



**CDTFA**  
CALIFORNIA DEPARTMENT OF  
TAX AND FEE ADMINISTRATION

# Sales to Native Americans and Sales in Indian Country

## Preface

This California Department of Tax and Fee Administration (CDTFA) publication is intended primarily as a guide to the proper application of California's Sales and Use Tax Law to transactions occurring in Indian country in California that involve both Native Americans and non-Native Americans. This publication is also intended to help Native American purchasers understand how the Sales and Use Tax Law generally applies to their purchases, as well as to provide some general information on other tax and fee programs we administer. We use the term "Native American" in this publication to represent "American Indian" and "Indian" as these terms are used in state and federal law.

Numerous federal and state laws, in addition to opinions issued by the courts, impact the application of taxes and fees we administer to transactions involving Native Americans. In administering the Sales and Use Tax Law in a fair and uniform manner, we are subject to, and limited by, all pertinent laws and regulations, including [Public Law 83-280](#), the provisions of the California Revenue and Taxation Code, and opinions issued by the federal courts in *Bryan v. Itasca County* (1976) 426 U.S. 373, 48 L.Ed.2d 710; *Moe v. The Confederated Salish and Kootenai Tribes of the Flathead Reservation* (1976) 425 U.S. 463, 48 L.Ed.2d 96; *Washington v. Confederated Tribes of the Colville Indian Reservation* (1980) 447 U.S. 134, 65 L.Ed.2d 10; *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma* (1991) 498 U.S. 505, 112 L.Ed.2d 1112; *Cabazon Band of Mission Indians v. Wilson* (9<sup>th</sup> Cir. 1994) 37 F.3d 430; *Oklahoma Tax Commission v. Chickasaw Nation* (1995) 515 U.S. 450, 132 L.Ed.2d 400; and *Wagnon v. Prairie Band Potawatomi Nation* (2005) 546 U.S. 95, 163 L.Ed.2d 429. We are committed to working cooperatively with tribal leaders to respect tribal sovereignty and promote tax compliance in California.

The applicable laws, regulations, and court decisions do not grant the State of California general authority to impose sales and use taxes on Native American tribes in Indian country or on tribal members who live in Indian country. The inherent sovereignty of Native American tribes to exercise powers of self-government over Indian country imposes limitations on the application of state laws to regulate or tax transactions in Indian country. Therefore, certain on-reservation sales to Native Americans and other transactions in Indian country may not be subject to California sales or use tax.

While there is no general sales tax exemption for sales to Native Americans, this publication explains when and how sales or use tax is applicable to transactions with Native Americans and to transactions that occur in Indian country. This publication also describes the types of documentation that retailers and Native American purchasers need to maintain in order to qualify for an exemption from paying sales or use taxes with respect to certain transactions. It also provides information on certain other applicable California taxes and fees.

Before you read other parts of this publication, be sure to read [Key Definitions](#). It contains important information that will help you as you review the rest of the publication.

This publication supplements our basic sales tax [publication 73](#), *Your California Seller's Permit*. Publication 73 includes general information about obtaining a permit, using a resale certificate, reporting and paying sales and use taxes, discontinuing a business, and keeping records.

All CDTFA publications, forms, regulations, and additional information regarding all our programs are available on our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov).

If you cannot find the information you need in this publication, please call our Customer Service Center at 1-800-400-7115 (CRS:711). Customer service representatives are available Monday through Friday from 7:30 a.m. to 5:00 p.m. (Pacific time), except state holidays.

The State of California Franchise Tax Board also offers online information, [Help with Native Americans taxation](#). The information is available from their website at [www.ftb.ca.gov](http://www.ftb.ca.gov) or by calling their information center, Monday through Friday, from 8:00 a.m. until 5:00 p.m. (Pacific time). Please call 1-800-852-5711 within the United States or 1-916-845-6500 outside the United States.

We welcome your suggestions for improving this or any other of our sales and use tax publications. Please provide your comments or suggestions directly to:

Audit and Information Section, MIC:44  
California Department of Tax and Fee Administration  
PO Box 942879  
Sacramento, CA 94279-0044

For suggestions relating to special taxes and fees publications, please provide your comments or suggestions directly to:

Program Administration Branch, MIC:31  
California Department of Tax and Fee Administration  
PO Box 942879  
Sacramento, CA 94279-0031

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*Please note:* This publication summarizes the law and applicable regulations in effect when the publication was written. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, decisions will be based on the law and not on this publication.

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## Key Definitions

*This section provides definitions of specific terms used throughout the publication. It also explains essential conditions for tax-exempt sales to Native Americans and requirements for documenting those sales. Be sure to read it before proceeding to the following sections.*

### Terms used throughout the publication

Please review these terms carefully. How tax applies to different sales can depend on whether a person, organization, or location fits the specific definitions below.

#### **Native American**

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

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

#### **Native American couple**

A married couple or a registered domestic partnership should be treated as a Native American couple for exemption purposes when the couple consists of two Native Americans or of a Native American and a non-Native American who have entered into officially recognized family relationships under California law or tribal law.

This generally includes a married couple or a domestic partnership entered into under the Domestic Partner Rights and Responsibilities Act of 2003. Tribes have the authority to establish their own laws and regulations regarding such unions. Tribal laws include not only written laws but may also include tribal customs and practices. However, such customs and practices must be that of the tribe, not of an individual tribal member. Therefore, if California law or tribal law recognizes the family relationship, and at least one member of the couple is a Native American, the couple qualifies as a Native American couple.

#### **Native American organization**

“Native American organization” includes Native American tribes and tribal organizations, including tribes that incorporate under [section 17 of the Indian Reorganization Act of 1934 \(25 U.S.C. section 5124\)](#). Partnerships qualify as “Native American organizations” for California sales and use tax purposes only when all of the partners are Native Americans. Corporations and limited liability companies qualify as Native American organizations only if they are organized under tribal authority and wholly owned by Native Americans. If an organization does not meet these criteria, it does not qualify, even when owned or operated by Native Americans.

For California sales and use tax purposes, a sale to a Native American organization (or to a Native American couple as described above) is treated the same as a sale to an individual Native American. Please keep this in mind as you read this publication.

#### **Native American purchaser**

Throughout this document, the proper application of sales and/or use tax to transactions involving Native Americans is discussed. The discussion of transactions involving a sale of tangible personal property to a Native American uses the term “Native American Purchaser.” A “Native American Purchaser” means and includes an individual Native American, a Native American couple, or a Native American organization, as those terms are discussed above.

## **Reservation**

[Sales and Use Tax Regulation 1616](#), subdivision (d)(2) defines “reservation” for purposes of the proper application of the Sales and Use Tax Law. Under the Sales and Use Tax Law, “reservation” generally has the same meaning as “Indian country” as defined in [Title 18 of United States Code section 1151](#). This publication uses the term “Indian country” to refer to tribal areas that would be considered “reservations” under Regulation 1616. For example, Indian country includes any of the following:

- 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 “Native American” tribe or “Native American” individual (also known as “trust land”).

*Please note:* Not all portions of a facility housing a Native American 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, exemption certificates are listed at the [end of this publication](#) and are available on our website.

## **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 Native Americans

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 a Native American retailer making sales only in Indian country. For more information, please 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 register on our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) by selecting *Register*, then select *Register a New Business Activity*. You can also register to report use tax in person at any of our [offices](#). Please contact our Customer Service Center for assistance at 1-800-400-7115 (CRS:711).

### Construction contracts—definition

Construction contractors are persons who agree to perform and do perform construction contracts. A construction contract means and includes a contract, whether on a lump-sum, time-and-materials, cost-plus, or other basis, to:

1. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property; or
2. Erect, construct, alter, or repair any fixed works such as waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers, sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries and chemical plants; or
3. Pave surfaces separately or in connection with any of the above works or projects; or
4. Furnish and install the property becoming a part of a central heating, air conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure thereon.



# Sales to Native Americans by Retailers Located Outside Indian Country

*This section describes how sales and use tax generally apply to sales to Native Americans when the retailer is not located in Indian country ("off-reservation" retailer). Please be sure to read [Key Definitions](#) before you read this section.*

## Sales to Native American customers, in general

If you are a California retailer who is not located in Indian country, your sales to Native American customers are generally subject to tax, unless specific requirements for exemption are met.

This chapter discusses the general rules that apply to your sales to Native American customers. This chapter also discusses specific rules that apply to dealer sales of vehicles, vessels, aircraft, and leases.

