

# **REVISED DISCUSSION FOR ISSUE PAPER**

## **Proposed Amendment and New Regulations Cigarette and Tobacco Products Tax Law**

### **Issue**

Should the Board amend Regulation 4061 “Unused Stamps And Unused Meter Settings” to provide for the refund of the value of tax stamps misapplied or only partially affixed to cigarette packages, and adopt two new regulations regarding (1) the procedure for obtaining a refund or credit of tax paid for unusable tobacco products; and (2) the issuance of a distributor’s license to a person “not engaged in business in this state”?

### **Staff Recommendation**

Staff recommends that the Board authorize publication of the attached proposed amendment and new regulations.

### **Background**

Staff recommends the addition of Regulation 4065.1 in order to provide the procedure for a distributor of tobacco products to obtain a credit or refund pursuant to Revenue and Taxation Code Section 30177 for tobacco products that have become unfit for use, unsalable or have been destroyed. Section 30177 was amended by Stats. 1998, Ch. 815 (AB2075) to include tobacco products, and no corresponding change was made to the regulations. Therefore, staff is recommending proposed Regulation 4065.1 to provide the procedure for obtaining a credit or refund of tax paid for tobacco products as authorized under Revenue & Taxation Code Section 30177.

Revenue & Taxation Code Section 30140.1 states that the board may adopt rules and regulations that provide for the issuance of a license to a person who is not engaged in business in this state. To date, no rules or regulations have been adopted. However, in recent months, staff has received inquiries from persons, not engaged in business in this state, who would like to pay the cigarette and/or tobacco products tax directly to the board in lieu of their customers receiving bills for the tax. Based on these inquiries and the potential to collect taxes that the board may otherwise not be able to collect tax, staff recommends the proposed regulation in order to license these persons as distributors.

Lastly, amendments to Regulation 4061 have been proposed to clarify the application of Revenue & Taxation Code Section 30176 by setting forth-current board procedures and requirements for refunds of unused stamps and meter settings when the tax stamps are affixed to cigarette packages because, for example, the stamps were misapplied or only partially affixed to the package.

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#### Discussion

On January 8, 2001, at the first interested party meeting, staff discussed the proposed amendments and proposed new regulations with interested parties. The following is a summary of the discussion:

**Regulation XXXX. DISTRIBUTORS NOT ENGAGED IN BUSINESS IN THIS STATE:** No discussion at the meeting. Therefore, no changes will be made to the proposed regulation at this time.

**Regulation 4061. UNUSED STAMPS AND UNUSED METER SETTINGS:** No discussion at the meeting. Therefore, no changes will be made to the proposed amendments at this time.

**Regulation 4065.1. UNUSABLE TOBACCO PRODUCTS:** The discussion at the meeting focused on this proposed regulation. One interested party told staff that the requirements of the proposed regulation could not be met. Currently, the interested party is reducing the amount entered on the first line of the return (1. "Cost of tobacco products distributed (prior to any discounts)") by the value of tax-paid tobacco products which have been returned, or destroyed, or have become unsalable, without setting forth the specific amount of that reduction in any further supporting documentation. Staff was not aware that distributors were netting the amounts reported on line 1. Further research by staff since the interested party meeting has shown that some distributors are reporting returns and destructions of tobacco products differently and not in accordance with Revenue and Taxation Code Section 30177. Section 30177 does not allow for taking any credit for destroyed, or unsalable product on the return. Instead, a separate claim for refund is required.

The proposed regulation is consistent with the requirements set forth in Revenue and Taxation Code Section 30177. That section provides, in part, that the board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products that has been paid on the distribution of tobacco products, which prior to distribution become unfit for use, unsalable or have been destroyed, or which after distribution have become unfit for use or unsalable and have been returned for credit or have been replaced, and the board has proof of that return or destruction.

At this time, staff recommends that the Board authorize publication of this regulation, but staff will consider any additional comments regarding the proposed regulation.

## **Summary**

Staff recommends that the Board authorize publication of the attached proposed amendment and new regulations.

Prepared by the Excise Taxes Division, Special Taxes Department  
Current as of 1/31/01 (discuss.dot rev. 10/99)

**Regulation 4061. UNUSED STAMPS AND UNUSED METER SETTINGS**

*Reference:* Section 30176, Revenue and Taxation Code.

**(a)** The board will refund or credit to a distributor the denominated value, less the purchase discount, of any unused stamps, which are returned to the board. The board will refund or credit to a distributor the denominated value, less the purchase discount, of any verifiable meter setting remaining on a meter when the meter is returned to the bank for cancellation of the meter setting. A claim for refund or credit must be made on a form prescribed by and filed with the board.

**(b)** “Unused stamp” means a tax stamp on a tax stamp roll or on a package of cigarettes which is not yet distributed and includes only those stamps on which 4 of the 5 characters of the stamp’s serial number can be identified. If fewer than 4 characters in the stamp’s serial number can be identified, the distributor shall provide evidence concerning the remainder of the tax stamp to show that the remainder of the stamp is not affixed to a package of cigarettes that has been distributed. Such proof may include, but is not limited to, the paper from the stamp roll or package of cigarettes to which the remainder of the stamp is affixed.

**(c)** If the refund or credit is for tax stamps that are affixed to packages of cigarettes, an authorized board employee, upon verification that the refund or credit is due, shall ensure that the distributor obliterated the stamp with the use of a permanent marker.

**(d)** If the refund or credit is for tax stamps remaining on a roll, upon verification that the refund or credit is due, the roll shall be returned to the board for destruction.

**Regulation 4065.1. UNUSABLE TOBACCO PRODUCTS**

Reference: Section 30177, Revenue and Taxation Code.

The board will refund or credit to a distributor the tax imposed on tobacco products that has been paid on the distribution of tobacco products, which have become unfit for use or unsalable before distribution, or after distribution if the tobacco products have been returned for credit or have been replaced and proof is submitted to the board showing that the tobacco products have not been used in California. Claim for refund or credit must be made on a form prescribed by the board and shall be accompanied by a properly executed receipt and a copy of the credit memorandum of the manufacturer for returned stock, or by proof of destruction of the tobacco products in the presence of an employee of the board authorized to witness the destruction.

**Regulation XXXX. DISTRIBUTORS NOT ENGAGED IN BUSINESS IN THIS STATE.**

Reference: Sections 30108 and 30140.1 Revenue and Taxation Code.

Persons who are not engaged in business in this state may apply for a distributor's license. Holders of such licenses are required to file a monthly report or return with the board on forms prescribed by the board reporting his or her distribution of cigarettes or tobacco products and such other information as the board may require. Further, the licensee is required to collect the tax, give receipts for the collected tax, and pay the tax to the board in the same manner as licensees engaged in business in this state.