



STATE BOARD OF EQUALIZATION

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State Controller

CYNTHIA BRIDGES
Executive Director

December 6, 2013

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the December 17, 2013, Business Taxes Committee meeting. This meeting will address proposed Regulation 4801, *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person*.

Action 1 on the Agenda concerns proposed Regulation 4801 of the Cigarette and Tobacco Products Licensing Act which formalizes the Board's current policy and documentation requirements on transfers of cigarettes and tobacco products between retail stores owned by the same person. Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in these issues.

Thank you for the input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **December 17, 2013**, in Room 121 at the address shown above.

Sincerely,

David J. Gau, Deputy Director
Property and Special Taxes Department

DJG:pb

Enclosures

cc: (all with enclosures)
Honorable Jerome E. Horton, Chairman, Fourth District (MIC 72)
Honorable Michelle Steel, Vice Chair, Third District (MIC 77)
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichelt, Board Member's Office Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Ms. Yvette Stowers, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Alan Giorgi, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Cynthia Bridges
Mr. Randy Ferris
Mr. Robert Tucker
Mr. Bradley Heller
Mr. Stephen Smith
Mr. Jeffrey L. McGuire
Ms. Lynn Bartolo
Mr. Todd Gilman
Ms. Michele Pielsticker
Mr. Randy Silva
Ms. Susanne Buehler
Ms. Debbie Kalfsbeek
Mr. Phillip Bishop

AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Regulation 4801 Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person

Action Item	Regulatory Language Proposed by Staff – No Limitation (Exhibit 2)
Action 1- Staff Recommendation	<p>Regulation 4801. TRANSFERS OF CIGARETTES AND TOBACCO PRODUCTS BETWEEN RETAIL STORES OWNED BY THE SAME PERSON</p> <p><u>(a) GENERAL. Every retailer of cigarettes and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the Board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarettes and tobacco products between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer. These transfer logs or documents will be utilized by Board staff for inventory reconciliation and must be provided upon request at the time of the inspection. Copies of original purchase invoices may be maintained at the receiving location on alternative storage media as prescribed in Regulation 4901 (h). The retailer must provide facilities and equipment for reading, locating, and reproducing any invoices maintained on alternative storage media.</u></p> <p><u>(b) SPECIFIC APPLICATION. The transfer log or document shall show the following:</u></p> <p>(1) <u>The transferring retail location, license information, supplier’s name, invoice number, and the date the bulk cigarettes and tobacco products purchase was made;</u></p> <p>(2) <u>The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and,</u></p> <p>(3) <u>A legible itemized listing of cigarettes and tobacco products transferred using the description as found on the original invoice, including packaging (e.g., 20 5-packs; 2 60-ct boxes), flavor and/or style, and quantity transferred.</u></p> <p><u>(c) The transfer of cigarettes and tobacco products shall only be allowed when the natural person or legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same natural person or legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners</u></p>

AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Regulation 4801 Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person

Action Item	Regulatory Language Proposed by Staff – No Limitation (Exhibit 2)
<p>Action 1- Staff Recommendation</p>	<p><u>would not qualify under this section since the same legal entity does not own both locations. As another example, a transfer between a location licensed to a parent corporation and a location licensed to its wholly owned subsidiary corporation would not qualify under this section since the parent corporation and its wholly owned subsidiary corporation are separate legal entities.</u></p> <p><u>(d) Records of the transfer shall be made available to the Board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarettes or tobacco products that are claimed to be transferred and the issuance of a citation. Transfer logs or documents not provided upon request at the time of inspection, or created or provided during or after an inspection has commenced, or created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.</u></p>

Issue Paper Number 13-010



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

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

I. Issues

Should the Board of Equalization (Board) authorize publication of a new regulation, under the Cigarette and Tobacco Products Licensing Act (Act), to provide guidelines on the documentation and retention requirements for transfers of cigarettes and tobacco products between retail stores owned by the same person?

II. Alternative 1 - Staff Recommendation

Staff recommends the approval of proposed Regulation 4801 regarding transfers of cigarettes and tobacco products between retail stores owned by the same person without limits on the value of the cigarettes and tobacco products transferred. Approving the proposed regulation provides Board staff and licensed retailers who own multiple locations with regulatory guidance for satisfying the documentation and invoice requirements required by statute in order to establish the tax-paid status of the product being transferred. See Exhibit 2 for staff's proposed regulation.

III. Other Alternative(s) Considered

Alternative 2 - Limit Transfers

Consider directing staff to pursue amending the Act in order to establish a violation for exceeding a dollar limit on transfers between retail stores owned by the same person. Once a violation has been established a regulation may then be promulgated on the documentary requirements necessary to support the transfers. See Exhibit 6 for a draft of Regulation 4801 with language imposing a limit.

Alternative 3 - Prohibit Transfers

Consider approving a regulation prohibiting the transfer of any cigarettes or tobacco products between retail locations owned by the same person, thereby creating a "bright line" prohibiting transfers as recommended by some Interested Parties.

IV. Background

On October 12, 2003, the State of California enacted the Cigarette and Tobacco Products Licensing Act (Assembly Bill 71, Horton [Chapter 890, Statutes 2003]) which established a statewide licensing program under Division 8.6 (commencing with Section 22970) of the Business and Professions Code (B&P Code). The Act imposes licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes. Assembly Bill 1749 (Chapter 501, Statutes 2006) added the same licensing requirements to manufacturers and importers of tobacco products. These licensing requirements are in addition to other permits and licenses that may be required depending on a person's business operations. The Act intended to address the problem of untaxed distributions and illegal sales of cigarettes and tobacco products in California and includes provisions for new recordkeeping requirements, identifies violations that may result in license suspensions or revocations including the imposition of civil and criminal penalties, and authorizes Board staff to inspect and seize any untaxed cigarettes or tobacco products. Inspections are performed by the Board's Investigations Division (ID) staff and, based upon the findings during the course of their inspections, may result in the issuance of citations and penalties for violations.