## Transfer of ownership in Indian country

Sales tax generally applies to sales by off-reservation retailers to Native American purchasers unless the retailer:

- Transfers ownership of the merchandise to a Native American purchaser in Indian country;
- Delivers the merchandise in Indian country, and
- The Native American purchaser lives in Indian country.

When the Native American purchaser is a Native American organization, the requirement that the Native American purchaser reside in Indian country must still be met. A Native American organization will be deemed to reside in Indian country if the Native American organization is located in Indian country or otherwise conducts the business of the Native American organization in Indian country.

If the tangible personal property is purchased by a Native American not residing in Indian country, the property is presumed to be purchased for use outside of Indian country, and the retailer must collect *use tax*, even though the transaction may be exempt from *sales tax*. In the event the nonresident Native American purchaser is ultimately able to demonstrate or document that the use of the property occurred in Indian country one-half or more of the time during the first 12 months following the sale, the Native American purchaser is entitled to a refund of the use tax paid. The Native American purchaser may request a refund of the use tax paid by completing [CDTFA-101, Claim for Refund or Credit](#), and submitting the completed form along with supporting documentation to us. Nonresident Native American purchasers may contact our Consumer Use Tax Section at 1-916-445-9524 for assistance with establishing that a refund should be granted for use tax paid.

*Please note:* The purchaser is not required to live in the same specific part of Indian country where ownership transfers. In other words, a resident of Reservation A could qualify for the exemption even when taking ownership of merchandise on Reservation B.

For a more complete definition, please see [Transfer of title \(ownership\) in Indian country](#).

## Property used in tribal self-governance by tribes without reservation facilities

Sales tax generally applies to sales by off-reservation retailers when ownership of the merchandise is transferred to a Native American purchaser outside Indian country. However, sales tax does not apply to sales of merchandise to the tribal government of a federally recognized Native American tribe for delivery outside of Indian country if all the following criteria are met:

- The tribe does not have a reservation or the principal place where the tribal government meets to conduct tribal business cannot be its Native American tribe's reservation because the reservation does not have a building in which the tribal government can meet or the reservation lacks one or more essential utility services, such as water, electricity, gas, sewage, or telephone, or mail service from the United States Postal Service;



- The merchandise will be used in tribal self-governance; and
- The merchandise is delivered to the tribal government and ownership of the merchandise transfers to the tribal government at the principal place where the tribal government meets to conduct tribal business.

In addition, use tax will not apply unless the merchandise is used for purposes other than tribal self-governance more than it is used for tribal self-governance during the first 12 months after delivery.

An example of property that qualifies for the exemption is the office equipment used for tribal business at the business location. However, a laptop used for personal business and only occasionally used for tribal business does not qualify for the exemption.

For purposes of discussion in this publication, references to property delivered in Indian country include property delivered at the tribal business location that qualifies for the exemption described above.

Please see [Reporting and paying use tax](#) for additional information.

### Married couples or registered domestic partners

Assuming all other requirements for exemption are met, sales of tangible personal property by an off-reservation retailer to a Native American couple are not subject to sales tax. A Native American couple, as defined in [Key Definitions](#), consists of a married couple or registered domestic partnership that consists of two Native Americans or of a Native American and a non-Native American that have entered into officially recognized family relationships under California law or tribal law.

*Please note:* A Native American couple may be liable for use tax on the purchase price of the property if the property is used outside of Indian country more than one-half of the time during the first 12 months following the date of sale.

### Dealer sales of vehicles, vessels, and aircraft

Tax generally applies to a dealer's sales of vehicles, vessels, and aircraft in the same way it does to sales of other merchandise. However, sales tax generally does not apply to sales to Native Americans who live in Indian country when the vehicle, vessel, or aircraft is delivered in Indian country and ownership also transfers to the Native American in Indian country. The sale does not qualify for the exemption if the Native American takes possession before delivery in Indian country. The same principles apply to sales to Native American organizations and Native American couples. Please see [Documenting exempt purchases of vehicles, vessels, and aircraft](#) for more information.

### Permanent improvements to real property

In general, tax does not apply to your sale of an item that will be permanently attached as an improvement to real property in Indian country, provided all of the following conditions apply:

- Your customer is a Native American who resides in Indian country (see [Purchasers](#)),
- The merchandise is delivered to the Native American purchaser in Indian country, and
- Ownership of the item transfers to the purchaser in Indian country (see [Transfer of title \(ownership\) in Indian country](#)).

Improvements to real property include:

- Buildings, structures, fixtures, and fences erected on or attached to land. For purposes of this sales tax exemption, improvements include trailer coaches that are not registered with the [Department of Motor Vehicles](#) (DMV), mobilehomes, manufactured homes, and factory-built housing; and
- Ornamental trees and vines. (*Please note:* Fruit and nut trees can also be improvements, but their sale may be exempt under another section of the Sales and Use Tax Law.)

For information on construction contractors, please see [Sales Related to Construction Contracts](#).

## Mobilehomes

“Mobilehomes,” sometimes referred to as manufactured homes, are structures:

- Designed to be movable in one or more sections, and
- Equipped to contain one or two dwelling units.

They can be designed for use with or without foundation systems. “Manufactured home” is a relatively new term and meets the definition of a mobilehome. Since the Revenue and Taxation Code uses the term “mobilehome” for all such homes, for consistency this publication does likewise.

A sale of a mobilehome to a Native American purchaser who lives in Indian country and takes ownership and delivery in Indian country will not be exempt from tax if the mobilehome is used outside of Indian country more than one-half of the time in the first 12 months after the sale.

In this case, the buyer owes the use tax and is responsible for paying it by using one of the following methods:

- Reporting a One-Time Use Tax—Go to our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov), select *Register*, then select *Register a New Business Activity*.
- Report use tax in person at any of our offices.
- If the buyer has a California seller’s permit, report the use tax on a sales and use tax return

For more information on mobilehomes and factory-built housing, please see [publication 47](#), *Mobilehomes and Factory-Built Housing*, and [publication 9](#), *Construction and Building Contractors*.

## Leases

When the lessee is a Native American residing in Indian country, neither sales nor use tax generally applies to leases of tangible personal property for any time period when the leased property is located and used in Indian country. Unless there is contrary evidence, it is assumed the use of the property by the Native American lessee is in Indian country if the lessor delivers the property to the Native American lessee in Indian country. However, use tax applies to leased vehicles registered with DMV to the extent that the vehicles are used outside of Indian country.

### ***Leases of vehicles and mobile transportation equipment***

If you lease vehicles or mobile transportation equipment to Native American customers, please contact our Customer Service Center for help regarding how tax applies and what documentation you need to claim an exemption from tax for your lease.

## Records

Your records must include documents to support each claimed exempt sale. For information on documenting sales to Native Americans who live in Indian country or Native American organizations, please see [Documenting Exempt Transactions](#). Please contact our Customer Service Center for further assistance in providing the necessary documentation to establish that the sale of the vehicle, vessel, or aircraft took place in Indian country. You may also call our Consumer Use Tax Section directly at 1-916-445-9524.

*Please note:* Exemption certificates that may be used to document exempt sales are:

- [CDTFA-146-RES](#), *Exemption Certificate and Statement of Delivery in Indian Country*
- [CDTFA-146-TSG](#), *Exemption Certificate—Property Used in Tribal Self-Governance and Statement of Delivery*
- [CDTFA-146-CC](#), *Construction Contract Exemption Certificate and Statement of Delivery in Indian Country*

## Sales by Native American and Non-Native American Retailers Located in Indian country

*This section describes how sales and use tax generally apply to sales made by retailers located in Indian country. It addresses sales by Native American and non-Native American retailers, as well as purchases by Native Americans and non-Native Americans. Please be sure to read [Key Definitions](#) before you read this section.*

### Permit requirements

In general, you must hold a seller's permit if you make sales in California. This is true whether you are a Native American, a Native American organization, or a non-Native American.

However, as explained later in this chapter, certain sales made only in Indian country by Native American retailers, including federally licensed Native American traders, are subject to use tax but not sales tax. Native American sellers who only make sales of this type do not need a seller's permit which is used for the collection of sales tax reimbursement and reporting and paying sales tax. Instead, they must obtain a *California Certificate of Registration—Use Tax*. Sellers can register on our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) by selecting *Register*, then select *Business Activity and Location*. Sellers can also register to report use tax in person at any of our [offices](#).

Please contact our Customer Service Center for assistance at 1-800-400-7115 (CRS:711).

