BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: JANUARY 15, 2013, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed Regulation 4801, *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person.*

Action 1

Proposed Regulation 4801, *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person.*

Issue:
Request approval and authorization to publish staff's proposed Regulation 4801 formalizing the current policy on transfers of cigarettes and tobacco products between retail stores owned by the same person; or direct staff to draft a proposed regulation that prohibits the transfer of cigarettes and tobacco products between any retail stores regardless of the ownership.

Committee Discussion:
Staff introduced the topic for discussion. Mr. Steven Alari, representing SEIU Local 1000, explained that SEIU has removed their previous concerns after additional language to the regulation was added requiring that the transfer logs must be provided to ID staff at the start of the inspection and further stipulate that transfer logs provided during or after the inspection will not be accepted. Mr. Dennis Loper, representing California Distributors Association, opposed staff's proposed Regulation 4801, stating this proposal would make it easier for a retailer to blend un-taxed tobacco products with tax-paid tobacco products and therefore increase evasion, and expressed support for alternative two, which prohibits transfers between any retail stores regardless of the ownership.

Mr. Runner expressed concern with the "no-transfer" alternative because it would require small business owners to maintain a larger inventory at each location to compensate for not allowing transfers and was supportive of staff's proposed regulation.

Mr. Horton noted that there are limited instances where a retailer may need to transfer incidental amounts of cigarettes and tobacco products, but that bulk transfers should be handled by licensed distributors or wholesalers. Mr. Horton expressed his concern that staff's proposed regulation does not limit the amount of cigarette or tobacco products transferred and may make it easier to evade the taxes. Mr. Horton suggested that staff add a requirement to the proposed regulation that would allow only small incidental transfers and continue to maintain the recommended inventory controls in the regulation.

Mr. Loper stated that he opposes any transfers but if transfers are allowed, they should be limited to emergency situations and should only be allowed upon notification to the Board. Mr. Runner stated he would support a limit or cap because he did not envision unlimited transfers but would not support requiring the retailer to contact the Board each time they transfer product.

After a general discussion, the matter was deferred so staff could reformulate the regulation in order to address limiting transfers and reach out to interested parties to discuss the impact of limiting transfers and to determine a reasonable transfer limit. Additionally, Ms. Mandel noted that since the matter would be deferred, staff should further clarify the term "legal entity" in referring to a natural person.

Committee Direction:

The Board directed staff to conduct outreach with interested parties to convey the Board's desire to limit transfers and to determine a reasonable limit. Ms. Yee noted that she would work with staff on a timeframe.

Action 2

Authorize Publication of Amendments Approved at the June 26, 2012, BTC Meeting to Regulations 4601, *Service of a Notice of Violation or Warning Notice*; 4603, *Penalties for Licensed or Unlicensed Retailers;* 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors;* and 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers.*

Issue:

Request approval to publish amendments approved at the June 26, 2012, BTC Meeting to Regulations 4601, Service of a Notice of Violation or Warning Notice; 4603, Penalties for Licensed or Unlicensed Retailers; 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors; and 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers.

Committee Discussion:

There was no discussion of this item.

Committee Action:

Upon motion by Mr. Horton and seconded by Ms. Steel with direction to staff to come back in a year with a report on staff's use of the five-day suspension period included in the amendments to Regulations 4603, 4604 and 4605, without objection, the Committee approved for publication the proposed regulatory amendments. A copy of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 are attached.

Agenda Item No: 2

Title: Proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table.*

Issue:
Request approval and authorization to publish proposed amendments to account for the new registration requirements imposed on certain retailers.

Committee Discussion:
Staff introduced the issue for discussion and explained that the proposed amendments would apply to the 2013 use tax table, which covers purchases made during the 2013 calendar year. Staff also noted that based on data from the Franchise Tax Board (FTB), the number of taxpayers reporting on the use tax line of their FTB returns nearly doubled from 2011 to 2012 with a revenue increase of $9.8 million. Ms. Gina Rodriguez, representing the California Taxpayers Association, stated that taxpayers were well served by the interested parties' process and staff was responsive to their concerns. Ms. Rodriguez concluded by expressing support for staff's recommendation.

Committee Action:
Upon motion by Mr. Horton, seconded by Ms. Mandel, without objection, the Committee approved and authorized for publication the proposed amendments. A copy of the proposed amendments to Regulation 1685.5 is attached.

Agenda Item No: 3

Title: Regulation 1502, *Computers, Programs, and Data Processing*, and Regulation 1507, *Technology Transfer Agreements.*

Issue:
Whether to amend Regulation 1502, *Computers, Programs, and Data Processing*, to clarify how sales and use tax applies to transfers of prewritten software recorded on tangible storage media; and/or amend Regulation 1507, *Technology Transfer Agreements*, to clarify how the technology-transfer-agreement statutes apply to transfers of prewritten software recorded on tangible storage media.