The Act authorizes the Board to administer and enforce the provisions of the Act and to prescribe, adopt, and enforce rules and regulations relating to its administration and enforcement. Since the inception of the Act, the Board has prescribed and adopted regulations to clarify the provisions with the intent to uniformly administer and enforce the provisions of the Act, and to provide guidance and clarity of the Act's provisions to licensed and unlicensed cigarette and tobacco product retailers, wholesalers, distributors, manufacturers, and importers.

Based on prior citations and related appeals proceedings involving the seizure of cigarettes and tobacco products due to a retailer's failure to maintain documentation supporting an assertion that tax-paid product was transferred from one licensed retail location to another licensed retail location owned by the same person, the Property and Special Taxes Department was asked to develop a new regulation to formalize the Board's existing policies regarding documentation requirements for the transfer of cigarettes and tobacco products between licensed retail locations owned by the same person. Transfers of cigarettes and tobacco products between licensed retail locations owned by the same person excludes sales transactions of cigarettes and tobacco products between licensed retail locations which are expressly prohibited by Revenue and Taxation Code (R&T Code) section 30478.

Current Policy

In April 2011, Board staff provided guidance to licensees and staff on its current transfer policies through an update to Publication 78, *Sales of Cigarettes and Tobacco Products in California*, and a letter sent to 1,790 legal entities owning multiple cigarette and tobacco products licensed retail locations. Both the letter and Publication 78 provided that:

“Generally, the transfer of cigarettes and tobacco products are not permitted. However, if you own more than one store and licenses are held by the same legal entity, you may be allowed to transfer cigarettes and tobacco products between stores belonging to the same legal entity. When transferring cigarettes and tobacco products, legible transfer records and copies of the original purchase invoice must be kept at each location involved in the transfer. Such transfer records which must be prepared at the time of transfer, must include the address of each store, the purchase invoice date, the purchase invoice number, the supplier's name on the invoice, including type of packaging, flavor and or style, and the

amounts of items transferred. Failure to provide such documentation when requested can result in the seizure of the claimed transferred product.”

The proposed Regulation is consistent with the above guidance.

Pertinent Statutes

Although the Act does not specifically provide for transfers of cigarette and tobacco products between retail locations owned by the same person, the Act does not preclude such transfers either. The Act requires that a retailer of cigarettes or tobacco products obtain a retailer’s license for each retail location in which cigarettes or tobacco products are sold, maintain purchase invoices that meet the requirements set forth in section 22978.4 of the B&P Code for all cigarettes or tobacco products the retailer purchased for a period of four years and that these records be maintained at the retail location for at least one year after purchase. Section 22978.4 also prescribes form and content requirements for invoices issued by distributors and wholesalers. In addition to requiring distributor and wholesaler information, each invoice must contain the name, address and license number of the customer, an itemized listing of cigarette and tobacco products sold, date of sale, and the amount of excise taxes due to the Board by the distributor or a statement that reads: “All California cigarette and tobacco product taxes are included.”

A retail location is defined under section 22971 (q) of the Act as any building from which cigarettes or tobacco products are sold at retail, or a vending machine. “Sale” is defined in section 30006 of the R&T Code as any transfer of title or possession for consideration, exchange or barter, in any manner or by any means whatever. As a result, the Act does not require a retailer to maintain a license at a warehouse or storage location from which retail sales are not made. The Act also does not require that a distributor or wholesaler deliver only to the address of the licensed retail location. Section 22978.4 (a)(4) requires that a distributor or wholesaler include on any invoice the name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold. It does not require that the product be delivered to the address where the retail license is held. There would appear to be good reasons for not requiring such a limitation, as had such a requirement been included in the Act, traditional cash and carry purchases would be prohibited, and vending machine operators would only be able to take delivery at the location of a licensed vending machine, which is generally located at another person’s business. One could therefore make an argument that without such delivery limitations the Act contemplates transfers of cigarettes and tobacco products between retail or storage locations owned by the same legal entity so long as the invoice retention requirements are satisfied at each retail location.

Meetings and Staff Outreach

Interested Parties (IP) meetings were held on March 6, 2012, and May 4, 2012. Divergent positions were taken at that time by SEIU Local 1000, representing Business Taxes Specialists and Business Taxes Compliance Specialists in the Investigation Division,¹ and Mr. Dennis Loper, representing the California Distributors Association, who both opposed allowing transfers. Two parties representing retailers, Mr. Scott Louie of Chevron, and Mr. Ron Michelson, owner of two Briar Patch smoke shops, both supported allowing transfers. Those opposed to allowing transfers argue that the Act does not allow transfers and that only those cigarette and tobacco products sold to the licensed retail store location may be sold at that licensed location. Those in support of allowing transfers argue that the Act does not specifically prevent transfers and not allowing transfers of cigarette and tobacco product between stores owned by the same person adds an undue burden on retailers owning more than one

¹ The initial position taken by SEIU Local 1000 was not supported by ID management who supports and actively participated in the drafting of proposed Regulation 4801.

retail store. For a full discussion on the two IP meetings, please see the Issue Paper presented at the June 26, 2012, Business Taxes Committee (BTC) meeting at: <http://www.boe.ca.gov/meetings/pdf/IP-Cigarette.pdf>. In addition to the June 2012 meeting, this issue was also presented at the January 15, 2013 BTC meeting.

At the June 26, 2012 BTC meeting, staff presented Regulation 4801, and requested the Board's approval and authorization to publish the proposed Regulation in order to begin formal rulemaking. Mr. Steven Alari, representing SEIU Local 1000, was the sole public speaker. Mr. Alari reiterated his position that the Board should prohibit transfers thereby creating a "bright line" for ID staff to follow when performing inspections. Mr. Alari noted that allowing transfers further complicates the reconciling of the tobacco product purchases to the tax-paid invoices during an inspection and thereby makes it more difficult to identify evasion of the cigarette and tobacco products excise taxes. While some Board Members expressed support for staff's proposed regulation, there were also concerns raised that the regulation may not be clear in what constitutes "same legal entity." In addition, concerns were raised regarding the need for adequate inventory controls when transferring products in order to prevent the blending of tax-paid and ex-tax product and to provide ID inspectors with the documents necessary to reconcile the tobacco product inventory to their original purchase invoices in order to verify the tax-paid or ex-tax status of the product. Enhancements were also suggested to the sample transfer log to include all the required elements in the proposed regulation that are necessary to satisfy the inspectors. Therefore, the matter was held over and staff was directed to work with ID and interested parties to further address these concerns in the regulation and the sample transfer log.