A retailer operating in Indian country may be required to obtain a tribal sales license. For more information regarding the requirement to obtain a tribal sales license and the proper application of tribal tax laws, please contact the tribal government in whose jurisdiction you are operating.

*Please note:* A tribal sales license is *not* a legal substitute for a California seller's permit or a certificate of registration to collect use tax.

### Sales by “on-reservation” Native Americans: Basic application of tax

If you are a Native American retailer located in Indian country, many of your sales may be exempt from California sales tax. Others may be taxable. In some cases, use tax will apply.

The discussion below explains the basic rules on how tax applies to your sales. Please remember, if any of your sales are subject to sales tax, you need a California seller's permit.

### Sales by “on-reservation” Native American retailers to Native Americans who reside in Indian country

Sales tax does not apply to sales of tangible personal property made to Native Americans by Native American retailers if:

- The sales are negotiated at places of business located in Indian country,
- The Native American purchaser resides in Indian country, and
- The property is delivered to the purchaser in Indian country.

In such an instance, the Native American *purchaser* may be required to pay use tax, but only if the property is used outside Indian country more than one-half of the time during the first 12 months after the sale.

*Please note:* The Native American purchaser is not required to live in the specific part of Indian country where ownership transfers. In other words, a resident of Reservation A could qualify for the exemption when taking ownership of merchandise on Reservation B.

## Sales by “on-reservation” Native American retailers to non-Native Americans and Native Americans who do not reside in Indian country

Sales tax generally does not apply to sales of tangible personal property by Native American retailers made to non-Native Americans and Native Americans who do not reside in Indian country when:

- The sales are negotiated at places of business located in Indian country, and
- The property is delivered to the purchaser in Indian country.

However, use tax generally applies to sales by on-reservation Native American retailers made to non-Native Americans and Native Americans who do not live in Indian country. These sales are presumed to be for use by the purchaser in California, and Native American retailers are required to collect use tax from such purchasers and must register with us for that purpose.

In circumstances where you are required to collect use tax from any of your purchasers, you must hold a *California Certificate of Registration—Use Tax*. You can register on our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) by selecting *Register*, then select *Business Activity and Location*. Once you have registered, you can pay any use tax due by filing your return. You can also register to report use tax in person at any of our [offices](#). Please contact our Customer Service Center for assistance at 1-800-400-7115 (CRS:711). As previously explained, a sale generally takes place outside Indian country when an on-reservation retailer delivers the items sold to the purchaser outside Indian country.

If the tangible personal property is purchased by a Native American not residing in Indian country, the property is presumed to be purchased for use outside of Indian country, and the retailer must collect *use tax*, even though the transaction may be exempt from *sales tax*. In the event the nonresident Native American purchaser is ultimately able to demonstrate or document that the use of the property occurred in Indian country one-half or more of the time during the first 12 months following the sale, the Native American purchaser would be entitled to a refund of the use tax paid. The Native American purchaser may request a refund of the use tax paid by completing a [CDTFA-101, Claim for Refund or Credit](#), and submitting the completed form with supporting documentation to us. Nonresident Native American purchasers may contact our Consumer Use Tax Section at 1-916-445-9524 for further assistance concerning maintaining and providing the documentation necessary to establish that a refund should be granted for use tax paid.

## Sales by Native American retailers of meals, food, and beverages

Tax does not apply to meals, food, and beverages sold by a Native American retailer operating an eating or drinking establishment, such as a restaurant or bar, in Indian country when the meals, food, and beverages are purchased for consumption in Indian country.

However, all meals, food, and beverages sold or purchased from a drive-through counter or window of an eating or drinking establishment in Indian country are presumed for consumption outside Indian country, and use tax may apply. [Regulation 1603, Taxable Sales of Food Products](#), explains the general application of tax to sales of meals, food, and beverages, when those items are sold or purchased for consumption outside Indian country.

## Sales by “on-reservation” non-Native American retailers: Basic application of tax

If you are a non-Native American retailer located in Indian country, some of your sales may be exempt from California sales tax, but others may be taxable. In some cases, use tax will apply (see [Use tax](#)).



### ***Sales by “on-reservation” non-Native American retailers to Native Americans who reside in Indian country***

Sales tax does not apply to sales of tangible personal property made to Native Americans by non-Native American retailers when:

- The sales are negotiated at places of business located in Indian country,
- The Native American purchaser resides in Indian country, and
- The property is delivered to the Native American purchaser in Indian country.

In such an instance, the Native American *purchaser* may be required to pay use tax but only if the property is used outside Indian country more than one-half of the time during the first 12 months after the sale.

*Please note:* The Native American purchaser is not required to live in the specific part of Indian country where ownership transfers. In other words, a resident of Reservation A could qualify for the exemption when taking ownership of merchandise on Reservation B.

The sale is exempt from sales tax whether the retailer is a federally licensed Indian trader or is not so licensed.

### ***Sales by “on-reservation” non-Native American retailers to non-Native Americans and Native Americans who do not reside in Indian country***

Either sales tax or use tax applies to sales of merchandise by on-reservation non-Native American retailers to non-Native Americans and Native Americans who do not reside in Indian country, or if you make any off-reservation sales. You can register on our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) by selecting *Register*, then select *Business Activity or Location*. You can also register to report use tax in person at any of our [offices](#). Please contact our Customer Service Center for assistance at 1-800-400-7115 (CRS:711). A tribal sales license is not a substitute for a California seller’s permit or a certificate of registration to collect use tax.

### ***Sales by non-Native American retailers of meals, food, and beverages to non-Native Americans and Native Americans who do not reside in Indian country***

Tax does not apply to sales by a non-Native American retailer of meals, food, and beverages to non-Native Americans or Native Americans who do not reside in Indian country when all the following criteria are met:

- The non-Native American retailer operates an eating or drinking establishment (for example, restaurant or bar) in Indian country pursuant to a lease or sublease,
- The sales are subject to a tribal sales or use tax, and
- The meals, food, and beverages are sold for consumption in Indian country.

However, all meals, food, and beverages sold or purchased from a drive-through counter or window of an eating or drinking establishment in Indian country are presumed for consumption outside Indian country, and use tax may apply. [Regulation 1603](#), *Taxable Sales of Food Products*, explains the general application of tax to meals, food, and beverages, when those items are sold or purchased for consumption outside Indian country.

## **Documenting claimed exempt sales**

Be sure your records include documents to show the basis for your claim that a particular sale was exempt from tax. For information on documenting sales to Native Americans who live in Indian country or Native American organizations, please see [Documenting Exempt Transactions](#).

## Tribal taxes

Some tribes require on-reservation retailers to collect and pay a tribal tax on their sales. The amount of tribal tax you charge your customers for sales you make in Indian country is not subject to California sales or use tax when the following apply:

- The tax is based on a percentage of the selling price of the merchandise, and
- You are substantially complying with the requirements of the California Sales and Use Tax Law. In other words, you have a seller's permit or a certificate of registration to collect use tax and you are filing your sales and use tax returns on time, reporting all taxable and nontaxable sales, and paying all California taxes due.

The imposition of a tribal tax does not affect the liability for California sales or use taxes.

## Sales for resale

As a registered seller, you may make nontaxable sales for resale to Native American or non-Native American businesses who will sell the merchandise they buy from you or physically include that merchandise in items they make and sell. If you accept a timely, fully completed resale certificate from your customer in good faith, you generally do not owe tax on your sale.

A certificate will be considered timely if you accept it any time before you bill the purchaser for the property, any time within your normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains valid until it is revoked in writing.

Native American retailers may purchase items for resale regardless of whether they are required to hold a seller's permit. Native American buyers who are not required to hold a seller's permit should make note of that fact on their resale certificates. For example, the buyer might state, "I do not hold a California seller's permit because all of my sales are made in Indian country. None of my sales are subject to California sales or use tax."

The seller may accept this certificate as a valid resale certificate if it is timely taken and is in the proper form as provided in [Regulation 1668](#), *Sales for Resale*, and taken in good faith from a person who is engaged in the business of selling the kind of merchandise being purchased. Other evidence to show the purchaser is engaged in the business of selling the kind of merchandise being purchased may include documents such as a business license, business card, or a copy of an advertisement from a newspaper or telephone book.

For more information, please see Regulation 1668 and [publication 103](#), *Sales for Resale*.



## Purchases by Native Americans

*This section provides information for Native American purchasers regarding the proper application of use tax on purchases of tangible personal property and the type of documentation the purchaser must retain to support an exemption from use tax.*

### Reporting and paying use tax

A Native American purchaser may owe use tax when the transaction is exempt from sales tax (see [Use tax](#)). Use tax is due when the Native American buyer 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. (An item is used outside Indian country when the item is stored or used outside Indian country.)

