periods of the audit meet the threshold limits for the 40-percent penalty, team members may apply the section 6597 penalty to periods that meet the thresholds and a negligence penalty for the remaining periods, if appropriate. This must be done in the system, using the “period level” and not the “audit level” functionality.

**STATUTE OF LIMITATIONS PERIOD 0510.15**

Tax can be assessed and penalties imposed for periods in which fraud is asserted beyond the statute of limitations set forth in RTC sections 6487 or 7073. Ideally, fraud should not be asserted outside applicable statutory periods unless records for the expired periods are available and those records establish an actual tax liability and support the assertion of fraud (see Audit Manual section 0509.20). Since section 6597 is not an evasion penalty, imposition of the penalty will, generally, not extend the statute of limitations periods. However, in instances where fraud is present and, absent imposition of the larger section 6597 penalty, a fraud penalty would be imposed, then the statute of limitations periods may be extended. That is, audits that include a 40-percent penalty must conform to the three, eight, or ten-year statute of limitations period unless fraud is asserted. Refer AM 0511.10 for procedures when imposing the RTC 6597 penalty when evasion is present.

**PROCEDURES TO PROCESS REQUESTS FOR RELIEF OF SECTION 6597 PENALTY 0510.20**

**General**

The Administrator who recommended the imposition of the section 6597 ([40 percent](#)) penalty, reviews the relief request and either denies or makes a recommendation to grant the relief. However, when a taxpayer requests relief of the section 6597 ([40 percent](#)) penalty on an appealed liability, the request is handled through the normal appeals process.

**Relief Requests**

Requests for relief of section penalty may be submitted online using the CDTFA’s online services. The section 6597 penalty may be submitted online using CDTFA’s Online Services, or by written request or in paper. The Petitions Section will forward all such requests for relief to create a relief case in CROS, if one was not automatically created, and will assign the owner of the case to the Administrator of the office that recommended the imposition of the 6597 ([40 percent](#)) penalty. See Compliance Policy and Procedures Manual (CPPM) section 535.075 [535.055](#).

**Review of Online Relief Requests**

The Administrator is responsible for reviewing the relief request within 30 days of the referral and determining if the taxpayer’s failure to timely remit sales tax reimbursement or use tax was due to reasonable cause or circumstances beyond the taxpayer’s control as provided in RTC section 6597.

**Relief Request Denied**

When the Administrator recommends denial of the relief request, the Administrator must inform the taxpayer, in writing, of the denial and forward a copy to the Petitions Section mailbox. The assignment should be reassigned back to Petitions Section in the system to finalize the online penalty ([btfdpetsection@cdtfa.ca.gov](mailto:btfdpetsection@cdtfa.ca.gov)). Upon receipt of the letter, the Petitions Section will change the owner of the case to staff to finalize the relief request. No further approval is required for a denial.

**Relief Request Granted**
When the Administrator recommends relief be granted, the recommendation must be forwarded to the Petitions Section mailbox to obtain approval by the Deputy Director, BTFD as provided by Audit Manual section 0501.30, from the Deputy Director, FOD. The assignment should be reassigned back to the Petitions Section in the system to finalize the online penalty.

**MULTIPLE PENALTIES**

Two or more fraud or evasion penalties may not be added to the same deficiency determination when the penalties apply to the same series of acts or course of action in the same reporting periods.

- If a person with intent to evade tax fails to obtain a permit and fails to file a return, either RTC section 7155 penalty (50 percent for failure to obtain a permit) or RTC section 6514 penalty (25 percent for fraud or intent to evade tax by failure to file return) may be imposed, but **not** both.

- RTC section 7155 penalty **should not** [50 percent for failure to obtain a permit] **may not** be applied in conjunction with a section 6485 penalty (25 percent for intent to evade).

- RTC section 6597 penalty (40 percent for knowingly collecting and failing to timely remit tax) **should may** not be applied to liabilities for which a fraud or evasion penalty, or a negligence penalty has already been more appropriately assessed, in the same period.

The system does allow, within the same Audit case, a 6597 penalty and a fraud penalty, in the same audit period, but not on the same quarter/month. However, this can only be done at the “period level” but not at the “audit level” in the system. (See sections 0511.10 – 0511.25 for more information about applying penalties with a 6597 penalty.)

The only two penalties that cannot be applied to the same audit period, in the system, are the fraud (25 percent) and the negligence (10%) penalties. There should not be a need for this except in very unusual circumstances. An example would be when the taxpayer made changes to their reporting practices and the fraud no longer exists, or the reverse. When this occurs, there must be a new Audit case created, one case including the fraud penalty and one case including the negligence penalty.

However, under certain circumstances, more than one penalty may apply to the same determination:

- RTC section 6511 penalty [10 percent for failure to file return] should be applied along with RTC section 6514 penalty (25 percent for fraud or intent to evade tax). RTC section 6511 penalty [10 percent for failure to file return] may be applied with RTC section 7155 penalty (50 percent for failure to obtain a permit) when appropriate.