At the January 15, 2013 BTC meeting, staff presented a revised Regulation 4801, and requested the Board's approval and authorization to publish the proposed Regulation in order to begin formal rulemaking. January 15, 2013 revisions addressed SEIU's concerns and attempted to address any confusion between same legal entity and natural person. For a complete discussion of the revisions please see the Issue Paper prepared for the January 15, 2013 BTC meeting at: <http://www.boe.ca.gov/meetings/pdf/Reg4801web.pdf>. Dennis Loper, representing cigarette and tobacco product distributors, addressed the Board and continued to oppose any regulation allowing transfers under the premise that allowing transfers makes it easier to sell un-taxed tobacco products and undermines the intent of the Act. The Board, in discussing the issue of transfers, suggested a limit on the dollar value of transfers and directed staff to reach out to the retailer community to determine the effect a limit would have on retailers owning multiple locations and determine a reasonable limit. The issue of limits placed on transfers had not previously been discussed or contemplated in the preparation of proposed Regulation 4801. In addition, staff was again asked to better define "same legal entity" so as to make it clear that it includes a natural person. In order to reach out to the retailer community, staff mailed a survey to all retailers owning more than one retail location. The survey and its results are included as Exhibits 4 and 5.

At the conclusion of the survey, a letter and survey results were sent by email to all interested parties outlining staff's recommendation, and notifying them of the respective dates for the submission of additional comments and the BTC meeting when the issue would be discussed. The letter is attached as Exhibit 7.

V. Discussion

Limit the Amount Transferred

As a result of the Board's direction to further reach out to the cigarette and tobacco products retailer community, and as part of the interested parties process BOE staff sent a survey on June 19, 2013 to

FORMAL ISSUE PAPER 13-010

licensed cigarette and tobacco products retailers that operate from two or more locations. The survey was accompanied with a letter to the retailer describing the purpose for the survey. The survey asked six questions regarding transfers of cigarette and tobacco products. The survey provided the retailer an opportunity to provide input on the effects of imposing a dollar limit on transfers of cigarette and tobacco products between locations owned by the same person. Of the 1,811 licensed cigarette and tobacco products retailers that operate from multiple locations, 555 completed the survey. Following are the questions and results of the survey:

Question 1: Do you transfer cigarettes or tobacco products between your retail stores?

38% - Yes

62% - No

The retailers that answered no to this first question did not answer the remaining five questions, as the survey instructed. The following 2 through 6 questions were only answered by the retailers that transfer cigarettes or tobacco products between their store locations.

Question 2: How often do you transfer products between your stores?

28% - Frequently transfer products (at least once a week)

24% - Often transfer products (at least once a month)

27% - Occasionally transfer products (at least once every three months)

21% - Rarely transfer products (at least once a year)

Question 3: What is the average cost of the cigarettes and/or tobacco products transferred during a calendar quarter (three month period)?

32% - Less than \$200

23% - \$201 to \$500

13% - \$500 to \$1,000

32% - Over \$1,000

Question 4: What dollar limit on cost of cigarettes and/or tobacco products transferred during a three month period would not adversely affect your business?

13% - \$200

15% - \$500

14% - \$1,000

50% - Any dollar limit would adversely affect my business operations

8% - Wrote in a dollar amount which ranged between \$1,200 and \$5,000, with an average of \$2,600

Questions 5: Would your supplier (Distributor or Wholesaler) still offer a quantity discount if your order was shipped to multiple sites versus a single location?

22% - Yes

37% - No

41% - Did not know

Question 6: Do you also have a Cigarette and Tobacco Products Distributor License?

18% - Yes

82% - No

Contact information was optional at the conclusion of the survey.

The survey revealed that over 38 percent of retailers owning more than one location transfer cigarettes and tobacco products between their locations. It further revealed that 50 percent of those transferring state any dollar limit would adversely affect their business operations. Another 8 percent of respondents wrote in a dollar amount which ranged from \$1,200 to \$5,000 as the limit under which they would be able to operate. These amounts exceeded the \$1,000 considered the top dollar limit in the survey. Based on these results, it is apparent that transfers of cigarettes and tobacco products are performed by a large percentage of cigarette and tobacco products retailers owning more than one location and the majority of those retailers state any limit would adversely affect their business operations.

Although the Board may promulgate rules and regulations in order to administer the provision of the Act, including imposing a limit on transfers, there is no violation within the Act for exceeding an imposed limit. Therefore, if the Board desires to impose a limit, staff recommends the Board seek legislation establishing a violation in order to enforce such a requirement. For the Board's consideration, a draft Regulation 4801, with language imposing a limit is included as Exhibit 6.

Same Legal Entity/Same Natural Person

The term "legal entity" is used in the regulation to more clearly convey the statutory definition of "person" in the Act. Person is defined in section 22971(n) of the Act to mean a person as defined in section 30010 of the R&T Code which includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit. Person is commonly thought to include an individual man, woman, or child and is not commonly thought of in the context of the definition above, whereas, "legal entity" conveys a broader meaning, more in line with the legal definition for "person" in the Act. For purposes of the regulation "same legal entity" was used in place of "same person" to better convey the R&T Code definition of "Person."

Revisions to Regulation 4801 were made and presented to the Board at the January 15, 2013, BTC meeting to address the misconception that could arise in situations involving transfers between sole proprietors and partnerships where the sole proprietor is also a partner. Regulation 4801(c) provides a specific example to address this non-qualifying transfer. To provide additional clarity and address situations involving a parent corporation making a non-qualifying transfer to its wholly owned subsidiary, another potentially problematic scenario, staff added another example to Regulation 4801(c) specifically addressing this non-qualifying situation.

