

# State Sales Tax

There are few forms of taxation that are more misunderstood than sales tax! We hope this article will help clear matters up.

The first thing that should be considered about sales tax, is the specific nature of the tax. Sales tax is an “excise” tax. An excise tax is a “privilege” tax. How do we know that it is an excise? Because (depending on the state) it says so right in the sales tax statute:

California Revenue and Taxation Code, section 6051:

“For the **privilege** of selling tangible personal property at retail a tax is hereby imposed upon all retailers...”

As can clearly be seen by the use of the “privilege”, the tax is based upon the exercise of a privilege. So why do we say that sales tax is an “excise” tax? Because the federal courts tell us that the two words (“privilege” and “excise”) represent the same form of tax.

“The term ‘**excise** tax’ and ‘**privilege** tax’ are synonymous. The two are often used interchangeably.”

American Airways v. Wallace, 57 F.2d 877, 880

Now that we know the tax is an excise, we must determine who is exercising the privilege. Only in this way can we determine who is actually and lawfully liable for the tax. But wait...reread the California statute shown above. The State has done our work for us by telling us plainly who the tax is imposed upon [which is the person “made liable” for the tax]. The statute says the tax is “...imposed upon all **retailers**...” Did you get that? The tax is upon “retailers”. The tax is not, and never has been, imposed on you.

O.K., now we know that the tax is imposed upon the retailer. So what is the **privilege** being exercised by the retailer? That question is the key to who is a “retailer” and who is not. ***Even if you sell products “at retail”, you are still not the “retailer” spoken of in the statute unless you are also exercising a privilege in the course of selling your goods at retail.*** Let’s explore this issue a bit.

California writes some of the most vague laws in the nation. The intention of the California legislature is not usually made clear in the text of the law, nor is there usually any sort of preface that explains its intended purpose. Other states generally don’t do much better because they often attempt to copy California’s lead. However, some do a tad better.

The Minnesota sales tax statute is an example of legislative language that at least tips us off to a few things!

Here's how the State of Minnesota imposes their sales tax:

**297A.62 Sales tax imposed; rates.**

“...a sales tax...is imposed on the gross receipts from retail sales...in this state by a person who is **required to have** or **voluntarily obtains** a permit under section 297A.83, subdivision 1”.

The Minnesota statute tells us that there are “persons” who are **required to have** a resale permit, and others who may acquire the permit on a purely **voluntary** basis. Minnesota law never reveals which “person” is **required to have** the permit, nor does California law. So...how do we distinguish between the person who has to have a permit and those who don't? That distinction will also tell us who is the “retailer” and who is not.

It would be nice if the legislative draftsmen who write these statutes would just come right out and tell us who is required, but that would cost a state such as California billions of dollars in lost revenue in just a single year, so the legislative draftsmen are not allowed to be that straightforward. If the legislative draftsmen were allowed to tell us plainly who is “required”, then we would also know just as plainly who is **not required** because they wouldn't be on the “required” list.

Let's be frank – to withhold a clear definition of who the tax is imposed upon in order to create an environment in which people will collect and pay a tax, out of ignorance, for which they are not liable, is criminal conduct – if not legally, certainly morally. Unless or until the culprits (your elected state legislators) vote to amend the law to clarify matters [fat chance!], we are left with what is written, and that is what we must examine for answers. Since the State will not allow any plain language to be used, the legislative draftsmen are left to write the law in such a way as to rely solely on **contextual framework** to determine who is required and who is not.

Let's explore the contextual framework of the “person” upon whom the tax is imposed.

Although the tax is actually imposed based upon the occurrence of certain events (i.e. “selling at retail”), the responsibility for collecting and paying over the tax rests upon a “**person**”. A typical definition of “person” in a statute usually looks something like this:

Person – *The term person includes an individual, partnership, joint venture, limited liability company, association, cooperative, corporation whether or not organized for profit, estate, or trust.*

The first thing that is important to note about that definition is that other than the word “individual” (which we will discuss in a moment), every one of the entities listed is clearly a “statutory legal fiction”. ***A statutory legal fiction is a legal entity (called a “person”) that exists because the legislature has allowed it to come into existence by passing a law that authorizes its creation.*** The most commonly recognized “statutory fiction” is a corporation. We would suggest that you re-read the bolded sentence as many times as is necessary, and let it sink in. [A quick and easy test to determine if something is a legal fiction is this: If it can sue you in court, but it has no flesh and blood, it’s a legal fiction.]