*Example:* A Native American purchaser who resides in Indian country operates an event business and negotiates the purchase of a sound system for \$3,500 from a dealer in Los Angeles. The dealer, using its own trucks, delivers the system in Indian country and ownership transfers to the purchaser there. The sale is exempt from sales tax. The purchaser will use the sound system at concerts and events all over California. Some of the events are in Indian country while others are not. The purchaser owes use tax based on the system's \$3,500 purchase price if in the first 12 months after purchase, the purchaser uses or stores the sound system outside Indian country more than half the time.

### Paying use tax

Individuals who owe use tax can pay it when filing their California income tax return or by using our electronic registration system. If the tax liability involves an aircraft, [publication 79A, Aircraft and California Tax](#), should be used to report the applicable use tax.

Businesses that hold seller's permits should pay any use tax they owe when filing their sales and use tax return. Other businesses that are required to collect use tax from customers and pay it to us must obtain a Certificate of Registration—Use Tax.

For information on how to apply district use tax to this and other specific situations, please see [publication 44, District Taxes \(Sales and Use Taxes\)](#).

### Documenting exempt purchases of vehicles, vessels, and aircraft

When a dealer's sale of a vehicle is exempt from the sales tax due to delivery to a Native American in Indian country, and the registration address for DMV purposes is also in Indian country, it is presumed the vehicle is purchased for use in Indian country and is not subject to the use tax. Maintaining a log of miles driven within and outside Indian country is not required since it is presumed the vehicle is stored at the registration address when not being operated. Since storage qualifies as use, it is presumed that the time stored in Indian country will generally exceed the time of use outside Indian country.

The registration address is typically a mailing address. If the physical storage address of the vehicle is a different location than the mailing address, the physical storage address of the vehicle determines whether the purchaser must document the use within and outside Indian country. For example, if the purchaser has a post office box for receiving mail that is not located in Indian country, but the vehicle is garaged at the purchaser's residence in Indian country, the purchaser is not required to document use of the vehicle within and outside Indian country. The purchaser, however, must be able to document that the vehicle is stored in Indian country.

## Mobilehomes

Generally, the purchase of a mobilehome by a Native American purchaser who lives in Indian country and takes ownership and delivery in Indian country will be rebuttably presumed for use in Indian country. However, if the mobilehome is used outside Indian country more than one-half of the time in the first 12 months after the sale, the use tax exemption does not apply.

In this case, the buyer owes the use tax and is responsible for paying it by using one of the following methods:

- Reporting a One-Time Use Tax—Go to our Online Services page at [onlineservices.cdtfa.ca.gov](https://onlineservices.cdtfa.ca.gov), select *File a Return* under Limited Access Functions, then select the option *One-Time Use Tax and/or Lumber Return*.
- Report use tax in person at any of our [offices](#).
- If the buyer has a California seller's permit, report the use tax on a sales and use tax return.





# Documenting Exempt Transactions

*This section provides information to sellers and purchasers regarding the correct type of documentation to support claimed exempt sales. This documentation should be provided by the purchaser and maintained in the seller's records as proof of the exempt sale. For more information on records that are suitable for sales and use tax purposes, please see [Regulation 1628](#), Transportation Charges, [Regulation 1667](#), Exemption Certificates, and [Regulation 1698](#), Records.*

## Transfer of title (ownership) in Indian country

How tax applies to a particular sale or purchase by a Native American depends on whether ownership of the item being sold or purchased transfers to the Native American purchaser in Indian country.

### ***Sale by retailer located in Indian country***

Ownership of an item being sold transfers in Indian country when an on-reservation retailer does both of the following:

- Negotiates the sale in Indian country; and
- Hands over or delivers the item in Indian country to a Native American or to an agent of a Native American.

### ***Sale by retailer not located in Indian country***

Retailers located outside Indian country may sell to Native American buyers 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 apply:

- The contract of sale or other sales agreement cannot transfer ownership of the item to the buyer before the item is delivered in Indian country, and
- The buyer or the buyer's representative cannot take possession of the item before delivery in Indian country.

In addition, the retailer generally must deliver the product:

1. Using the retailer's vehicle, or
2. By mail, common carrier (for example, UPS, FedEx), or contract carrier (a shipping, trucking, or transport company), when both of the following requirements are met:
  - The contract of sale or sales invoice includes a statement specifically requiring delivery in Indian country (for example, Freight on Board [F.O.B.] and the name of the Native American reservation) and providing that title passes upon delivery in Indian country, and
  - The goods are in fact delivered in Indian country.

When delivery does not take place as described here, ownership of the item being sold or purchased generally transfers to the buyer outside Indian country because the retailer's obligations with respect to physical delivery are usually completed outside Indian country.

Generally, when property is delivered by common or contract carrier, the transfer of title and the shift of risk of loss may occur at different locations unless the contract of sale contains a title clause indicating title transfers to the Native American purchaser in Indian country coupled with an F.O.B. destination statement. Inclusion of the F.O.B. destination statement usually dictates that the risk of loss shifts at the destination because risk of loss typically follows possession of the property and shifts upon delivery of the property, unless otherwise provided in the contract of sale. Under California commercial law, however, shifting the risk of loss is not equivalent to transferring title. Again, in the absence of specific title provisions and F.O.B. destination statements, title generally passes when the retailer's obligations with respect to the physical delivery of goods are completed (that is, at the time and place of shipment).

*Please note:* This is a general description of transfer of ownership in Indian country. Other sections of this publication describe the specific rules that apply to certain types of sales and leases.

## Claimed exempt sales to Native Americans require documentation

### **Retailers**

When you make an exempt sale to a Native American purchaser, you should keep copies of documents that our 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 a Native American purchaser. For example, you may obtain documentation such as:

- One or more documents that show the purchaser is a Native American, 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 Native American purchaser. As discussed in more detail below, the exemption certificate should state that the Native American purchaser lives in Indian country. The exemption certificate will serve as support that the property was sold to a Native American. Therefore, if you obtain an exemption certificate, you will not need to obtain any additional documentation showing the purchaser is a Native American such as a tribal ID card. You will still need to retain documentation showing the transfer of title and delivery of the property to the Native American in Indian country.

Exemption certificate forms [CDTFA-146-RES](#), *Exemption Certificate and Statement of Delivery in Indian Country*, and [CDTFA-146-TSG](#), *Exemption Certificate—Property Used in Tribal Self-Governance and Statement of Delivery*, are available on our website. The forms contain all the required elements of an exemption certificate and contain a section that a notary public may complete to document delivery of the property in Indian country or at the principal place where the tribal government meets to conduct tribal business. A notarized CDTFA-146-RES or CDTFA-146-TSG 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 Native American purchaser in Indian country. If you obtain a properly completed and notarized CDTFA-146-RES or CDTFA-146-TSG, 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 Native American 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, a 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 a Native American 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. Instead of providing the retailer with an exemption certificate, you may provide the retailer with documentation showing you are a Native American, 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 a Native American 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 your partners are Native Americans, such as partnership agreements.
- Documents showing that your organization is a Native American 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 Native Americans, such as the organization's articles of incorporation.
- An "exemption certificate" containing certain other required content (see next section).

### **Exemption certificates**

A seller is relieved of the liability for sales tax if the purchaser certifies in writing to the seller that the sale of the property is subject to an exemption. An exemption certificate must be in writing, issued timely, and accepted by the seller in good faith. It can be a simple document in the form of a letter. The certificate or letter must include all the following essential elements:

#### **For individuals and Native American couples:**

- The date,
- The purchaser's name,
- Home address,
- Signature,
- A description of the products or merchandise purchased under the certificate, and
- A statement that the property is being purchased for use in Indian country by a Native American who lives in Indian country.

#### **For Native American organizations:**

- The date,
- The organization's name,
- The organization's address,
- The title and signature of the person completing the certificate,
- A description of the products or merchandise purchased under the certificate, and
- A statement that the property is being purchased for use in Indian country by the Native American organization.

A document containing the essential elements described above is considered the minimum amount of information to help support claimed exempt sales.