At the BTC meeting a concern was raised that the use of the term "legal entity" instead of "person" could be construed by some to exclude natural persons. To clarify that a "natural person" is also a "person" and therefore transfers between retail cigarette and tobacco stores owned by the same "natural person" also qualify under the regulation, the following underlined changes to 4801(c) are recommended:

(c) The transfer of cigarettes and tobacco products shall only be allowed when the natural person or legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same natural person or legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section since the same legal entity does not own both locations. As another example, a transfer between a location licensed to a parent corporation and a location licensed to its wholly owned subsidiary corporation would not qualify under this section since the parent corporation and its wholly owned subsidiary corporation are separate legal entities.

Sample Transfer Log

Following the first IP meeting, it was suggested that an example of a transfer log would be helpful to visually depict what the regulation requires in regard to the documentation needed to support a transfer. The sample transfer log (Exhibit 3) is not a subsection to the regulation but an illustrative example of what a retailer may wish to replicate. As noted in the regulation, the retailer need only provide a document or transfer log in any format so long as it contains the essential elements as required in subsection (b) of the proposed regulation and is accompanied by a copy of the original invoice in either electronic or hardcopy form.

Cigarette and Tobacco Product Seizure Study

ID evaluated its cigarette and tobacco product seizures for eighteen months, from February 2012 through August 2013 and concluded that transferring cigarettes and tobacco products between retail stores owned by the same person does not have a significant effect on tax evasion. Seizures can occur for a variety of reasons as a result of a site inspection, such as, invalid stamps, lack of tax-paid invoice support, product not authorized pursuant to the Master Settlement Agreement, unlicensed retailer, or failure to maintain a transfer log. Of the 441 inspections resulting in a seizure of cigarettes or tobacco products, 31, or 7 percent, were the result of a failure to maintain a transfer log or if there was a transfer log, it lacked invoice support. The average value of the 441 seizures of cigarette or tobacco products was \$1,754. The average value for the 31 cases where the seizure was the result of a failure to properly maintain or support a transfer log was \$544. Although the 31 seizures resulting from problems with transferring cigarettes or tobacco products is not an inconsequential number, it is also not a systemic problem and represents a very small percentage when one compares it to the number of sites operated by retailers with multiple locations.

There are 1,811 retailers of cigarettes and tobacco products in California operating multiple locations that may transfer product between locations. That is, roughly 6.4 percent of the 28,165 cigarette and tobacco product retailers. Although these 1,811 retailers represent only 6.4 percent of the retailer population, they operate 8,815 licensed retail locations, or 24 percent, of the 36,980 licensed retail locations in California. The 31 seizures represent only a 0.35 percent non-compliance rate (31 divided by 8,815 = 0.35).

Comments and Summary

Robinson Oil Corporation, owner of 34 licensed locations, submitted a letter (Exhibit 8) along with their survey opposing any attempt to place limits on transfers. In the letter it cites three recurring situations that require its locations to transfer cigarettes or tobacco products. These recurring situations are; (1) non-flexible contract agreements with vendors that force distribution of product to locations that do not have the customer base to sell it, (2) wholesaler out-of-stock on products needed to fulfill

customers' requests that can be obtained from another location, and (3) ordering mistakes that either shorted the location's saleable inventory or increased it by too much. These situations are similar to some of those expressed by Mr. Scott Louie of Chevron in his original email submission of May 17, 2012². In addition, Chevron noted two additional situations that arise that require transfers between stores, unanticipated events causing sales to increase and store closures, abandonments, or divestments that require the transfer of un-sold inventory. Chevron reiterated its support for staff's recommendation to not impose a limit in an email dated September 6, 2013.

The survey results support the Board's current policy acknowledging the practice of transfers of cigarettes and tobacco products within this industry. The Board has adopted procedures allowing for the transfers of cigarettes and tobacco products between retail locations owned by the same person with no limits placed on the amount of the cigarettes and tobacco products transferred. These procedures acknowledge the blending concern and are designed to address them through the requirement that copies of invoices be maintained at both locations and a transfer log or document be available detailing the amount of product, description of product, and license information of the transferring and receiving locations. Since the inception of these transfer procedures, the Board has had relatively few problems with issues pertaining to transfers of cigarette and tobacco products between retailer locations owned by the same person. Proposed Regulation 4801 is consistent with current Board policies and procedures and is intended to provide for consistent enforcement of the documentary requirement provisions. The proposed regulation will also provide retailers with the documentation and recordkeeping requirements for these types of transfers so as to avoid seizures of the transferred products, along with avoiding citations and fines that may be assessed against the retailer for improper documentation of these transfers.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Regulation 4801 as proposed by staff formalizes the Board's current policy of allowing transfers of cigarettes and tobacco products between retail stores owned by the same legal entity. Licensed retailers owning more than one location may transfer product between locations so long as the retailer prepares a transfer log or other document at the time of transfer and maintains a copy of the transfer log at both the transferring and receiving location along with copies of applicable invoices for inspection. These records must be maintained for a period of four years with copies of the log and invoices maintained at each location involved in the transfer for a period of one year. Copies of invoices may be maintained on alternative storage media pursuant to Regulation 4901, *Records*. Facilities and equipment must be provided for reading, locating and reproducing any invoices maintained on alternative storage media.

The transfer log or document shall show the following:

- (1) The transferring retail location, license information, supplier's name, invoice number, and date the bulk cigarettes and tobacco products purchase was made;
- (2) The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and

² Included as Exhibit 12 on the Formal Issue Paper presented at the June 26, 2012 BTC meeting. The Issue Paper may be viewed at: <http://www.boe.ca.gov/meetings/pdf/IP-Cigarette.pdf>, on the Board's website.

- (3) A legible itemized listing of cigarettes and tobacco products transferred using the description as found on the original invoice, including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.

