

Amend Sections 22978.7 and 22979.7 of the Business and Professions Code to clarify the penalty for second or subsequent violations of the Cigarette and Tobacco Products Licensing Act. (Housekeeping)

Source: Legal Department

Existing Law:

Under current law, Section 22974.7 of the Business and Professions Code provides that in addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has a second or any subsequent offense of any provision of the Cigarette and Tobacco Products Licensing Act of 2003, the Board of Equalization (Board) may, in addition to revoking or suspending the license or licenses of the retailer, impose a civil penalty in the amount not to exceed the greater of five times the retail value **of the seized** cigarettes or tobacco products, or five thousand dollars (\$5,000).

Sections 22978.7 and 22979.7 are identical to Section 22974.7 with the exception of the amount of civil penalty relating to the civil penalty amount of five times the retail value of the cigarettes or tobacco products **seized**. Instead, Section 22978.7 and 22979.7 are ambiguous as to what the basis for retail value of cigarettes or tobacco products is to be used to compute the civil penalty. For example, would the civil penalty be computed based on the retail value of cigarettes or tobacco products seized or the retail value of all cigarette or tobacco products inventory?

This Proposal:

This proposal would clarify that in the case of a second or any subsequent offense, the civil penalty would apply to the retail value of the **seized** cigarettes or tobacco products, consistent with Section 22974.7.

Section 22978.7 of the Business and Professions Code is amended to read:

22978.7. In addition to any other civil or criminal penalty provided by law, upon a finding that any distributor or any wholesaler has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor or the wholesaler pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

- (1) Five times the retail value of the seized cigarettes or tobacco products.
- (2) Five thousand dollars (\$5,000).

Section 22979.7 of the Business and Professions Code is amended to read:

22979.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a manufacturer or importer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the manufacturer or importer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

- (1) Five times the retail value of the seized cigarettes or tobacco products defined as cigarettes under this section.
- (2) Five thousand dollars (\$5,000).