***Because statutory fictions are created by the State, they are subject to absolute regulation by the State solely on the basis of “public policy” considerations.*** [In this article we will only be addressing statutory fictions. There are non-statutory fictions, such as Common Law Trusts, which are not generally subject to State regulation as are **statutory** fictions.] Once again, we would suggest that you re-read the bolded sentence above as many times as necessary to lock it in your mind.

Some corporations are referred to as “private corporations”. This phrase is misleading. A “private corporation” is not “private” in the way most people use that word. In law, the phrase “private corporation” is merely a way of distinguishing a corporation as not being listed with the Security and Exchange Commission for “public trading” of its shares on a stock exchange. Because corporations (and all other statutory fictions) are created by the State, they are **never** “private” in the way most people understand and use the word “private”.

Since all of the words used within the definition of “person” appear to be “legal fictions”, how then should we view the word “individual”? And remember, we are ascertaining the proper meaning and application of a tax statute through **context**.

The first question that we would ask is whether or not an “individual” is a Citizen. [See the [Citizenship](#) page within this site for details on “Citizen”.] Since a Citizen of a state of the Union is definitely **not** exercising a privilege when buying or selling his own property in a private transaction, then a Citizen cannot be the “individual” in a definition dealing with an excise [privilege] tax – at least not in his private capacity. But what if the “individual” is a man (Citizen or not) who holds a position of authority and responsibility within one of those legal fictions (such as a corporate officer)? Let’s see if that theory holds water!

Chapter 75 of the Internal Revenue Code specifies various criminal tax offenses. The term “person” is used in virtually every section of the chapter. After all, since a “legal fiction” can’t be put in jail, there has to be someone that the government can ultimately hold accountable for wrongdoing.

So what is the definition of “person” for IRS tax crimes?

26 USC §7343:

**Person** - *The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

Ah...so when a real-live-flesh-and-blood person (known in law as a “natural person”) is held accountable for criminal non-compliance with the law, he is held accountable only in his capacity as the officer or employee, **under a duty to perform**, on behalf of the “legal fiction”.

Does it not then seem reasonable that the “individual” listed in the sales tax statute is simply a natural person who is under a duty to perform, or not perform, an act regarding the tax being imposed upon the legal fiction?

Of course under the Minnesota sales tax statute it is entirely likely that “individual”, as used within the definition of “person”, is also anyone who **voluntarily** acquired a resale permit, thus **entering into an agreement with the State of Minnesota, thereby making himself an “individual”** (as such word is used within the definition of “person”). Although the California statute does not specifically mention the person who would obtain a resale permit voluntarily, the same principle applies in that state. Got a headache yet? Too bad – we’re not done!

Who else might the word “individual” include? Could it include an alien residing in this country? Of course. This can easily be seen by the fact that aliens legally entering this country must receive written permission from the Immigration and Naturalization Service in order to work in this country. [Still not done!]

Who else might the word “individual” include? Let’s see what Black’s Law Dictionary has to say. After pointing out that the word “individual” can mean a “natural person as distinguished from partnership, [or] corporation...” [See a theme here?], it goes on to say;

**“...but it is said this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons.”**

Black's Law Dictionary, 6<sup>th</sup> Ed.

In case you're wondering, an "artificial person" is simply another way of saying, "a legal fiction"! Boy, these lawyers are a tricky bunch aren't they?

So now we have three probable meanings for the word "individual" as it is used within the definition of "person" (concerning the imposition of an excise tax):

- A natural person under a duty as an official of a corporation or other fiction.
- A natural person who created liability through an agreement with the State.
- A non-specified form of legal fiction, not otherwise appearing in the definition.

Given varying circumstances, "individual" may mean one or more of those definitions, but one thing is for sure – ***in a statute involving an excise tax, the word "individual" never means a private Citizen buying or selling his own private property in the course of a private transaction.*** Why? Because a private Citizen has an "inalienable right" to acquire, possess, and dispose of his private property without interference from the government.