Staff's proposed regulation is shown in Exhibit 2.

B. Pros of Alternative 1

- Is consistent with the Board's current policy on transfers.
- Provides regulatory support and guidance to taxpayers and staff.
- Adopts into regulation the retail industry's current business practices regarding transfers between retail stores owned by the same legal entity.

C. Cons of Alternative 1

- Requires a degree of additional verification during an inspection.
- Requires a taxpayer to prepare and maintain an additional document or log to satisfy the records requirement in section 22974 of the B&P Code.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of proposed Regulation 4801.

E. Operational Impact of Alternative 1

Minor. Although the regulation adopts current policy, staff intends to add the sample transfer log to the Board's website and appropriate publications for the tobacco industry.

F. Administrative Impact of Alternative 1

1. Cost Impact

Absorbable.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

None, adopts current policy.

H. Critical Time Frames of Alternative 1

None.

VII. Alternative 2 – Limit Transfers

A. Description of Alternative 2

Direct staff to pursue amending the Act in order to establish a violation for exceeding a dollar limit on transfers between retail stores owned by the same person. Once a violation has been established a regulation may then be promulgated on the documentary requirements necessary to support the transfers. See Exhibit 6 for a draft regulation imposing a limit.

B. Pros of Alternative 2

- May reduce the amount of transfers that need to be reviewed by Board staff.

C. Cons of Alternative 2

- Requires legislative action establishing a violation for exceeding a limit on transfers.
- Limits a retailer's ability to transfer product to their own stores regardless of the business situation. For instance, retailers would be limited on the amount allowed to transfer product from a closed store to one that is still in business or from a store that has overbought a product that can be sold at another location.
- Retailers would be limited from transferring inventory when a supplier is out of a product that is available at another location owned by the retailer, or when there are supplier delays in delivering a product to one retail store but the product is available at another location owned by the retailer.
- May prevent retailers with multiple locations from taking advantage of quantity discounts.
- May increase delivery charges that vendors charge the retailers for deliveries to each location owned by the retailer.
- Would create additional workload for retailers that would need to keep track of the amount of tax-paid cigarettes and tobacco products transfers in order to not violate the limit amount allowed.
- Would create additional workload for Board staff to determine if the retailer has exceeded the allowed limit amount for transfers of tax-paid cigarettes and tobacco products.

D. Statutory or Regulatory Change for Alternative 2

A statutory change is required to establish a violation and penalties for retailers that transfer amounts of cigarettes and tobacco products in excess of the allowed amounts.

E. Operational Impact of Alternative 2

Establishing a limit on the amount of cigarettes and tobacco products that can be transferred would require the Board to rescind the letter mailed April 2011 to retailers owning multiple locations that addressed the current policy allowing unlimited transfers. Staff would also need to revise Publication 78, *Sales of Cigarettes and Tobacco Products in California*, and advise industry of the policy change in other outreach materials.

F. Administrative Impact of Alternative

1. Cost Impact

Additional mailing costs unknown.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Establishing a limit on the amount of cigarettes and tobacco products transferred between a taxpayer's own stores could have a major impact on those retailers operating multiple licensed locations that transfer products between their own stores.

H. Critical Time Frames of Alternative 2

None.

VIII. Alternative 3 – Prohibit Transfers**A. Description of Alternative 3**

Direct staff to draft a regulation prohibiting transfers of cigarettes and tobacco products between retail stores regardless of ownership.

B. Pros of Alternative 3

- Limits the invoice documentation required on site to only those invoices referencing the licensed retail location.
- Prohibition creates a “bright line” on transfers for retailers and Board staff to follow.

C. Cons of Alternative 3

- Eliminates a retailer's ability to transfer product to their own stores regardless of the business situation. For instance, retailers would not be allowed to transfer product from a closed store to one that is still in business or from a store that has overbought a product that can be sold at another location. Retailers would also be prohibited from transferring inventory when a supplier is out of a product that is available at another taxpayer owned location, or when there are supplier delays in delivering a product to one retail store but the product is available at another taxpayer owned location.
- May prevent taxpayers with multiple locations from taking advantage of quantity discounts.

D. Statutory or Regulatory Change for Alternative 3

No statutory change required. However, because the Act does not specifically prohibit the transfer of cigarettes and tobacco products between retail stores owned by the same person, a regulation prohibiting transfers should be considered.

E. Operational Impact of Alternative 3

Prohibiting transfers would require the Board to rescind the letter mailed April 2011 to retailers owning multiple locations that addressed the current policy allowing transfers. Staff would also need to revise Publication 78, *Sales of Cigarettes and Tobacco Products in California*, and advise industry of the policy change in other outreach materials.

F. Administrative Impact of Alternative 3**1. Cost Impact**

FORMAL ISSUE PAPER 13-010

Additional mailing costs unknown.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 3

A prohibition of the common practice of transferring cigarettes or tobacco products between a taxpayer's own stores could have a major impact on those retailers operating multiple licensed locations.

H. Critical Time Frames of Alternative 3

None.

Preparer/Reviewer Information

Prepared by: Policy and Compliance Division, Property and Special Taxes Department

Current as of: November 19, 2013



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

I. Issues

Should the Board of Equalization (Board) authorize publication of a new regulation, under the Cigarette and Tobacco Products Licensing Act (Act), to provide guidelines on the documentation and retention requirements for transfers of cigarettes and tobacco products between retail stores owned by the same person?

II. ALTERNATIVE 1 - STAFF RECOMMENDATION

Staff recommends the approval of proposed Regulation 4801 regarding transfers of cigarettes and tobacco products between retail stores owned by the same person without limits on the value of the cigarettes and tobacco products transferred. Approving the proposed regulation provides Board staff and licensed retailers who own multiple locations with regulatory guidance for satisfying the documentation and invoice requirements required by statute in order to establish the tax-paid status of the product being transferred. .

III. Other Alternative(s) Considered

Alternative 2 - Limit Transfers

Consider directing staff to pursue amending the Act in order to establish a violation for exceeding a dollar limit on transfers between retail stores owned by the same person. Once a violation has been established a regulation may then be promulgated on the documentary requirements necessary to support the transfers.

