

**Amend Sections 30438 and 30449 of the Cigarette and Tobacco Products Tax Law to allow any person owning or claiming any interest in tobacco products, as specified, to file a petition with the Board requesting the release or recovery of such products.**

**Source: Honorable Bill Leonard**

**Current Law**

Under existing law, the cigarette tax is paid through the use of stamps or meter impressions. An appropriate stamp is affixed to, or an appropriate meter impression is made on, each package of cigarettes prior to the distribution of the cigarettes. On the other hand, the tobacco products tax is paid through the use of a return on which the distributor reports the wholesale cost of the tobacco products distributed and calculates the tax due.

Cigarettes not contained in packages to which a California cigarette tax stamp or meter impression is affixed can be seized by the Board if those cigarettes are offered for sale, possessed, kept, stored or owned with the intent to sell the cigarettes without payment of the cigarette tax. Cigarettes not contained in packages to which are affixed a California cigarette tax stamp or meter impression are as follows:

- A packages of cigarettes with no tax stamp or meter impression;
- A package of cigarettes with a counterfeit tax stamp or meter impression affixed; or
- A package of cigarettes with another state's tax stamp or meter impression affixed.

While evidence of the payment of tax on cigarettes is more easily identified by Board staff through the use of an appropriate stamp on the cigarette package, the payment of the tobacco products tax is not.

Tobacco products possessed, stored, owned, or sold by any retailer, distributor, wholesaler or any other person upon which the tax is due but has not been paid may also be seized by the Board. It is presumed that tax has not been paid until the contrary is established by a proof of payment to the Board or by a purchase invoice that shows that the tax has been paid or is included in the purchase price, as provided. The burden of proof that tax has been paid on tobacco products is upon the person in possession of the tobacco products.

Upon the administrative seizure and forfeiture of cigarettes or tobacco products, the Board is required to give notice by personal service or by certified mail to all persons known by the Board to have any right, title or interest in the property. In addition, notice of seizure and forfeiture must be given on the Board's web site for a period of six months from the notice of seizure, as specified, if the seizure involves 61 cartons of 200 or more cigarettes or equivalent amount of tobacco products.

Any person owning or claiming any interest in the cigarettes or tobacco products may file a verified petition with the Board stating his or her interest in the property and requesting the release or recovery of the property on the grounds that property was erroneously or illegally seized. The petition must be filed within 20 days from the date of the personal service upon him or her or the date of the mailing of the notice. Any

person not serviced personally or by mail, however, must file the petition within 20 day from the date of publication of the notice. The failure of any such person to file a timely verified petition constitutes a bar to his or her right to any interest in the property, unless otherwise provided.

Petitions for release or recovery of seized cigarettes or tobacco products generally appear before the Board by the next scheduled Board Meeting if the 20-day petition period has elapsed. At that point the Board determines whether the cigarettes or tobacco products were erroneously or illegally seized. If the Board finds that the cigarettes or tobacco products were erroneously or illegally seized, it is required under current law to order the release of the property. However, if the Board denies the petition for the release or recovery of the property, notice of the denial is mailed (within five days) to the petitioner. The seized cigarettes or tobacco products, which are considered unsalable, are then destroyed by the Board unless the petitioner files an action against the Board in the Superior Court of the County of Sacramento for the release or recovery of the property on the grounds that the property was erroneously or illegally seized. If the petitioner files an action against the Board and the court determines that the seizure of the property was in accordance with law, it would enter an appropriate order for the disposition of the property. In such a case, the Board would request that the cigarettes or tobacco products be destroyed.

While evidence of the payment of tax on cigarettes is more easily identified by Board staff through the use of an appropriate stamp on the cigarette package, the payment of the tobacco products tax is not. The Board hears several cases a year for the release or recovery of seized tobacco products involving persons who, among other things, are unable to locate a purchase invoice showing evidence of the payment of the tobacco products tax or received tobacco products erroneously delivered instead of other products that had been ordered and which do appear on invoices. In many cases, the petitioner is willing to pay the tax due in exchange for the tobacco products. However, current law does not allow for the release of seized tobacco products unless the seizure itself was erroneous or illegal. If the Board determines that the seizure of the tobacco products was proper, the petition is denied and the tobacco products are destroyed. Depending on the amount of tobacco products seized, this could be financially devastating for a business owner.

### **This Proposal**

This proposal would allow any person owning or claiming any interest in the seized tobacco products to file a petition with the Board stating his or her interest in the product and request for the release of the property upon all of the following:

- Payment of an amount equal to the amount of tax owed on the property, and
- A penalty of 35 percent of the amount of tax owed.

The tobacco products would not be returned to the custody of the petitioner unless the tax was paid on the tobacco products.

*Section 30438 of the Revenue and Taxation Code is amended to read:*

30438. (a) Any person owning or claiming any interest in the property may file a verified petition with the board stating ~~his~~ the person's interest in the property within the time periods set forth in subdivision (c).

(b) The verified petition shall contain either or both of the following:

(1) A request for ~~and requesting~~ the release or recovery of the property on the ground that the property was erroneously or illegally seized.

(2) A request for the return of the tobacco products upon payment of an amount equal to the amount of tax owing on the property, plus a penalty of 35% of the amount of tax owing.

(c) Any person served personally or by mail under Section 30437 shall file the petition within 20 days from the date of the personal service upon ~~the person~~ him or the date of the mailing of the notice to ~~the person~~ him. Any person not served personally or by mail under that section shall file the petition within 20 days from the date of publication of the notice. The failure of any such person to file a timely verified petition shall constitute a bar to ~~the person's~~ his right to any interest in the property, except insofar as the rights of any such person may be established in an action filed by the board under this chapter.

*Section 30449 of the Revenue and Taxation Code is amended to read:*

30449. (a) Except as provided in subdivision (b), (c), or (d), or (f), any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of the sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than five days nor more than 10 days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is unsalable, it may destroy that property.

(b) Any property forfeited to the state pursuant to subdivision (e) of Section 30436 shall be destroyed.

(c) Any cigarettes forfeited to the state pursuant to subdivision (b) of Section 30436 shall be destroyed.

(d) Any cigarettes or tobacco products forfeited to the state pursuant to Division 8.6 (commencing with Section 22970) of the Business and Professions Code shall be destroyed.

(e) A record shall be kept of all property destroyed pursuant to this section showing the nature of the property, the quantity, the reason for, and the manner of destruction. The proceeds of the sale and any money forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.

(f) If the board grants the request for the return of the tobacco products pursuant to section 30438(b)(2), it shall order the return of the property upon receipt of the payment of all amounts required. Notice of the determination to return the tobacco products shall be mailed to the petitioner within five days of the date of the order. If the board denies the request for the return of the property, notice of the denial shall be mailed to the petitioner within five days of the denial.