Exemption certificate forms [CDTFA-146-RES](#), *Exemption Certificate and Statement of Delivery in Indian Country*, and [CDTFA-146-TSG](#), *Exemption Certificate—Property Used in Tribal Self-Governance and Statement of Delivery*, are available on our website. These certificates can be used to document exempt sales of general merchandise, vehicles, vessels, and aircraft. [CDTFA-146-CC](#), *Construction Contract Exemption Certificate and Statement of Delivery in Indian Country*, is also available on our website. The CDTFA-146-CC may be used for the purposes of documenting exempt retail sales of materials and fixtures by a construction contractor to a Native American purchaser in Indian country. With any of these exemption certificates, a specific exemption certificate for a single transaction may be issued, or a blanket exemption certificate covering numerous transactions may be issued. However, for each transaction in which a statement of delivery is required, a separate statement of delivery must be completed.

More information on exemption certificates may be found in [Regulation 1667](#), *Exemption Certificates*.

### Good faith

If you timely accept a completed exemption certificate from a Native American purchaser in good faith, CDTFA staff should not question your acceptance of the certificate. However, if you have evidence or knowledge that the Native American may not live in Indian country, you should not accept an exemption certificate unless the Native American purchaser provides you with other reliable documentation to verify residency in Indian country.

A mailing address outside Indian country or the same address used by numerous Native Americans may cause you to question the validity of an exemption certificate. Many Native Americans residing in Indian country maintain post office boxes at locations outside Indian country. Other reservations may only have a single mailing address on the reservation that is shared by Native Americans on the reservation. Provided the property is in fact delivered to a Native American in Indian country that resides in Indian country, the exemption still applies. However, if delivery of the property is made to the off-reservation post office box, the exemption does not apply. If you have reason to question the validity of an exemption certificate, you should obtain additional documentation to support the exempt sale.

### Records

A retailer's records should include documents to support the basis for a claim that a particular sale was exempt from tax. You should retain exemption certificates and any other supporting documentation you obtain to support claimed exempt sales for *at least four years*.



## Sales Related to Construction Contracts

*This section describes how tax applies to sales to construction contractors and sales by construction contractors involving Native American customers and construction contracts for work in Indian country. For detailed information on applying tax to sales of construction materials, fixtures, and supplies, please see [publication 9](#), Construction and Building Contractors. You may also want to refer to [Regulation 1616](#), Federal Areas, and [Regulation 1521](#), Construction Contractors, which may be obtained on our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) or by contacting our Customer Service Center.*

### Construction activity outside Indian country

There are no special sales or use tax exemptions for construction work done for a Native American customer outside Indian country. Tax applies to your sales in the same manner as other construction contracts.

### Materials versus fixtures

Generally, a construction contractor is a *consumer* of materials and a *retailer* of fixtures that are furnished and installed in the performance of a construction contract. Due to the different application of tax when a contractor is a consumer rather than a retailer, it is very important to ascertain whether items that are being furnished and installed in the performance of a construction contract are materials or fixtures.

*Materials* are construction materials, components, and other tangible personal property incorporated into, attached to, or affixed to real property by contractors in the performance of a construction contract, and which, when combined with other tangible personal property, lose their identity to become an integral and inseparable part of the real property. Examples of items typically regarded as materials include concrete, doors, electric wiring, lumber, flooring, roofing, windows, and paint.

*Fixtures* are items that are accessory to a building or other structure. Fixtures do not lose their separate identity as accessories when installed. Examples of fixtures include signs, heating and air conditioning units, furnaces, plumbing fixtures, lighting fixtures, shutters, and blinds.

For more information on items regarded as materials or fixtures, please see Appendix A and Appendix B of Regulation 1521.

### Sales to construction contractors (by “off-reservation” retailers)

#### *Sales to Native American construction contractors*

##### **Materials**

Sales tax does not apply to your sales of materials to Native American construction contractors (construction contractors that are Native Americans) when you deliver the materials in Indian country and ownership transfers to the Native American construction contractor in Indian country. Tax applies if materials are delivered to Native American construction contractors at any point outside Indian country. Be sure to read the information on documentation and transfer of ownership in [Documenting Exempt Transactions](#).

##### **Fixtures**

Sales tax does not apply to sales of fixtures furnished and installed by Native American construction contractors in Indian country. Therefore, when you sell fixtures to a Native American construction contractor, you should obtain a completed and timely California resale certificate from the Native American contractor. In the event the purchasing Native American construction contractor does not have a California seller’s permit, instead of including a seller’s permit number, the resale certificate must include sufficient information as to why the Native American construction contractor is not required to hold a California seller’s permit. Please see [publication 103](#), *Sales for Resale*, for additional information.

## ***Sales to non-Native American construction contractors***

### **Materials**

Generally, construction contractors are consumers of materials that are furnished and installed in the performance of a construction contract. Tax generally applies to sales of materials to non-Native Americans contractors. This is true even when the materials are delivered in Indian country and permanently attached to real estate in Indian country.

### **Construction contractor as retailer of materials**

Under certain specific circumstances, a construction contractor performing a construction contract may qualify as a retailer of materials by meeting each of the following requirements

*Please note:* These requirements are distinct from the requirements for exemptions discussed on the next page:

- The construction contractor must be in the business of selling materials or other tangible personal property;
- The construction contractor must possess a valid seller's permit;
- The construction contract must explicitly provide for the transfer of title to the materials prior to the time the materials are installed and must separately state the sales price of materials, exclusive of the charges for installation (for example, a time-and-materials contract); and
- The construction contractor must provide a valid and timely resale certificate to its vendor.

A construction contractor that furnishes and installs materials may or may not have a seller's permit. For example, a construction contractor that only furnishes and installs carpet and tile and makes no over-the-counter sales of materials is generally not required to hold a seller's permit. If such a construction contractor wishes to enter into a construction contract with a Native American purchaser in Indian country to furnish and install materials and qualify as the retailer of the materials, the construction contractor must obtain a seller's permit. Any construction contractor that obtains a seller's permit is deemed to be in the business of selling materials. If the construction contractor does not obtain a seller's permit, the construction contractor may not act as a retailer of the materials.

### **Fixtures**

Sales tax generally does not apply to the sale of fixtures to non-Native American construction contractors when the construction contractors furnish and install the fixtures in Indian country. You should obtain a completed and timely California resale certificate from the construction contractor. For more information, please see [publication 103, Sales for Resale](#), for additional information.



## Sales by construction contractors

### *Sales to Native Americans—Construction contracts for work in Indian country*

As a construction contractor, when your customer is a Native American, tax generally does not apply to your sales of *fixtures* furnished and installed as part of a construction contract for work in Indian country, since the construction contractor is a retailer of fixtures that are furnished and installed in the performance of a construction contract, and the retail sale takes place in Indian country.

However, the same provisions do not necessarily apply to materials since a construction contractor is generally a consumer of materials that are furnished and installed in the performance of a construction contract. Unless you qualify as a retailer of materials, as provided above, you are the consumer of materials, and tax is generally due on your purchase of those materials.

### *Tax-exempt sales of materials under a construction contract*

When the construction contractor qualifies as a retailer of materials, as previously described, the contractor may purchase materials from its vendor for resale. In order to resell the materials in a tax-exempt transaction to the Native American customer in performance of a construction contract in Indian country, each of the following requirements must also be met:

1. The construction contract must separately state the price of materials, exclusive of the charge for installation (for example, a time-and-materials contract);
2. The contract must specifically provide that ownership of the materials (title) will transfer to the Native American customer in Indian country *prior to use or installation of the materials*;
3. The materials must in fact be delivered to the Native American customer in Indian country; and
4. The construction contractor must obtain an exemption certificate from its Native American customer.

Be sure to document the circumstances of any sale you claim as exempt (see [Documenting Exempt Transactions](#)).

It is important to note that in a situation where a subcontractor is acting as a retailer of materials that are furnished and installed, or in a situation where a subcontractor is furnishing and installing fixtures, the subcontractor generally may not accept a resale certificate from a prime contractor. The subcontractor must sell the materials or fixtures at retail directly to the Native American purchaser in Indian country for the transaction to qualify as exempt from tax. However, if the subcontractor is making a retail sale of materials or fixtures to a prime contractor, and the materials or fixtures are resold by the prime contractor to the Native American purchaser prior to installation (see [Two Agreements](#) in Example 2 on next page), the subcontractor may accept a resale certificate from the prime contractor in this situation.

For a contractor to be a retailer of materials, the contractor must separately state the selling price of the materials and the contract must pass title of the materials to the Native American customer prior to installation. A time-and-materials contract is one type of contract that provides for a separate statement of the selling price of materials. However, a time-and-materials contract is not required. Any other type of contract may be used provided the contract contains a separately stated selling price of the materials. For example, a guaranteed maximum price contract may qualify provided the selling price of the materials is separately stated. In addition to the separately stated selling price of the materials, the contract must contain sufficient language transferring title of the materials to the Native American purchaser in Indian country on the reservation prior to installation by the selling contractor.

The following are two examples of language that may be included in a guaranteed maximum price construction contract for the purpose of providing a separately stated selling price of materials. In addition to either of the following examples, the contract must contain a title clause providing for the transfer of title to the materials from the contractor to the Native American purchaser prior to installation.

### Example 1.

Section x. Contract Price. Subject to the terms and conditions hereof, as payment for contractor's performance of the Services under this Agreement, Tribe shall pay a guaranteed maximum cost of \$ \_\_\_\_\_ ("Contract Price"). The portion of the Contract Price which is the guaranteed maximum cost of materials only is \$ \_\_\_\_\_, which amount is exclusive of any charge for installation and performance of labor services.

### Example 2.

#### Contract Sum

The sum of the cost of the work and the contractor's fee is guaranteed by the contractor not to exceed an aggregate amount, hereinafter the "guaranteed maximum price," equal to \$ \_\_\_\_\_. The cost of the work shall include materials that are exempt from tax under [18 CCR 1616\(d\)\(4\)\(C\)](#), which materials contractor shall, pursuant to this agreement, sell or cause to be sold to owner. The final cost of such materials is estimated to be \$ \_\_\_\_\_. Changes to the cost of materials exempt from sales tax under [18 CCR 1616\(d\)\(4\)\(C\)](#), stated above, shall be effected through change orders, which shall in all cases separately state the cost of such materials.

#### Two Agreements

Notwithstanding anything to the contrary contained herein, this Agreement is intended to constitute, and shall be construed and interpreted as if it constitutes, two (2) separate agreements with regard to materials exempt from sales tax under [18 CCR 1616\(d\)\(4\)\(C\)](#), as follows:

- a) one for the retail sale of such materials from the Contractor to the Tribe, with delivery to the Tribe and transfer of title to the Tribe occurring in Indian country prior to installation; and
- b) one for the later installation (and labor associated therewith) of the Tribe's materials into the Project.

#### Contractor as Seller

It is the intent of the parties that Contractor, Subcontractors, and Sub-subcontractors be "sellers" of materials as provided in [18 CCR 1521\(b\)\(2\)\(A\)2](#).

The above examples are meant to illustrate the nature of contract language that will allow a contractor to be a retailer of materials. It is important to note that use of the above language in a contract does not automatically result in the contractor being a retailer of materials as the contract in its entirety must be examined. As these types of transactions may be complicated, if you are unsure that your contract to furnish and install materials qualifies you as a retailer rather than a consumer, please contact us for assistance.



## Special Taxes and Fees

*In addition to sales and use tax, special taxes and fees may apply to sales, transactions, or activities involving Native Americans and sales in Indian country. The following section is information pertaining to some of the more common special taxes and fees that may apply to transactions or activities involving Native Americans or conducted in Indian country.*

- Motor Vehicle Fuel Tax
- Diesel Fuel Tax
- Aircraft Jet Fuel Tax
- Underground Storage Tank Maintenance Fee
- Oil Spill Response, Prevention, and Administration Fees
- Use Fuel Tax
- International Fuel Tax Agreement (IFTA)
- Interstate User Diesel Fuel Tax
- Covered Electronic Waste Recycling Fee
- Hazardous Waste Fees (Environmental, Generation and Handling, and Facility Fees)
- Marine Invasive Species Fee
- Occupational Lead Poisoning Prevention Fee
- Integrated Waste Management Fee (Solid Waste and Wood Waste)
- Water Rights Fee
- California Tire Fee
- Childhood Lead Poisoning Prevention Fee
- Alcoholic Beverage Tax
- Cigarette and Tobacco Products Tax
- Cigarette and Tobacco Products Licensing
- Lithium Extraction Excise Tax
- Tax on Insurers
- Emergency Telephone Users Surcharge
- Natural Gas Surcharge
- Energy Resources Surcharge (Electrical)
- Timber Yield Tax



### **Motor Vehicle and Diesel Fuel Taxes**

There are no special exemptions from the state's motor vehicle or diesel fuel taxes related to fuel sales in Indian country. California's excise tax on motor vehicle fuel and diesel fuel applies when the fuel is removed from an in-state fuel terminal rack or imported into California. As a result, fuel delivered to Indian country will generally include California excise tax in its cost. Fuel retailers usually pass the tax to their customers.

Any person who uses fuel on Indian country land that is not part of a state or local road system may claim a refund for taxes paid on fuel consumed off-highway in Indian country. Generally, Bureau of Indian Affairs roads are located within Indian country and are not considered part of a state or local road system.

If you have used gasoline in Indian country, you may file a claim for refund with the State Controller's Office (SCO). To download a claim form ([SCGR-1](#)) and schedules, go to SCO's *Gasoline Tax Refund* webpage at [www.sco.ca.gov/ardtax\\_gas\\_tax.html](http://www.sco.ca.gov/ardtax_gas_tax.html). Follow the instructions to file your claim for refund. If you need assistance, please contact SCO's Gas Tax Refund Section by email at [GTR@sco.ca.gov](mailto:GTR@sco.ca.gov).

If you used tax-paid clear diesel fuel off-highway on Indian country land, you may file a claim for refund by completing a *Diesel Fuel Claim for Refund on Nontaxable Uses* through our [online services](#). If you are not registered to file claims for refund for nontaxable uses, you must do both of the following before you file your first claim:

- [Register](#) to obtain a diesel user account number, and
- Submit a completed [Diesel Fuel Tax Claim for Refund Questionnaire](#).

Your claim for refund may be filed annually or quarterly (if each quarterly claim is for \$750 or more) and must be filed within three years from the date the fuel was purchased.

For more information, please visit our [Users—Nontaxable Uses—Filing Claims for Refund](#) webpage.

### ***Underground Storage Tank Maintenance Fee***

The [Underground Storage Tank Maintenance Fee](#) is due on every gallon of petroleum products placed into the underground storage tanks. The underground storage tank fee does not apply to underground storage tanks located on a reservation. The U.S. Environmental Protection Agency regulates underground storage tanks on reservations. The state does not require owners of underground storage tanks located on a reservation to obtain permits for the underground storage tanks, whether they are operated by Native Americans or non-Native Americans; therefore, such owners are not required to pay the underground storage tank fee.

### ***Oil Spill Response, Prevention, and Administration Fees***

The [Oil Spill Prevention and Administration Fee](#) is imposed on the owner of crude oil, petroleum products, and renewable fuel. Marine terminal operators, refinery operators and renewable fuel receiving facility operators, and renewable fuel production facility operators are responsible for collecting the fee from the owner. When fuel is sold at retail, the oil spill fee may be included as part of the cost of goods sold, but will not be separately stated or listed as part of the retail sales price. There are no exemptions from the oil spill fee based on the fuel being ultimately sold for retail on a reservation.

### ***Covered Electronic Waste Recycling Fee***

When a consumer purchases or leases certain new or refurbished covered electronic devices (CEDs) with a screen size of more than four inches measured diagonally, the [California's Covered Electronic Waste Recycling Fee](#) (eWaste) generally applies. The following devices with a screen size over four inches are CEDs covered by the eWaste fee:

- Televisions
  - Cathode ray tube (CRT)
  - Liquid crystal display (LCD), excluding LCD projection televisions
  - Light-emitting diode (LED)
  - Plasma, excluding plasma projection televisions
  - Organic light-emitting diode (OLED) screens
- Desktop monitors and laptop computers
  - LCD
  - LED
  - OLED
- LCD, LED, or OLED-containing tablets
- Bare CRT or any other CRT devices
- Portable DVD players with LCD or LED screens
- LCD or LED Smart Displays

If any of the items above are purchased in Indian country by a Native American who resides in Indian country, the eWaste fee is not owed. However, the Native American retailer of those items must register with us to collect and pay the fee when those items are sold to non-Native Americans and Native Americans who do not reside in Indian country.

Please see the [Getting Started](#) tab in our [Covered Electronic Waste Recycling Fee Guide](#) on how to register for an eWaste fee account.

### **California Tire Fee**

When a consumer purchases new tires, the [California Tire Fee](#) generally applies. If tire(s) are purchased in Indian country by a Native American who resides in Indian country, the tire fee is not owed. However, the Native American retailer of tires must register with us to collect and pay the fee for tires that are sold to non-Native Americans and Native Americans who do not reside in Indian country.