Alternative 3 - Prohibit Transfers

Consider approving a regulation prohibiting the transfer of any cigarettes or tobacco products between retail locations owned by the same person, thereby creating a “bright line” prohibiting transfers as recommended by some Interested Parties.

Alternative 1 – Staff Recommendation

There is nothing in staff recommendation that would impact revenue. Regulation 4801 as proposed by staff formalizes the Board's current policy of allowing transfers of cigarettes and tobacco products between retail stores owned by the same legal entity. Licensed retailers owning more than one location may transfer product between locations so long as the retailer prepares a transfer log or other document at the time of transfer and maintains a copy of the transfer log at both the transferring and receiving location along with copies of applicable invoices for inspection. These records must be maintained for a period of four years with copies of the log and invoices maintained at each location involved in the transfer for a period of one year. Copies of invoices may be maintained on alternative storage media pursuant to Regulation 4901, *Records*. Facilities and equipment must be provided for reading, locating and reproducing any invoices maintained on alternative storage media.

Other Alternative(s) Considered

Alternative 2: There is nothing in Alternative 2 that would impact revenue. This alternative would direct staff to draft a regulation limiting the amount of cigarettes and tobacco products that can be transferred between retail stores owned by the same legal entity.

Alternative 3: There is nothing in Alternative 3 that would impact revenue. This alternative would direct staff to draft a regulation prohibiting transfers of cigarettes and tobacco products between retail stores regardless of ownership.

Revenue Summary

Alternative 1: Staff recommendation does not have a revenue impact.

Other alternatives considered:

Alternative 2 does not have a revenue impact.

Alternative 3 does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate is subject to suggested changes made by Mr. Joe Fitz, Chief, Research and Statistics Section, Legislative and Research Division, and Ms. Debbie Kalfsbeek, Administrator, Program Policy and Administration Branch, Property and Special Taxes Department. For additional information, please contact Mr. Benson at (916) 445-0840.

November 25, 2013

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

Reference: Section 22971, 22974, 22974.3, and 22978.4, Business and Professions Code

(a) GENERAL. Every retailer of cigarettes and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the Board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarettes and tobacco products between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer. These transfer logs or documents will be utilized by Board staff for inventory reconciliation and must be provided upon request at the time of the inspection. Copies of original purchase invoices may be maintained at the receiving location on alternative storage media as prescribed in Regulation 4901 (h). The retailer must provide facilities and equipment for reading, locating, and reproducing any invoices maintained on alternative storage media.

(b) SPECIFIC APPLICATION. The transfer log or document shall show the following:

- (1) The transferring retail location, license information, supplier's name, invoice number, and the date the bulk cigarettes and tobacco products purchase was made;
- (2) The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and,
- (3) A legible itemized listing of cigarettes and tobacco products transferred using the description as found on the original invoice including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.

(c) The transfer of cigarettes and tobacco products shall only be allowed when the natural person or legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same natural person or legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section since the same legal entity does not own both locations. As another example, a transfer between a location licensed to a parent corporation and a location licensed to its wholly owned subsidiary corporation would not qualify under this section since the parent corporation and its wholly owned subsidiary corporation are separate legal entities.

(d) Records of the transfer shall be made available to the Board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarettes or tobacco products that are claimed to be transferred and the issuance of a citation. Transfer logs or documents not provided upon request at the time of inspection, or created or provided during or after an inspection has commenced, or created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.

**Sample Transfer Log
Cigarettes and Tobacco Products**

Store Transferring Product	Store Receiving Product	Date of Transfer	Items Transferred Complete Description From Original Invoice	Original Purchase From
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	B Street Market 123 B Street Anywhere, CA LRQ 91-1XXXXX	March 2, 2010	50 packs Marlboro cigarettes Red Hard Pack, 100 5 boxes Romeo y Juliet Reserve Real Churchill Cigars (25ea)	LD Tobacco Distributors LDG 90-2XXXXX February 14, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	B Street Market 123 B Street Anywhere, CA LRQ 91-1XXXXX	April 30, 2010	7 rolls Grizzly Long Cut, Mint (5ea) 2 packs Black & Mild cigars, wine flavor (5ea) 3 packs Black & Mild cigars, wine flavor, wood tip (5ea)	S&W Wholesale SWQ 90-3XXXXX April 27, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	D Street Market 123 D Street Anywhere, CA LRQ 91-3XXXXX	June 28, 2010	50 packs Marlboro Cigarettes Red King 12 packs Backwoods Sweet (6ea) 6 rolls Copenhagen Regular (5ea)	Tobacco Road Distributors SWQ 90-4XXXXX June 12, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	C Street Market 123 C Street Anywhere, CA LRQ 91 2XXXXX	August 15, 2010	8 packs Swisher Cigarillo wood tip (5ea) 10 boxes Salem Gold 100	S&W Wholesale SWQ 90-3XXXXX July 21, 2010
D Street Market 123 D Street Anywhere, CA LRQ 91-3XXXXX	A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	August 28, 2010	6 packs Backwoods Sweet (6ea)	Tobacco Road Distributors SWQ 90-4XXXXX June 12, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	E Street Market 123 E Street Anywhere, CA LRQ 91 4XXXXX	October 3, 2010	20 packs Marlboro Cigarettes Gold 100 2 rolls Skoal Long Cut Mint (5ea) 2 rolls Skoal Bandit Wintrg. (5ea)	LD Tobacco Distributors LDG 90-2XXXXX September 29, 2010

Note: Transfer of cigarettes and tobacco products is allowed only when the legal ownership (as registered with the BOE) of the store transferring the product is the same as the legal ownership of the store receiving the product.