Committee Discussion:
Staff introduced the topic for discussion. Staff explained that, if staff's recommendation is approved, it anticipates holding one interested parties meeting in March to discuss the application of tax to optional software maintenance contracts that include the transfer of a back-up copy of the same or similar prewritten software recorded on tangible storage media and two interested parties meetings, one in April and one in June, to discuss the application of tax to site license transactions. Staff further stated that they would present both issues to the Board at the August Board meeting.

Mr. Julian Decyk from Paul Hastings LLP clarified that their written submissions did not make specific recommendations to amend Regulation 1507, as indicated in the formal issue paper, and

their purpose was to base the discussion for potential amendments on their understanding of an accurate statement of the facts and law to avoid potential for an invalid regulation. Mr. Decyk also questioned the need for a regulation to implement the statutes. Mr. Decyk also argued that staff's discussion papers failed to substantially respond to asserted factual corrections and legal analysis which he previously presented to staff.

Mr. Mark Nebergall, representing the Software Finance and Tax Executives Council and a broad-based coalition of companies and trade associations (e.g., Silicon Valley Leadership Group), expressed general support for staff's recommendation. Mr. Nebergall also requested the Board consider the proposal to use a percentage split approach, with respect to software sold on TPP other than a separate tangible storage medium (i.e., what staff generally refers to as "embedded software"), to develop a regulation that allows companies to sell products with a clear understanding of their sales and use tax responsibilities.

Ms. Gina Rodriguez, representing the California Taxpayers Association, stated that if there is a need for regulatory amendments, they would like to continue to work with staff on proposed language which considers the needs of the software industry, as well as other industries.

Ms. Yee commented on the need to adopt proposals that are on a solid legal foundation, and clarity is of the upmost importance with respect to implementation, administration, and compliance and audit requirements.

Mr. Horton requested that staff address whether there is a need for a regulation or not. Staff noted that we currently have Regulation 1502 which addresses computer programs and Regulation 1507 that pertains to technology transfer agreements. Staff explained that to the extent that we would further define technology transfer agreements, staff thought it would be most appropriate to incorporate the amendments to Regulation 1507. Staff also explained that if we were to treat computer programs in a manner that is different than other property, staff believes it would be most appropriate to incorporate those amendments in Regulation 1502. Staff further stated that it remains open to further discussion as to the best method of amending either of the regulations.

Mr. Horton expressed the need for clarification and guidance to industry and audit staff and explained that this has historically been codified through the regulatory process rather than the audit manual alone for the purpose of providing guidance to all affected parties.

Lastly, staff initiated a corrective comment regarding the fact that the issue paper misconstrued Ernst & Young's comments with respect to the types of property to which Ernst and Young's comments would apply. Staff stated that it would discuss with Ernst and Young to obtain clarification.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Steel, the Committee unanimously approved staff's recommendation to continue to work with interested parties to discuss the application of tax to prewritten software.

Honorable Betty T. Yee, Committee Chair

Cynthia Bridges, Executive Director

BOARD APPROVED
at the 2/26/13 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Regulation 1685.5. *Calculation of Estimated Use Tax – Use Tax Table.*

Reference: Section 6452.1, Revenue and Taxation Code.

(a) In General.

(1) Estimated Use Tax and Use Tax Table. The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

(2) Who is Eligible to Use BOE Use Tax Tables.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand ($1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) Safe Harbor. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) Definitions and Data Sources.

(1) AGI Ranges. The use tax table shall be separated into fifteen (15) AGI ranges as follows:

(A) AGI less than $10,000;

(B) AGI of $10,000 to $19,999;

(C) AGI of $20,000 to $29,999;

(D) AGI of $30,000 to $39,999;

(E) AGI of $40,000 to $49,999;

(F) AGI of $50,000 to $59,999;

(G) AGI of $60,000 to $69,999;

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(H) AGI of $70,000 to $79,999;

(I) AGI of $80,000 to $89,999;

(J) AGI of $90,000 to $99,999;

(K) AGI of $100,000 to $124,999;

(L) AGI of $125,000 to $149,999;

(M) AGI of $150,000 to $174,999;

(N) AGI of $175,000 to $199,999;

(O) AGI more than $199,999

(2) Use Tax Liability Factor or Use Tax Table Percentage. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On June 1, 2012, ~~and each June 1 thereafter,~~ the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on taxable purchases for the preceding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent. On June 1, 2013, and each June 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on taxable purchases for the preceding calendar year by 0.23, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) Total Personal Income. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) Total Spending at Electronic Shopping and Mail Order Houses. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) Total Spending on Taxable Purchases. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

(i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;

(ii) Prescriptions;

(iii) Video Content Downloads;

(iv) Audio Content Downloads;

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(v) Prepackaged computer software, including software downloads; and

(vi) All nonmerchandise receipts.