### **Tires Subject to the Fee**

New solid tires or pneumatic tires (those inflated or capable of inflation with compressed air) intended for use with, but sold separately from:

- On-road or off-road motor vehicles (including trailers);
- Motorized equipment (lawn mower, golf cart, go-kart, etc.);
- Construction equipment; or
- Farm equipment.

New tires (including the spare) included with the purchase of:

- New or used motor vehicles (includes all-terrain vehicles (ATVs), motorcycles, and electric bicycles);
- New or used trailers drawn upon a highway or road;
- New or used construction equipment (tractor, backhoe, bulldozer, loader, etc.); or
- New or used farm equipment (combine harvester, baler, cultivator, picker, etc.).

*Please note:* A new tire does not include retreaded, reused, or recycled tires.

Please see the [Getting Started](#) tab in our [California Tire Fee Guide](#) on how to register for a California Tire Fee account.

### **Hazardous Waste Programs**

We administer [Hazardous Waste Fee Programs](#) (Environmental, Generation and Handling, and Facility Fees) in cooperation with the Department of Toxic Substances Control (DTSC), as required by the California Hazardous Substances Tax Law. Each of these programs applies to Native American businesses outside Indian country and to non-Native American businesses located in Indian country. However, these programs may or may not apply to Native American businesses in Indian country, depending upon the tribes' state legal environmental responsibilities such as any that may be called for under their compacts with the state.

### **Alcoholic Beverage Taxes**

#### **Sales to Native American Retailers**

There are no exemptions from the [California alcoholic beverage excise taxes](#) for sales of alcoholic beverages (beer, wine, and distilled spirits) to Native Americans. Sales of alcoholic beverages by a manufacturer, importer, or wholesaler located in California to Native Americans are not considered exempt exports. Therefore, the California alcoholic beverage excise taxes are owed by the manufacturer, importer, or wholesaler on all alcoholic beverages sold to Native American retailers located in California, unless otherwise exempt.

#### **Native American Manufacturers**

Generally, the California alcoholic beverage excise tax is imposed upon all alcoholic beverages sold in California by a manufacturer, importer, or seller in which no excise tax has been previously paid. California currently does not have U.S. congressional authority to charge the California alcoholic beverage excise tax to Native Americans.

Therefore, a tribally-owned manufacturer located in Indian country does not owe the California alcoholic beverage excise tax on the alcoholic beverages they manufacture and sell in Indian country to Native American or non-Native American consumers.

### **California Battery Fee**

The [California Battery Fee](#) is not applicable if the sale and delivery of a lead-acid battery to a Native American purchaser occurs on a reservation. However, the Native American retailer of lead-acid batteries must register with us to collect and pay the fee to us when the battery is sold to non-Native Americans and Native Americans who do not reside in Indian country.

### **Cigarette and Tobacco Products Taxes**

#### **Distributors**

There are no special exemptions from [California cigarette and tobacco products taxes](#) for cigarettes and tobacco products sold to Native Americans. A non-Native American cigarette distributor who sells cigarettes to a Native American must pay the cigarette tax by buying California cigarette tax stamps from us and affixing them to the cigarette packages. A non-Native American tobacco products distributor who sells tobacco products to a Native American must report and pay the tobacco products excise tax.

#### **Native American retailers**

When a Native American retailer in California buys untaxed cigarettes or untaxed tobacco products and then sells them to non-Native Americans in Indian country, the Native American retailer is required to collect the cigarette and tobacco products excise tax from the purchasers and pay the excise tax to us. If the Native American retailer does not collect and pay the excise taxes due, the non-Native American purchaser is ultimately liable for the excise tax. Non-Native Americans who purchase cigarettes without California tax stamps or purchase untaxed tobacco products from a Native American retailer owe the cigarette and tobacco products excise tax. The non-Native American must register with us, file returns, report their purchases, and pay the applicable California excise tax.

#### **California Electronic Cigarette Excise Tax (CECET)**

Beginning July 1, 2022, when a Native American retailer sells electronic cigarettes to non-Native Americans in Indian country, the Native American retailer is required to collect from the purchaser at the time of sale the California Electronic Cigarette Excise Tax (CECET) at the rate of 12.5 percent of the retail selling price of electronic cigarettes containing or sold with nicotine. The collection of the CECET is in addition to the sales and use tax.

A Native American retailer of electronic cigarettes containing or sold with nicotine must:

- Be registered with a CECET permit (account),
  - Only one CECET account is issued for reporting multiple retail locations in Indian country.
- Include the CECET amount in any price marketing on any sign or display,
- Collect the CECET from the purchaser at the rate of 12.5 percent of the retail selling price of electronic cigarettes containing or sold with nicotine at the time of sale,
- Provide the purchaser with a receipt or other document that separately identifies the CECET and the CECET amount the purchaser paid on each electronic cigarette retail sale,
- File a CECET return electronically, and
- Pay the excise tax to us.

For additional information, see our [Tax Guide for California Electronic Cigarette Excise Tax](#).

#### **License and Fee Requirements**

Generally, California law requires federally recognized Native American tribes to obtain and maintain the appropriate cigarette and tobacco products license(s) to sell cigarettes and tobacco products to businesses or consumers in California.

A Native American tribe must provide supporting documentation that they are a federally recognized tribe operating all business activities on their own reservation for the cigarette and tobacco products license fee to be waived at registration. A license will not be issued without proper documentation.

Please see our [Tax Guide for Cigarettes and Tobacco Products](#) and select the [Getting Started](#) tab. Then, under Registration, select [Online Registration](#) to register for a cigarette and tobacco products license, a seller's permit, and many other permits, licenses, or accounts.

For more information about cigarette and tobacco products taxes and licensing, please see our [Tax Guide for Native Americans](#) and select [Other Taxes and Fees](#), then [Cigarette and Tobacco Products Taxes](#). On our website, go to the [Tax Resources](#) dropdown, select [Industry Guides](#), and then under the Tax and Fee Guides list, select [Native Americans](#).

### ***Emergency Telephone Users Surcharge (911 and 988 Surcharges)***

The 911 and 988 surcharges do not apply to enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation. Revenue and Taxation Code prohibits the imposition of the surcharges under the United States or California Constitutions.

### ***Energy Resources (Electrical) Surcharge and Natural Gas Surcharge***

Enrolled Native Americans are exempt from surcharges related to the consumption of electrical energy and natural gas in Indian country. The exemption prohibits the taxation of electrical energy consumption under the United States or California Constitutions. Similar constitutional exemptions are provided for the natural gas surcharge in the Public Utilities Code.

### ***Timber Yield Tax***

Indians, Indian organizations, or associations comprised entirely of Indians logging timber on Indian reservations are not liable for the tax.

An "Indian" is any person of Indian descent who is entitled to receive services as an Indian from the U.S. Department of the Interior. An "Indian organization" includes Indian tribes and tribal organizations, partnerships, all whose members are Indians, and corporations organized under tribal authority and wholly owned by Indians.

For more information regarding any of the special tax and fee programs listed above, please visit our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) or contact:

#### **By Telephone**

1-800-400-7115 toll-free (CRS:711), then select the option for *Special Taxes and Fees*

#### **By Mail**

California Department of Tax and Fee Administration  
Program and Compliance Bureau  
PO Box 942879  
Sacramento, CA 94279-0088

## Tables: Proper Application of Tax

The tables below are provided as a resource for determining the proper application of tax to sales and purchases involving Native Americans and construction contracts involving Native Americans. These tables are a summary of the information contained in this publication. For specific details regarding the proper application of tax to a specific transaction, please refer to the appropriate section in this publication.