For example:

Store Transferring Product	Store Receiving Product	Is the Transfer Allowed?
John Smith –sole proprietor	John Smith – sole proprietor	Yes
John Smith – sole proprietor	John Smith – corporate officer	No
John Smith – sole proprietor	John Smith – partner	No
John Smith Corporation – Parent Corp.	John Smith Jr. – Wholly Owned Sub.	No

STATE BOARD OF EQUALIZATION
CIGARETTE AND TOBACCO PRODUCTS TRANSFERS
SURVEY QUESTIONNAIRE

1. Do you transfer cigarettes or tobacco products inventory between your retail stores? (Please check the box for your answer.)

Yes

No

If No, please fill out the contact information on the last page of this survey questionnaire (optional) and return the survey in the postage paid envelope enclosed for your convenience.

If Yes, please answer the remaining questions and return the completed survey in the postage paid envelope enclosed for your convenience.

2. How often do you transfer products between your stores? (Please check the box for your answer.)

Frequently (At least once a week)

Often (At least once a month)

Occasionally (At least once every three months)

Rarely (At least once a year)

3. What is the average cost of the cigarettes and/or tobacco products transferred during a **calendar quarter** (three month period)? If you answered rarely above, please provide the average for the entire year. (Please check the box for your answer.)

Less than \$200

\$201 to \$500

\$501 to \$1000

Over \$1,000

STATE BOARD OF EQUALIZATION
CIGARETTE AND TOBACCO PRODUCTS TRANSFERS
SURVEY QUESTIONNAIRE

4. What dollar limit on cost of cigarettes and/or tobacco products transferred during a **three month period** WOULD NOT adversely affect your business operations? (Please check the box or write in your answer.)

- \$200
- \$500
- \$1000
- Other: \$ _____ (write in dollar amount).
- None, no dollar limit. Any dollar limit would adversely affect my business operations.

5. If your supplier (distributor or wholesaler) currently offers you quantity discounts, would they still offer these discounts if your order was shipped to multiple locations versus a single location? (Please check the box for your answer.)

- Yes
- No
- Don't know

6. Do you also have a Cigarette and Tobacco Products Distributor License? (Please check the box for your answer.)

- Yes
- No

CONTACT INFORMATION (OPTIONAL)

Name of Person Completing the Survey _____ Title _____

Name of Business _____

BOE Cigarette & Tobacco Products Retail License Number (LR) _____

Email Address _____

TRANSFERS OF CIGARETTES AND TOBACCO PRODUCTS
RESULTS OF SURVEY

Question 1: Do you transfer cigarettes or tobacco products between your retail stores?

38% - Yes

62% - No

The retailers that answered no to this first question did not answer the remaining five questions, as the survey instructed. The following 2 through 6 questions were only answered by the retailers that transfer cigarettes or tobacco products between their store locations.

Question 2: How often do you transfer products between your stores?

28% - Frequently transfer products (at least once a week)

24% - Often transfer products (at least once a month)

27% - Occasionally transfer products (at least once every three months)

21% - Rarely transfer products (at least once a year)

Question 3: What is the average cost of the cigarettes and/or tobacco products transferred during a calendar quarter (three month period)?

32% - Less than \$200

23% - \$201 to \$500

13% - \$500 to \$1,000

32% - Over \$1,000

Question 4: What dollar limit on cost of cigarettes and/or tobacco products transferred during a three month period would not adversely affect your business?

13% - \$200

15% - \$500

14% - \$1,000

50% - Any dollar limit would adversely affect my business operations

8% - Wrote in a dollar amount which ranged between \$1,200 and \$5,000, with an average of \$2,600

Questions 5: Would your supplier (Distributor or Wholesaler) still offer a quantity discount if your order was shipped to multiple sites versus a single location?

22% - Yes

37% - No

41% - Did not know

Question 6: Do you also have a Cigarette and Tobacco Products Distributor License?

18% - Yes

82% - No

Staff's Proposed Regulation 4801 – Limiting Transfers

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

Reference: Section 22971, 22974, 22974.3, and 22978.4, Business and Professions Code

(a) GENERAL. Every retailer of cigarettes and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the Board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarettes and tobacco products between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer. These transfer logs or documents will be utilized by Board staff for inventory reconciliation and must be provided upon request at the time of the inspection. Copies of original purchase invoices may be maintained at the receiving location on alternative storage media as prescribed in Regulation 4901 (h). The retailer must provide facilities and equipment for reading, locating, and reproducing any invoices maintained on alternative storage media.

(b) SPECIFIC APPLICATION. The transfer log or document shall show the following:

- (1) The transferring retail location, license information, supplier's name, invoice number, and the date the bulk cigarettes and tobacco products purchase was made;
- (2) The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and,
- (3) A legible itemized listing of cigarettes and tobacco products transferred using the description as found on the original invoice including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.

(c) The transfer of cigarettes and tobacco products shall only be allowed when the natural person or legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same natural person or legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section since the same legal entity does not own both locations. As another example, a transfer between a location licensed to a parent corporation and a location licensed to its wholly owned subsidiary corporation would not qualify under this section since the parent corporation and its wholly owned subsidiary corporation are separate legal entities.

(d) Records of the transfer shall be made available to the Board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarettes or tobacco products that are claimed to be transferred and the issuance of a citation. Transfer logs or documents not provided upon request at the time of inspection, or created or provided during or after an inspection has commenced, or created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.

(e) A retailer of cigarettes and tobacco products may transfer inventory having a maximum total purchase price of \$1,000 within a calendar quarter, i.e., January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31. Any additional transfers of cigarettes and tobacco products inventory are not permitted by this regulation.

Formal Issue Paper 13-010
September 5, 2013, Letter with Survey Results to Interested Parties

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0057
TELEPHONE (916) 327-6440 FAX (916) 324-2554
www.boe.ca.gov

Exhibit 7



BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

September 5, 2013

Dear Interested Party:

The State Board of Equalization (BOE) is proposing a new Cigarette and Tobacco Products Tax Regulation. Proposed Regulation 4801, *Transfers of Cigarette and Tobacco Products between Retail Stores Owned by the Same Person*, copy enclosed, establishes the documentary requirements for retailers transferring cigarettes or tobacco products.