- RTC section 6511 penalty [10 percent for failure to file a return] may be applied in conjunction with RTC section 6597 penalty (40 percent for knowingly collecting and failing to timely remit tax).

The series of acts or course of action involved in the misuse of a resale certificate for the purpose of evading payment of tax on purchases are different from those involved in failing to obtain a permit for the purpose of evading the tax on sales. Therefore, the following penalties may apply to the **same** determination:

- RTC section 6511 penalty (10 percent for failure to file a return) may be applied with RTC section 6072 or 6094.5 penalty (improper use of resale certificate) since RTC section 6511 penalty is not for fraud or intent to evade the tax.

- Similarly, RTC section 7155 penalty (50 percent for failure to obtain a permit) may be added to
the same determination if appropriate.

APPLYING SECTION 6597 IN CONJUNCTION WITH AN EVASION PENALTY 0511.10

If the auditor finds clear and convincing evidence the taxpayer intended to evade the payment of tax collected, then determinations may be extended beyond the three or eight-year statute of limitations set forth in RTC section 6487 or ten-year statute of limitations set forth in RTC section 7073 (d). The 40-percent penalty should be applied to unremitted tax collected, including in the extended periods for which there are records to establish and support a tax liability. A memorandum must be prepared in accordance with Audit Manual section 0511.15 and include all relevant elements for recommending a finding of evasion (0509.40) and the 40-percent penalty (section 0510.00).

When there are errors in addition to unremitted tax collected and the evidence of an intent to evade is not solely related to the unremitted tax collected, fraud should be asserted under the applicable statute(s). Only the 40-percent penalty should be applied to unremitted tax collected errors, including in the extended periods for which there are records to establish tax liability by a preponderance of evidence, and the evasion penalty will generally be applied to the remaining errors in the audit, unless it would be inequitable (see Audit Manual section 0509.35). The system allows the 40-percent penalty and an evasion penalty to be added to different audit error items within the same audit period, provided it is done at the “period level” rather than at the “audit level.” Therefore, a split billing is not necessary. If there are other errors, in addition to unremitted tax collected, but the evidence of evasion is solely related to the unremitted tax collected, it may not be equitable to apply an evasion penalty to the other errors in the audit. In these instances, auditors can utilize the “period level” penalties in the system to assert the 40-percent penalty on the periods that include unremitted tax collected only. The only two penalties the system will not allow in the same audit period are the fraud penalty and the negligence penalty. All other penalties can be combined utilizing the “period level” sections in the system, as appropriate.

MEMORANDUM FOR EVASION PENALTY IN CONJUNCTION WITH 6597 PENALTY 0511.15

When fraud is asserted in an audit that also includes the 40-percent penalty, only one memorandum from the Administrator to the Deputy Director, FOD is required. A memorandum that recommends a finding of evasion and imposition of the section 6597 penalty in the same determination, should contain separate sections for each penalty recommendation. The evasion penalty for fraud section must include all of the relevant elements and supporting documentation for a fraud memorandum as instructed in Audit Manual section 0509.40, and the section 6597 penalty section must include all relevant elements (including how the thresholds are met) as discussed in section 0510.05.

When a taxpayer provides an explanation for failure to remit the tax, it is the Administrator's responsibility to evaluate the explanation. The Administrator will evaluate the taxpayer's explanation to determine whether the person’s failure to timely remit the tax was due to reasonable cause and/or circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care, and absence of willful neglect. RTC section 6597 provides specific examples of what constitutes “reasonable cause or circumstances beyond the person's control.” If the penalty is not applied, the auditor must document the taxpayer's explanation on Form CDTFA-414-A Report of Field Audit or Form CDTFA-414-B, Field Billing Order, to any, or only some of the periods, auditors must document the taxpayer’s explanation in CRM Notes in the system for an audit or FBO.

If the penalty is applied, the Verification Comments, “Penalty”, must include the comment, “Penalty of 40% has been added for unremitted tax collected.”
When an audit recommends the 6597 penalty, a memorandum is required from the Administrator to the Deputy Director, FOD. See AM section 0510.00, *Failure to Remit Sales Tax Reimbursement or Use Tax (RTC 6597)*, for more information on this memorandum.

**APPLYING 6597 AND NEGLIGENCE**

When the section 6597 penalty is warranted for only a portion of a determination and there is insufficient evidence to establish that any part of the determination is due to fraud, the appropriate penalty for the remainder of the deficiency determination may be the section 6484 10-percent negligence penalty. This combination of penalties must be done at a period level in the system.

