

Amend Section 30473.5 of the Cigarette and Tobacco Products Tax Law to add felony provisions for the possession of fraudulent tax stamps or meter impressions with intent to evade the taxes.

Source: Investigations Division

Under current law, any person who possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions with a tax value greater than seven hundred fifty dollars (\$750) is guilty of a misdemeanor. Current law does not contain corresponding felony provisions for this violation.

With the passage of Proposition 10 in November 1998, which increased the tax from \$0.37 to \$0.87 per pack of twenty, the incentive to evade the taxes has escalated. Prior to this time, the Board had no evidence of counterfeit stamps in California. However, recent information has indicated this is changing. The most recent case involved approximately one million dollars (\$1,000,000) in counterfeit California stamps on their way to Los Angeles from out of state. Possession of this quantity of stamps under current law is only a misdemeanor, which is not a very effective deterrent against flagrant offenders.

Unaffixed stamps are generally found and seized during the search warrant process. Three recent cases where search warrants were served led to the seizure of unaffixed stamps in amounts of 36,000, 69,000 and 146,129, for a total 251,129 counterfeit stamps. If these stamps had been affixed, the amount of tax evaded would have amounted to \$31,320, \$60,030 and \$127,132, respectively. Again, only misdemeanor charges apply since current law does not contain a felony provision.

This proposal would make any person who possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions in a quantity of less than 2000 guilty of a misdemeanor. This proposal would also make any person who, with the intent to defeat or evade or with the intent to aid another to defeat or evade the taxes, possesses, sells, or offers to sell, buys or offers to buy any fraudulent stamps or meter impressions in a quantity of 2000 or greater, guilty of a felony.

A quantity of 2000 stamps is currently equivalent to \$1,740 (2000 stamps x \$0.87 per pack of 20). Accordingly, the threshold using the current tax rate of \$0.87 per pack of 20 cigarettes would make any person with counterfeit stamps, as specified, in an amount less than \$1,740 guilty of a misdemeanor. A person with any amount above this threshold would be guilty of a felony.

Section 30473.5 of the Revenue and Taxation Code is amended to read:

30473.5. (a) Any person who possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part ~~with a tax value greater than seven hundred fifty dollars (\$750)~~ in a quantity of less than 2000 is guilty of a misdemeanor.

(b) Any person who, with intent to defeat or evade or with the intent to aid another to defeat or evade the taxes imposed by this part, possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of 2000 or greater, is guilty of a felony.