As part of the interested parties process BOE staff sent a survey on June 19, 2013 to cigarette and tobacco products licensed retailers that operate two or more locations. The survey asked six questions regarding transfers of cigarette and tobacco products. The survey provided the retailer an opportunity to provide input on the effects of imposing a dollar limit on transfers of cigarette and tobacco products between locations owned by the same person. Of the 1,811 licensed cigarette and tobacco products retailers that operate from multiple locations, 555 completed the survey. Enclosed are the survey results.

The survey revealed that over 38 percent of retailers owning more than one location transfer cigarettes and tobacco products between their locations. Among the retailers who transfer product between locations, 50 percent stated that any dollar limit would adversely affect their business operations. Another 8 percent of respondents wrote in a dollar amount ranging from \$1,200 to \$5,000 as the limit they would be able to operate under. These amounts exceeded the \$1,000 considered the top dollar limit in the survey. Based on these results, it is apparent that transfers of cigarettes and tobacco products are performed by a large percentage of cigarette and tobacco products retailers owning more than one location and the majority of those retailers state any limit would adversely affect their business operations.

Proposed Regulation 4801 is scheduled for discussion at the November 19, 2013 Business Taxes Committee meeting. At this meeting staff will present the Board with three alternatives: 1) adopt the regulation as drafted and presented at the January 2013 meeting which allowed transfers without a limit, 2) prohibit all transfers, or 3) limit transfers and seek legislation imposing a violation and penalty for exceeding a dollar limit on transfers¹. Because of the adverse impact limiting the dollar amount of transfers will have on retailers, staff is proposing to our Board to continue to allow transfers without a limit to coincide with the Board's current policy on the issue.

As mentioned above, proposed Regulation 4801 will be discussed at the November 19, 2013, Business Taxes Committee meeting in Sacramento. Prior to this meeting staff will present to the Board and interested parties a formal Issue Paper fully discussing the results of the survey, the proposed alternatives, and staff's recommendation. If you would like to provide written comments that may be addressed in the Issue Paper please send them to the above address or email to Barry.Ivy@boe.ca.gov by September 19, 2013. Please be aware that copies of your submission may be provided to other interested parties.

¹ Although the Board may promulgate rules and regulations in order to administer the provisions of the Cigarettes and Tobacco Products Licensing Act (Act), including imposing a limit on transfers, there is no violation within the Act for exceeding an imposed limit. Therefore, if the Board desires to impose a limit, staff recommends seeking legislation establishing a violation in order to enforce such a requirement.

E-file now, find out how . . . www.boe.ca.gov



September 5, 2013

Therefore, please ensure your comments do not contain confidential information. Your participation at the November 19, 2013 Business Taxes Committee meeting is also welcome. As an interested party you will receive an email containing the formal Issue Paper approximately two weeks prior to the November meeting.

Thank you for your consideration and any participation you may have had in the survey. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Mr. Phillip Bishop, at (916) 327-6440.

Sincerely,

Lynn Bartolo
Chief, Special Taxes Policy and Compliance
Division
Property and Special Taxes Department

LB: pb

Enclosures (Proposed Regulation 4801 and Survey Results)

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel
(via e-mail)
Mr. David Hunter, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichelt, Board Member's Office Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Ms. Yvette Stowers, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Alan Giorgi, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Cynthia Bridges
Mr. David Gau
Mr. Randy Ferris
Mr. Jeffrey L. McGuire
Mr. Jeff Vest
Mr. Jeff Angeja
Mr. David Levine
Mr. Robert Tucker
Mr. Stephen Smith
Mr. Todd Gilman
Ms. Laureen Simpson
Ms. Michele Pielsticker
Mr. Randy Silva
Ms. Susanne Buehler
Mr. Phillip Bishop

Formal Issue Paper 13-010
Letter from Robinson Oil Corp.

ROBINSON OIL
corporation

Rotten
Robbie

CFM

PACIFIC
PRIDE
THE COMMERCIAL FUELING SYSTEM

955 Martin Avenue, Santa Clara, CA 95050 • phone 408.327.4300 • fax 408.327.4340

July 2, 2013

Special Taxes and Fees Division
State Board of Equalization
PO Box 942879
Sacramento, CA 94299-9879

Re: Survey – Transfers of Cigarettes and Tobacco Products

Dear Sir or Madam,

Thank you for allowing us the opportunity to participate in your survey regarding the transfer of cigarette and tobacco products. Enclosed you will find the completed survey and a listing of our 34 locations' license numbers.

We appreciate the Board's attention to preventing the distribution of cigarette and tobacco products that have not had taxes paid on them. The sale of such cigarettes not only hurts the State's income from cigarette and tobacco taxes but hurts the sales volume of responsible tax-paying retailers like us.

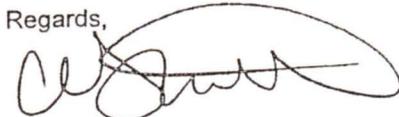
In our operation, we make every effort to make each of our locations responsible for maintaining their own inventory of cigarette and tobacco products. However, during the course of regular business our locations do frequently transfer cigarette and tobacco products to/from our other locations. Transfers are typically a result of:

- Non-flexible contract agreements with vendors that force distribution of product to locations that do not have the customer base to sell it to. In order to sell the product it must be transferred to a location that has customers to buy it.
- Wholesaler out-of-stock on products needed to fulfill customers' requests that can be obtained from another location until out-of-stock situation can be resolved.
- An unfortunate mistake made on an order by the location that either shorted the location's saleable inventory or increased it by too much.

The transferring of any item between our locations costs us time and money so we would avoid it all together if we could, but we can't due to the above situations. Any limit on the amount we could transfer could potentially leave of with unsellable product or no product to sell, thus would adversely affect our business operations.

Because this is such an important function of our business we would like to be notified of any future meetings on this topic.

Regards,



Coleen Stubelt
MIS Manager
Robinson Oil Corporation
408-327-4322 / cstubelt@rottenrobbie.com

Enclosures: Completed survey & location listing