Sales and Purchases of Tangible Personal Property					
Retailer	Purchaser	Location of Retailer	Transfer of Possession and Title	Proper Application of Tax	Page Number
Native American	Native American residing in Indian country	Indian country	In Indian country	Exempt from sales tax and rebuttably presumed exempt from use tax	7
Non-Native American	Native American residing in Indian country	Outside Indian country	In Indian country	Exempt from sales tax. Native American purchaser must pay use tax if property is used outside Indian country more than one-half of the time during the first 12 months of ownership.	4
Non-Native American	Native American residing in Indian country	Outside Indian country	Outside Indian country	Sales tax payable by seller	4
Non-Native American	Non-Native American or Native American not residing in Indian country	Indian country	In Indian country	Sales tax payable by seller	9
Non-Native American	Native American Tribal Government	Outside Indian country	Outside Indian country at the principal location tribal government conducts tribal business	Exempt from sales tax. Purchaser must pay use tax if property is used for other than tribal self-governance more than one-half of the time during the first 12 months of ownership.	4
Non-Native American	Native American residing in Indian country	Indian country	In Indian country	Exempt from sales tax. Native American purchaser must pay use tax if property is used outside Indian country more than one-half of the time during the first 12 months of ownership.	9
Native American selling meals, food, or beverages at eating/drinking establishments	Any	Indian country	In Indian country	Exempt from sales and use tax	8
Native American	Non-Native American or Native American not residing in Indian country	Indian country	In Indian country	Exempt from sales tax, but Native American retailer must collect and pay use tax from purchaser	8

**Construction Contracts in Indian country**

<b>Contractor</b>	<b>Customer or Purchaser</b>	<b>Type of Contract</b>	<b>Proper Application of Tax—Materials</b>	<b>Proper Application of Tax—Fixtures</b>	<b>Page Number</b>
Native American	Native American in Indian country	Lump-Sum	Contractor is consumer of materials— application of tax will depend on how materials are acquired by Native American contractor.	Contractor is retailer of fixtures—tax does not apply to sale or purchase of fixtures.	17
Native American	Native American in Indian country	Time-and-Materials <sup>1</sup>	Contractor is retailer of materials—tax does not apply to sale or purchase of materials.	Contractor is retailer of fixtures—tax does not apply to sale or purchase of fixtures.	19
Non-Native American with a seller's permit	Native American in Indian country	Lump-Sum	Contractor is consumer of materials— tax applies to contractor's cost of materials.	Contractor is retailer of fixtures—tax does not apply to sale or purchase of fixtures.	19
Non-Native American with a seller's permit	Native American in Indian country	Time-and-Materials <sup>1</sup>	Contractor is retailer of materials—tax does not apply to sale or purchase of materials.	Contractor is retailer of fixtures—tax does not apply to sale or purchase of fixtures.	19
Non-Native American without a seller's permit	Native American in Indian country	Lump-Sum	Contractor is consumer of materials— tax applies to contractor's cost of materials.	N/A—a contractor must have a seller's permit to furnish and install fixtures.	19
Non-Native American without a seller's permit	Native American in Indian country	Time-and-Materials <sup>2</sup>	Contractor is consumer of materials— tax applies to contractor's cost of materials.	N/A—a contractor must have a seller's permit to furnish and install fixtures.	19

<sup>1</sup> Assumes contract explicitly provides for the transfer of title to the materials to the Native American purchaser prior to the time the materials are installed and the materials are delivered to the Native American purchaser in Indian country. If any of these requirements are not met, the contractor is regarded as the consumer of the materials and tax applies to the contractor's cost of the materials.

<sup>2</sup> A contractor without a seller's permit may enter into a time-and-materials contract for the furnishing and installation of materials, but the contractor remains the consumer of the materials. Inclusion of a title clause passing title of the materials to the Native American purchaser prior to installation is only permitted when the contractor has a valid seller's permit.

## For More Information

For additional information or assistance, please take advantage of the resources listed below.

### CUSTOMER SERVICE CENTER 1-800-400-7115 (CRS:711)

Customer service representatives are available Monday through Friday from 7:30 a.m. to 5:00 p.m. (Pacific time), except state holidays. In addition to English, assistance is available in other languages.

### OFFICES

Please visit our website at [www.cdtfa.ca.gov/office-locations.htm](http://www.cdtfa.ca.gov/office-locations.htm) for a complete listing of our office locations. If you cannot access this page, please contact our Customer Service Center at 1-800-400-7115 (CRS:711).

### INTERNET

[www.cdtfa.ca.gov](http://www.cdtfa.ca.gov)

You can visit our website for additional information—such as laws, regulations, forms, publications, industry guides, and policy manuals—that will help you understand how the law applies to you or your business.

You can also verify seller's permit numbers and certain CDTFA licenses or accounts on our website (see [Verify a Permit, License, or Account](#)).

Multilingual versions of publications are available on our website at [www.cdtfa.ca.gov/formspubs/pubs.htm](http://www.cdtfa.ca.gov/formspubs/pubs.htm).

Another good resource—especially for starting businesses—is the California Tax Service Center at [www.taxes.ca.gov](http://www.taxes.ca.gov).

### BULLETINS AND NEWSLETTERS

The CDTFA publishes a quarterly *Tax Information Bulletin* (TIB) and an annual *Special Taxes and Fees Newsletter*. These include articles on the application of law to specific types of transactions, announcements regarding new and revised publications, and other articles of interest. You can find current TIBs and newsletters on our website. You may also [sign up](#) to receive email notifications when new TIBs and newsletters are posted to our website.

### FREE CLASSES, SEMINARS, AND TUTORIALS

We offer free [online](#) seminars and video tutorials for help using our online services system, including how to file your return. Some classes are offered in multiple languages. If you would like further information on specific classes, please call our Motor Carrier Office.

### WRITTEN TAX ADVICE

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction if we determine that we gave you incorrect written advice regarding the transaction and that you reasonably relied on that advice in failing to pay the proper amount of tax. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstances of the transaction.

For written advice on general tax and fee information, please visit our website at [www.cdtfa.ca.gov/email](http://www.cdtfa.ca.gov/email) to email your request.

You may also send your request in a letter. For written advice on use fuel tax questions, send your request to: Program Administration Branch, MIC:31, California Department of Tax and Fee Administration, P.O. Box 942879, Sacramento, CA 94279-0031.

### TAXPAYERS' RIGHTS ADVOCATE

If you would like to know more about your rights as a taxpayer or if you have not been able to resolve a problem through normal channels (for example, by speaking to a supervisor), please see [publication 70](#), *Understanding Your Rights as a California Taxpayer*, or contact the [Taxpayers' Rights Advocate Office](#) for help at 1-888-324-2798. Their fax number is 1-916-323-3319.

If you prefer, you can write to: Taxpayers' Rights Advocate, MIC:70, California Department of Tax and Fee Administration, P.O. Box 942879, Sacramento, CA 94279-0070.

### QUESTIONS RELATED TO USE FUEL TAX

You may contact our Motor Carrier Office for more information regarding how to complete your use fuel tax return.

Motor Carrier Office, California Department of Tax and Fee Administration, 1030 Riverside Parkway, Suite 125, West Sacramento CA 95605-1527, Telephone: 1-916-309-0900, Fax: 1-916-373-3070.



## Regulations, forms, publications, and industry guides

### *Lists vary by publication*

Selected [regulations](#), [forms](#), [publications](#), and [industry guides](#) that may interest you are listed below. Translated versions of certain publications are also available online.

### **Regulations**

- 1521 *Construction Contractors*
- 1521.4 *Factory-Built Housing*
- 1593 *Aircraft and Aircraft Parts*
- 1610 *Vehicles, Vessels, and Aircraft*
- 1610.2 *Mobilehomes and Commercial Coaches*
- 1616 *Federal Areas*
- 1628 *Transportation Charges*
- 1660 *Leases of Tangible Personal Property—In General*
- 1661 *Leases of Mobile Transportation Equipment*
- 1667 *Exemption Certificates*
- 1668 *Sales for Resale*
- 1698 *Records*

### **Forms**

- 146-RES *Exemption Certificate and Statement of Delivery in Indian Country*
- 146-TSG *Exemption Certificate—Property Used in Tribal Self-Governance and Statement of Delivery*
- 146-CC *Construction Contract Exemption Certificate and Statement of Delivery in Indian Country*

### **Publications**

- 9 *Construction and Building Contractors*
- 17 *Appeals Procedures: Sales and Use Taxes and Special Taxes and Fees*
- 34 *Motor Vehicle Dealers*
- 44 *District Taxes (Sales and Use Taxes)*
- 46 *Leasing of Tangible Personal Property*
- 47 *Mobilehomes and Factory-Built Housing*
- 51 *Resource Guide to Tax Products and Services for Small Businesses*
- 52 *Vehicles and Vessels: Use Tax*
- 61 *Sales and Use Taxes: Exemptions and Exclusions*
- 70 *Understanding Your Rights as a California Taxpayer*
- 73 *Your California Seller's Permit*
- 75 *Interest, Penalties, and Collection Cost Recovery Fee*
- 76 *Audits*
- 79A *Aircraft and California Tax*
- 90 *Environmental Fee*
- 91 *California Tire Fee*
- 95 *Electronic Waste Recycling Fee*
- 103 *Sales for Resale*
- 107 *Do You Need a California Seller's Permit?*
- 109 *Internet Sales*
- 110 *California Use Tax Basics*

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PUBLICATION 146 | AUGUST 2023