

Add Section 30361.5 to the Revenue and Taxation Code to apply excess tax reimbursement to persons that represent amounts as reimbursement for taxes imposed upon the distribution of tobacco products when such amounts are computed upon an amount that is not taxable or is in excess of the tax amount. (Housekeeping)

Source: Excise Taxes Division

Existing Law:

Under existing Sales and Use Tax Law, when an amount represented by a person to a customer as constituting reimbursement for taxes due is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid is required to be returned by the person to the customer upon notification by the Board of Equalization (Board) or by the customer that such excess tax has been collected. In the event of his or her failure or refusal to do so, the amount so paid is required to be remitted to the state. Those amounts remitted to the state will be credited by the Board on any amounts due and payable on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

The Cigarette and Tobacco Products Tax Law requires every distributor to pay a tax upon his or her distribution of tobacco products, based on the wholesale cost of these products, at a tax rate determined annually by the Board. Distribution is defined to mean, in part, the sale of untaxed cigarettes or tobacco products in this state. However, tobacco products distributors who import tobacco products manufactured outside of the United States (original importer) are exempt from the excise tax imposed on the distribution of tobacco if such sales are to a licensed distributor. As such, an original importer's distribution of tobacco products to a licensed California distributor is not subject to tax and the purchasing licensed distributor owes the excise tax upon their distribution of the tobacco products based upon the wholesale cost of the product.

Notwithstanding the exemption provided, the Board has found a few original importers collecting an amount represented as tobacco products tax from licensed distributors. Although these original importers may believe they are doing a favor by collecting and paying the excise tax, *it does not offset or relieve the purchasing licensed distributor's excise tax liability.* Since the tobacco products taxes are not owed by the original importer, they are eligible to claim and receive a refund of all tobacco products taxes incorrectly paid. However, existing law does not require the original importer to return amounts that were represented as tax to the purchasing licensed distributor. This imposes a hardship on licensed distributors that thought they had paid the excise tax on tobacco products only to discover that they still owe the tax, including interest,

and the original importer is not willing to return the excess amounts collected that were represented as excise tax.

Currently the Board has twelve appeals cases as a result of audits where tobacco product taxes have been assessed against licensed distributors for their purchases from original importers where the original importer has indicated that taxes are included in the price to the distributor.

In addition, a similar issue exists for manufacturers of tobacco products as existing law provides an exemption for manufacturers where their sales are to licensed distributors.

This Proposal:

This proposal would conform the tobacco products tax law to other tax and fee programs administered by the Board to allow the state to issue a determination for excess tobacco products tax when any person fails to return that excess tax to the customer or to remit those amounts to the state. Amounts remitted to the state would be credited to amounts due and payable from the purchasing licensed distributor, as specified.

Section 30361.5 is added to the Revenue and Taxation Code to read:

30361.5. When an amount represented by a person to a customer as constituting reimbursement for taxes imposed upon the distribution of tobacco products pursuant to this part is computed upon an amount that is not taxable or is in excess of the tax amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the tax or is in excess of the tax amount, shall be remitted by that person to this state. Those amounts remitted to the state by the person shall be credited by the board on any amounts due and payable from the person which are subject to this part and are based on the same activity, and the balance, if any, shall constitute an obligation due from the person to this state.