

Amend Section 22978.4 of the Business and Professions Code to revise the distributor and wholesaler invoicing requirements for the sale of cigarettes or tobacco products. (Housekeeping)

Source: Excise Taxes Division and Investigations Division

Existing Law:

Under current law, Section 22978.4 of the Business and Professions Code requires each distributor and each wholesaler to include specified information on each invoice for the sale of cigarettes or tobacco products. This information includes, in part, the name, address, and telephone number of the distributor or wholesaler and the statement "All California cigarette and tobacco product taxes are included in the total amount of this invoice." Failure to comply with the invoicing requirements is a misdemeanor and punishable by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment.

The invoicing provisions, however, do not require distributors and wholesalers to include the date the cigarettes or tobacco products were sold on invoices for the sale of such products. This would be an important tool to allow Board of Equalization (Board) investigators to match cigarettes and tobacco products on a retailer's shelf to distributor or wholesaler invoices for the purpose of verifying tax paid product.

In addition, some distributors and wholesalers programmed software to show the actual amount of excise tax paid on cigarette and tobacco products for the purpose of showing that tax was paid on such products. This was consistent with the invoicing requirements for cigarettes or tobacco products sold prior to September 27, 2004, when AB 3092 (Ch. 822) amended Section 22978.4 to instead only require the statement "All California cigarette and tobacco product taxes are included in the total amount of this invoice." This change was intended to address an industry concern that it would impossible to program software to print the exact amount of excise paid for tobacco products that were purchased from multiple sources. For purposes of complying with the invoicing requirements, a distributor or wholesaler should have the option between printing the amount of excise taxes due to the Board or the specified statement required under existing law.

This Proposal:

This proposal would require distributor and wholesaler invoices for the sale of cigarettes or tobacco products to include the date such products were sold, which would assist Board investigators in verifying a retailer's tax paid product. This proposal would also clarify that such invoices also include either the amount

of excise taxes due to the Board or the statement "All California cigarette and tobacco product taxes are included in the total amount of this invoice." Either option would continue to prove intent to evade if shown on a distributor or wholesaler invoice when such excise tax has not been paid to the state to allow for criminal prosecution.

Section 22978.4 of the Business and Professions Code is amended to read:

22978.4. (a) Each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) One of the following:

(A) The following statement: "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

(B) The amount of excise taxes due to the board by the distributor on the distribution of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(6) The date the cigarettes or tobacco products are sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.