**SPLIT BILLINGS WHEN APPLYING 6597 PENALTIES AND NON-EVASION PENALTIES**

The section 6597 penalty applies only when it is established by a preponderance of evidence that a taxpayer knowingly collected the sales tax reimbursement or use tax and failed to remit it. The system allows the 40-percent penalty and an additional penalty (for example, a negligence penalty) to be added to different audit items *within the same quarter*. However, the system will allow the 6597 penalty and another non-evasion penalty within the same audit period, but it must be done at the “period level” and not at the “audit level.” Therefore, when the audit liability includes other audit items upon which adding a non-evasion penalty is recommended in the same quarter as UTC, the auditor must prepare a split billing (regular audit billing and a FBO) to properly assess the 40-percent and 10-percent penalties. with a copy to the Chief, Headquarters Operations Bureau (HOB).

When the 40% evasion penalty is recommended for a portion of a deficiency determination, the 25 percent evasion penalty pursuant to RTC section 6485 should be applied to the remainder of the determination. It is not appropriate to recommend a 10 percent negligence penalty (RTC section 6484) for the remaining portion of a deficiency determination when the 40 percent penalty is warranted for a portion of the determination. In very unusual cases, it may be inequitable to apply an evasion penalty to the entire deficiency determination. For example, a change in management during an audit period may have resulted in the discontinuance of fraudulent practices, or the reverse. In these rare cases, staff may split the audit and issue two deficiency determinations; one with the evasion penalty (or penalties) and one without (i.e., either the 10 percent negligence penalty or without any penalty). If splitting the audit into two determinations, staff must fully document the reason for the split in the fraud memo.

**NOTE:** If a recommendation is made to grant relief of a section 6597 evasion penalty, that in effect is a finding there was no fraud and thus the section 6597 penalty should not have been imposed. As explained in AM section 0509.70, the application of evasion penalties can extend determinations beyond the three or eight year statute of limitations set forth in RTC section 6487 or ten-year statute of limitations set forth in RTC section 7073(d). Thus, in situations where a section 6597 evasion penalty was imposed and tax was assessed in the audit for periods beyond the normal statute of limitations, if a request for relief of penalty is granted, the tax assessed for the extended periods must be removed from the assessment. This is because the granting of the relief is a finding the penalty should not have been imposed and the tax assessed for periods beyond the normal statute of limitations must be removed.
TABLE OF EXHIBITS

Sample Warning Letter — Misuse of a Resale Certificate............................................. Exhibit 1
Sample Letter Imposing Penalty for Misuse of a Resale Certificate................................. Exhibit 2
Date

ABC Company
One Main Street
Sacramento, CA 95814

In Reply Refer To:
Account number

Dear Mr. Jones:

The California Department of Tax and Fee Administration has reviewed the records of one of your vendors and found resale certificates were issued by your company for items that do not appear to be of a type normally resold by your business. While the resale certificate may have been properly issued, in some cases businesses are not aware of the proper use of resale certificates.

The purpose of this letter is to remind you that resale certificates may only be issued for merchandise you intend to resell. Your seller’s permit does not allow you to purchase property without tax for personal or business use. In fact, a purchaser who knowingly issues a resale certificate for the purpose of evading payment of the sales and use tax may be subject to one or more of the following penalties:

- A penalty of $500 or 10% of the amount of tax due, whichever is greater, for each misuse of a resale certificate.
- A 25% penalty for intent to evade the tax.
- Revocation of the seller’s permit.

At this time, we are not asking for any further information or action on any specific transactions.

If you have any further questions or concerns, please do not hesitate to contact us at the above address or call our Information Customer Service Center at (800) 400-7115. You may also visit our website at www.cdtfa.ca.gov.

Sincerely,
Date

ABC Company  
One Main Street  
Sacramento, CA 95814

In Reply Refer To:  
Account Number

Dear Mr. Jones:

We have reviewed your response to our letter and the statement concerning “Property Purchased Without Payment of California Sales Tax.” Based on the information you provided, it has been determined that a $500 penalty for Misuse of a Resale Certificate is applicable. This penalty is in addition to the tax and interest on the same transaction.

The penalty for Misuse of a Resale Certificate is authorized pursuant to section 6094.5 of the Revenue and Taxation Code which states as follows:

Any person, including any officer or employee of a corporation, who gives a resale certificate for property, which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business, is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10% of the tax or five hundred dollars ($500), whichever is greater, for each purchase made for personal gain or to evade the payment of taxes.

Please respond within the 10 days of the date of this letter if you do not agree with the imposition of any portion of this decision. I will consider any additional information that you provide before preparing my recommendation.

While there is no interest imposed upon penalties and interest, interest does continue to accrue on the amount of unpaid tax. For your convenience, I have enclosed Form CDTFA-1, Audit Payment Information. If you wish to make a payment toward any amount of tax, please return the bottom portion of the form with your payment and include the phrase “Misuse of Resale Certificate Billing” with your remittance so that we may properly credit your account.

If you have any further questions, please feel free to contact me at the telephone number or address shown above.

Sincerely,

Enclosure: CDTFA-1, Audit Payment Information