(B) Adding ten billion dollars ($10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

(6) Percentage of Income Spent on Taxable Purchases. The percentage of income spent on taxable purchases during a calendar year shall be calculated by dividing the total spending on taxable purchases for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(7) Average State, Local, and District Sales and Use Tax Rate. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) Calculation of the Estimated Use Tax Liability.

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying $5,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (N) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

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(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(O) shall be determined by multiplying each range members actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) Use Tax Table Format.

(1) The use tax table for calendar year 2011 shall provide as follows:

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than $20,000	$7
$20,000 to $39,999	$21
$40,000 to $59,999	$35
$60,000 to $79,999	$49
$80,000 to $99,999	$63
$100,000 to $149,999	$88
$150,000 to $199,999	$123
More than $199,999 -Multiply AGI by 0.070% (.0007)	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as follows:

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than $10,000	$
$10,000 to $19,999	$
$20,000 to $29,999	$
$30,000 to $39,999	$
$40,000 to $49,999	$
$50,000 to $59,999	$
$60,000 to $69,999	$
$70,000 to $79,999	$
$80,000 to $89,999	$
$90,000 to $99,999	$
$100,000 to $124,999	$
$125,000 to $149,000	$
$150,000 to $174,999	$
$175,000 to $199,999	$
More than $199,999 -Multiply AGI by % (.000)	

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Regulation 4601. Service of a Notice ~~of Violation or Warning Notice~~

Any notice issued under the Cigarette and Tobacco Products Licensing Act may be served personally or by mail in the manner prescribed for service of a notice of determination under Revenue and Taxation Code section 30206 of the Cigarette and Tobacco Products Tax Law. ~~The Notice of Suspension, Notice of Revocation, Notice of Violation or Warning Notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a Notice of Violation may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.~~

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Regulation 4603. Penalties for Licensed or Unlicensed Retailers

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a retailer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions shall result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22974 (retailer's failure to retain purchase invoices).

(2) Business and Professions Code section 22980.1, subdivision (c), (d) or (e) (purchase from unlicensed person or person with suspended or revoked license).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision (b)).

(4) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by an unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions shall result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22973, subdivision (a)(5) (retailer's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above, shall result in both a 30-day suspension or revocation and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22974.3 (possession of unstamped cigarettes or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during that period.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine shall be determined in accordance with Regulation 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.3 subdivision (a)(2) or subdivision (a)(4), 22974.4, ~~22978.6,~~ or–22980.3, subdivision (a)(2) or subdivision (d).

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Regulation 4604. Penalties for Licensed or Unlicensed Wholesalers and Distributors

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22978.1 (distributor's or wholesaler's failure to retain purchase invoices).

(2) Business and Professions Code section 22978.4, subdivision (c) (distributor's or wholesaler's failure to comply with invoice requirements).

(3) Business and Professions Code section 22978.5, subdivision (b) (distributor's or wholesaler's failure to retain sales records).

(4) Business and Professions Code section 22980.1, subdivision (b), (c), (d), (e) (sales to or purchases from unlicensed person or person with suspended or revoked license) or (f) (sales of cigarettes or tobacco products to retailer or wholesaler revoked or suspended until debts are clear).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions will result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22977, subdivision (a)(5) (distributor's or wholesaler's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision. (b)).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation, and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee or unlicensed person has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during the month.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with section 4607.

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(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4~~, 22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Regulation 4605. Penalties for Licensed or Unlicensed Manufacturers and Importers

The following penalties shall be assessed 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 the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22979.4 (importer's failure to retain purchase invoices on premises).

(2) Business and Professions Code section 22979, subdivision (b)(1) (participating manufacturer's false statement on certification to the Board).

(3) Business and Professions Code section 22979.5, subdivision (b) (manufacturer's or importer's failure to retain sales records on premises).

(4) Business and Professions Code section 22980.1, subdivision (a), (e) or (f) (purchases or sales from or to an unlicensed person or person with suspended or revoked license).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(6) Business and Professions Code section 22979.6, subdivision (c) (manufacturer's or importer's failure to comply with invoice requirements).

(b) A first offense of a violation of Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision. (b)) shall result in a 20-day suspension.

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation and a fine.

(d) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4, 22978.6, or~~ 22980.3, subdivision (a)(2) or subdivision (d).

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