



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

SALES AND USE TAX LIABILITY FOR CHARTER SCHOOLS

All charter schools, including charter schools that are exempt from federal income tax under Internal Revenue Code Section 501(c)(3) and from California State income tax under Section 23701, are subject to paying both sales tax and use tax. Recently a number of charter schools have received notices of tax liability from the California Board of Equalization. This Legal Alert provides an overview of the sales and use tax obligations of charter schools.

Sales and use taxes are very similar. The sales tax is a tax on in-state purchased physical merchandise (goods). The use tax is a tax on physical merchandise (goods) purchased out-of-state that are brought back into the State of California for use, storage, or other consumption. The sales tax is a tax that California vendors collect at the point-of-sale from California purchasers. Conversely, the use tax is a tax paid by California purchasers of out-of-state goods. Both the sales and the use tax are set at the same 7.25% statewide standard rate in California.

If the out-of-state vendor is registered in California, then the vendor will collect the use tax at the point-of-sale from California purchasers. However, if the out-of-state vendor is not registered in California, then the vendor will not collect the use tax at the point-of-sale from California purchasers. In that scenario, it is the responsibility of the California purchasers to voluntarily disclose their California use tax liability on Form 79B with the California Board of Equalization, which is the entity that collects the sales and use tax in California. It is the responsibility of California purchasers to submit the Form 79B to the California Board of Equalization within the month following the quarter the out-of-state purchase was made.

The California Board of Equalization tends to uncover unreported use tax liability by California charter schools when it performs audits for the collection of use tax on out-of-state vendors from which California schools purchase goods. For example, the California Board of Equalization might perform an audit on an out-of-state art supply store for collecting use taxes on goods sold to California schools. During the audit, the California Board of Equalization might discover that a California charter school purchased art supplies without paying any use taxes because the out-of-state vendor failed to collect the tax from the charter school. In this situation the California Board of Equalization would send a letter to the charter school alerting it of its use tax liability.

Generally, the California Board of Equalization renders penalties and interest when taxpayers fail to disclose use tax liability. However, in the case of intentional evaders of the use tax, the potential penalties include fines, and in rare circumstances, even jail-time.

If you should have any questions regarding this update, please contact Paul Minney at (pminney@smymlaw.com) or Adam Susz at (asusz@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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