So...if we know what "individual" does and does not mean, we now have a better understanding of what "person" means! Since we know that every other entity (except "individual") is a legal fiction, and we know what "individual" does and does not mean, ***we now know that "person" (when applied to an excise tax) does not mean a private Citizen buying or selling his own private property in the course of a private transaction.***

So let's tie this back into the issue of ***context***, which is where we started three pages ago when we first found that the statute does not specify who is exercising the taxable privilege!

Because a private Citizen who is buying or selling his own private property must be excluded from the word "individual" on Constitutional grounds, the ***contextual framework*** has been staked out; after having excluded a Citizen, the law may properly be applied to those who do not have inalienable rights to violate. So we find that "person" means:

- 1) Any statutory fiction of law (not exempt by statute).
- 2) An "individual".

We have found that "individual" means:

- a) A natural person under a duty as an official of a corporation or other fiction.

- b) A natural person who created liability through an agreement with the State.
- c) A non-specified form of legal fiction, not otherwise appearing in the definition of “person”.

It should be remembered that this discourse pertains exclusively to excise taxes and may not be applicable in other unrelated matters.

We hope that this has not only educated you as to the contextual framework of excise taxes, but may also have demonstrated a general approach to making sense of convoluted and/or vague statutes. **Context is always a fundamental element.**

In closing, we should bring one additional issue to your attention. The State of California and many other states assert that for proper administration of sales tax the State may operate under the presumption that everyone is a retailer and owes sales tax.

California Revenue and Taxation Code, §6091:

*For the purpose of the proper administration of this part and to prevent evasion of the sales tax it shall be **presumed** that all gross receipts are subject to the tax until the contrary is established.*

It should be noted that only “persons” have “gross receipts”, not Citizens in the pursuit of their private affairs – even if such private affairs include the buying and selling of goods or services. It should also be noted that all presumptions are rebuttable by affidavit, sworn testimony, or other evidence. The State’s presumption can never operate lawfully upon a Citizen (unless he has a resale permit) because such a presumption would conflict with our nation’s fundamental principle of “innocent until proven guilty”, and would reverse the standard that the government has the “burden of proof”. The State’s presumption can only operate against “persons”, who have no inalienable rights to offend.

[For assistance with proper rebuttal, click on [Original Intent Services](#) or [Contact Us](#)]

And finally, many Citizens make some serious mistakes in reference to sales tax, which winds up causing them significant legal and financial heartburn later. These mistakes are:

- Not collecting or paying over the sales tax while in possession of a valid resale permit.
- Allowing the resale permit to merely “expire” as opposed to properly canceling it. [For assistance in properly canceling a resale permit, click on [Original Intent Services](#) or [Contact Us](#).]

- Filing other State tax returns that require you to declare “gross receipts” or “gross income” under penalty of perjury. [The “class of person” who owes State income tax is the same “class of person” who is required to get a resale permit!]
- Filing federal income tax returns. [The “class of person” who owes federal income tax is the same “class of person” who is required to get a resale permit!]
- Collecting sales tax (with or without a resale permit) and not paying it over to the State – or – returning it to the person from whom it was collected.

### **Summary**

- 1) Sales tax (in every state) is an excise tax.
- 2) Excise taxes are taxes that are levied upon the exercise of a privilege.
- 3) A privilege is an activity that you do not have a right to engage in as a Citizen.
- 4) Private Citizens have an inalienable right to buy and sell their own private property without interference from state.
- 5) Sales tax is imposed upon a “person” who is exercising the privilege of selling at retail; i.e. “the retailer”.
- 6) The term “person” generally means entities that are fictions of law.
- 7) The term “person” can include an “individual”.
- 8) An “individual” can be a natural person who holds a position within a legal fiction, which requires him to act in relation to the tax imposed upon the fiction.
- 9) An “individual” can be an alien.
- 10) An “individual” can be a Citizen who has created liability that would not otherwise exist by entering into an agreement with the state; i.e. voluntarily obtaining a resale permit.
- 11) Many states assert the presumption of liability, but this presumption cannot operate upon a Citizen who is not a “person” for sales tax purposes.

We hope this article has provided some assistance in better understanding the law relating to sales tax, as well as various other peripheral issues. If you enjoyed this article and found it to be of value, please pass this page along to friends and associates. [[www.originalintent.org/salestax.shtml](http://www.originalintent.org/salestax.shtml)].