

Amend Sections 30014, 30016, 30104, 30108, 30176.1, and 30181 of the Revenue and Taxation Code to reference provisions of Proposition 10.

Source: Special Taxes Department - Excise Taxes Division

Under current law, as passed by California voters through Proposition 10 on the November 3, 1998 ballot, the California Children and Families First Act of 1998 imposes an additional excise tax on cigarettes and tobacco products under Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of the Revenue and Taxation Code. As a result of simply adding the new article to the existing law, certain sections of the Cigarette and Tobacco Products Tax Law do not currently reference the new sections created by Proposition 10. This lack of reference to the Proposition 10 sections results in an inconsistent application of the administrative provisions of the law.

This proposal would simply add conforming and necessary code section references to the Proposition 10 sections of law in order for the Board to properly administer the surtax in a manner consistent with the other excise taxes imposed on cigarettes and tobacco products. Specifically, this proposal would:

- Reference the additional tax in the definition of “transporter” to include any person transporting into or within this state tobacco products upon which the tobacco products surtax imposed by Article 3 (commencing with Section 30131) has not been paid.
- Allow common carriers engaged in interstate or foreign passenger service to be exempted from the new surtax.
- Require distributors engaged in business in this state and selling and accepting orders for cigarettes and tobacco products to collect the tax from the purchaser, if the purchaser is other than a licensed distributor, at the time the purchaser becomes obligated to pay the tax.
- Require every person engaged in business in this state and making gifts of untaxed cigarettes and tobacco products as samples to collect the tax from the donee, if the donee is other than a licensed distributor, at the time the donee becomes obligated to pay the tax.
- Allow refunds on tobacco products exported to a point outside California.
- Require a distributor to report and pay a surtax liability on a return if the tax has not been paid through the purchase of stamps or meter impressions.

These suggested changes are simply code section reference updates in order to administer the tax in a consistent manner for taxpayers and the Board.

Section 30014 of the Revenue and Taxation Code is amended to read:

30014. (a) "Transporter" means any person transporting into or within this state any of the following: (1) Cigarettes not contained in packages to which are affixed California cigarette tax stamps or meter impressions. (2) Tobacco products upon which the tobacco products surtax imposed by Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 has not been paid.

(b) "Transporter" shall not include any of the following:

(1) A licensed distributor.

(2) A common carrier.

(3) A person transporting cigarettes and tobacco products under federal internal revenue bond or customs control that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended.

Section 30016 of the Revenue and Taxation Code is amended to read:

30016. "Wholesaler" includes: (a) Any person, other than a licensed distributor, who engages in this state in making sales for resale of cigarettes that are contained in packages to which are affixed stamps or meter impressions.

(b) Any person, other than a licensed distributor, who engages in this state in making sales for resale of tobacco products on which the tax imposed in Sections 30123 and 30131.2 has been paid.

Section 30104 of the Revenue and Taxation Code is amended to read:

30104. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes or tobacco products on the facilities of such carrier. Whenever cigarettes or tobacco products are sold by distributors to common carriers engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes or tobacco products on those facilities, the tax imposed by Sections 30101, ~~and 30123 and 30131.2~~ shall not be levied with respect to the sales of the cigarettes or tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes or tobacco products on the facilities of the carriers, as the case may be, for the privilege of making such sales in California at the same rate as set forth in Sections 30101, ~~and 30123 and~~

30131.2. Those common carriers and authorized persons shall pay the tax imposed by this section and file reports with the board, as provided in Section 30186.

Section 30108 of the Revenue and Taxation Code is amended to read:

30108. (a) Every distributor engaged in business in this state and selling or accepting orders for cigarettes or tobacco products with respect to the sale of which the tax imposed by Sections 30101, and 30123 and 30131.2 is inapplicable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the purchaser becomes so obligated, collect the tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) Every person engaged in business in this state and making gifts of untaxed cigarettes or tobacco products as samples with respect to which the tax imposed by Sections 30101, and 30123 and 30131.2 is inapplicable shall, at the time of making the gift or, if the donee is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the donee becomes so obligated, collect the tax from the donee, if the donee is other than a licensed distributor, and shall give the donee a receipt therefor in the manner and form prescribed by the board. This section shall not apply to those distributions of cigarettes or tobacco products which are exempt from tax under Section 30105.5.

(c) "Engaged in business in the state" means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes or tobacco products.

(d) The taxes required to be collected by this section constitute debts owed by the distributor, or other person required to collect the taxes, to the state.

Section 30176.1 of the Revenue and Taxation Code is amended to read:

30176.1. (a) The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 which is paid on the distribution of tobacco products which

are shipped to a point outside the state for subsequent use or sale out of the state.

(b) This section does not apply to tobacco products delivered to the consumer in this state and subsequently taken outside the state.

Section 30181 of the Revenue and Taxation Code is amended to read:

30181. (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101), ~~or~~ Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form prescribed by the board for each calendar month. The return shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2 for that period. To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods.