REGULATION HISTORY

TYPE OF REGULATION: Cigarette and Tobacco Products Licensing Act of 2003

REGULATION: 4703

TITLE: Seizures and Forfeitures

PREPARATION: Monica Brisbane/Peter Gaffney
LEGAL CONTACT: Monica Brisbane

Proposed Amendments to Regulation 4703, California Code of Regulations, Title 18, relating to the Cigarette and Tobacco Products Licensing Act of 2003 (Bus. & Prof. Code, § 22970 et seq.).

HISTORY OF PROPOSED AMENDMENTS:

09-12-07: Public hearing

09-03-07: 45-day public comment period ends

07-21-07: Public comment period begins

07-20-07: Notice of public hearing published in California Regulatory Notice Register, Register 2007, No. 29-Z; notice letter sent to Interested Parties via email and US mail

07-09-07: Notice to publish submitted to the Office of Administrative Law (OAL)

06-01-07: Board approved authorization to publish amendments

Support: NA
Oppose: NA

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
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Executive Director

August 17, 2007

STATE BOARD OF EQUALIZATION
NOTICE OF RESCHEDULED PUBLIC HEARING

CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003
REGULATION 4703, SEIZURES AND FORFEITURES

BY NOTICE dated July 20, 2007, and published in the July 20, 2007 California Regulatory Notice Register 2007, Number 29-Z, the State Board of Equalization, announced that it would conduct a public hearing on September 11, 2007, to consider proposed amendments to Regulation 4703 in Title 18, Division 2, Chapter 9.5 of the California Code of Regulations, relating to the Cigarette and Tobacco Products Licensing Act of 2003.

A rescheduled public hearing on the proposed regulation will be held on September 12, 2007, in Room 121, 450 N Street, Sacramento, CA at 9:30 a.m., or as soon thereafter as the matter may be heard.

Questions regarding the substance of the proposed regulatory action should be directed to Ms. Monica Gonzalez Brisbane, (916) 322-0438, email Monica.Brisbane@boe.ca.gov, or by mail to: State Board of Equalization, Attn: Monica Gonzalez Brisbane, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Mira Tonis, telephone (916) 319-9518, e-mail Mira.Tonis@boe.ca.gov or by mail at State Board of Equalization, Attn: Diane Olson or Mira Tonis, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080 by September 12, 2007.

STATE BOARD OF EQUALIZATION

Gary Evans, Acting Chief
Board Proceedings Division

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Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

July 20, 2007

To Interested Parties:

Notice of Proposed Regulatory Action
By the
State Board of Equalization

Proposed to Adopt Regulation 4703,
Seizures and Forfeitures

Notice Is Hereby Given

The State Board of Equalization (the Board), pursuant to the authority vested in it by section 22971.2 of the Business and Professions Code, proposes to amend Regulation 4703 in Title 18, Division 2, Chapter 9.5 of the California Code of Regulations, relating to the Cigarette and Tobacco Products Licensing Act of 2003.

A public hearing on the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on Tuesday, September 11, 2007. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by the time of the public hearing.

Informative Digest/Policy Statement Overview

The Board proposes to amend Regulation 4703 as follows:

Regulation 4703 outlines the situations when cigarettes or tobacco products may be seized under certain statutes and that such seized products are forfeited to the state unless a timely petition for release of seized property is filed. The regulation further describes what evidence can be provided that may result in the return of seized property. The proposed amendments specifically provide that licensed distributors are excluded from seizures of unstamped cigarettes (including cigarettes stamped with another state's tax stamp) and further clarify that in the absence of an applicable exemption from tax or other lawful possession of unstamped product under the Revenue and Taxation Code (e.g., Revenue and Taxation Code sections

Revenue and Taxation Code (e.g., Revenue and Taxation Code sections 30102 through 30106 or 30431), unstamped cigarettes and/or untaxed tobacco products are subject to seizure.

Cost or Savings to State or Local Agencies or School Districts

The Board has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulatory action will result in no direct or indirect cost or savings to any state agency, or any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

Effect on Business

Pursuant to Government Code section 11346.5(a)(8), the Board makes an initial determination that the proposed Regulations will not have a significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand business in the State of California.

The regulations proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulations may affect small business.

Cost Impact on Private Person or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect on Housing Costs

No significant effect.

Federal Regulations

The proposed regulations have no comparable federal regulations.

Authority

Section 22971.2 of the Business and Professions Code.

Reference

The Cigarette and Tobacco Products Licensing Act of 2003, Division 8.6 of the Business and Professions Code (commencing with section 22970); Revenue and Taxation Code sections, 30102 through 30106, 30435, 30436, 30438, 30431, 30473, and 30474.1.

Contact

Questions regarding the substance of the proposed regulatory action should be directed to Ms. Monica Gonzalez Brisbane, (916) 322-0438, email Monica.Brisbane@boe.ca.gov, or by mail to: State Board of Equalization, Attn: Monica Gonzalez Brisbane, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mira N. Tonis, Regulations Coordinator, telephone (916) 319-9518, fax (916) 324-3984, e-mail Mira.Tonis@boe.ca.gov, or by mail to: State Board of Equalization, Attn: Mira N. Tonis, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Alternatives Considered

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to the Board's attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

Availability of Initial Statement of Reasons and Text of Proposed Regulation

The Board has prepared an initial statement of reasons and an underscore and strike-out version (express terms) of the proposed amendments. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments are available on the Internet at the Board's Web site, http://www.boe.ca.gov.

Availability of Final Statement of Reasons

The final statement of reasons will be made available on the Internet at the Board's Web site following its public hearing of the proposed amendments. It will also be available for your inspection at 450 N Street, Sacramento, California.

Additional Comments

Following the hearing, the Board may, in accordance with law, adopt the proposed amendments if the text remains substantially the same as described in the text originally made available to the public. If the Board makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulations. The text of any

modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Tonis. The Board will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,

Gary Evans, Acting Chief
Board Proceedings Division

GE:mnt

Enclosures

Article 6: SEIZURE AND FORFEITURE

Regulation 4703. Seizures and Forfeitures.

(a) Seizures. The seizure of cigarette and tobacco products is authorized under the Cigarette and Tobacco Products Licensing Act Law and the Cigarette and Tobacco Products Tax Law.

(b) Seizure of Untaxed Products.

(1) In the absence of an applicable exemption from tax or other lawful possession of unstamped product under Revenue and Taxation Code (e.g. Revenue and Taxation Code sections 30102 through 30106 or 30431), t~~T~~he Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products that cannot be sold legally in California, including, but not limited to the following:

(A) Cigarette packages without any cigarette tax stamp that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.~~when an exemption from tax is provided under Revenue and Taxation Code section 30102 through section 30106.~~

(B) Cigarette packages with another state's tax stamp or the stamp of another taxing jurisdiction that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.~~when an exemption from tax is provided under Revenue and Taxation Code section 30102 through section 30106.~~

(C) Cigarette packages with a California tax stamp affixed and marked "Not for sale in the United States" "For Export Only" or similar wording indicating the manufacturer did not intend the product to be sold in the United States, that are possessed, stored, owned by a retailer, wholesaler, distributor, manufacturer importer, or any other person.

(D) Tobacco products for which the California excise tax is due, but has not been paid that are possessed, stored, owned, or for sale by a retailer, wholesaler or any other person except when possessed by a licensed distributor.~~when an exemption from tax is provided under Revenue and Taxation Code section 30102 through section 30106.~~

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized

by the Investigations Division or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) Petition Procedure. The Board's seizure of such products as described under subsection (b) shall comply with the procedures set forth in Revenue and Taxation Code, Division 2, Part 13, Chapter 7.5, commencing with section 30435.

(A) An owner or any person owning an interest in the seized property may file a petition with the Board to request recovery of the seized property as permitted by Revenue and Taxation Code section 30438.

(B) The petitioner has the burden of proving in the petition that the seized cigarettes and/or tobacco products are legal to possess, store, own or sell and that taxes have been paid to obtain the recovery of the seized product(s).

(c) Seizure of Product From Persons Without a Valid License. The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

(1) Unlicensed Persons.

(A) Stamped cigarettes that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, manufacturer, importer, or any other person after notice by the Board or a law enforcement agency.

(B) Tobacco products for which the California excise tax has been paid, that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, or any other person after notice by the Board or a law enforcement agency.

(2) Persons with Suspended or Revoked Licenses.

(A) Stamped or unstamped cigarettes offered for sale at the time of seizure by a retailer, distributor, wholesaler, manufacturer or importer with a suspended or revoked license after notice by the Board of the suspension or revocation.

(B) Tobacco products, regardless of whether the California excise taxes have been paid, that are offered for sale at the time of seizure

by a retailer, distributor or wholesaler with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) Forfeiture. Any cigarettes and tobacco products seized by the board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

(4) Petition Procedure. The petitioner may file a petition to contest the citation(s) resulting in the suspension or revocation of the license issued under the Cigarette and Tobacco Products Licensing Act Law pursuant to Article 5 of these regulations.

(d) Evidence Required For Recovery of Product. Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

(1) The cigarette packages had valid California tax stamps affixed and the petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(2) The cigarette packages had valid California tax stamps affixed and the petitioner was not operating at the time of seizure with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) The cigarette packages without California tax stamps affixed were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(4) Cigarette packages that bear another state's tax stamp or the stamp of another taxing jurisdiction were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(5) Cigarette packages without a California tax stamp affixed and marked "Not for sale in the United States" or similar wording indicating that the manufacturer did not intend the product to be sold in the United States were in the possession of a distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law and intended for sale outside of California at the time of seizure.

(6) The petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law and the tax was paid for the seized tobacco products at the time of seizure.

(7) The petitioner was not operating with a suspended or revoked license after notice by the Board of the suspension or revocation and the tax was paid for the seized tobacco products at the time of seizure.

(8) The untaxed tobacco products were in the possession of a tobacco products distributor with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(e) Counterfeit Products. Counterfeit cigarette and tobacco products are defined as those with false manufacturing labels or false or fraudulent stamps, or both false labels and false stamps.

(1) The Board shall be authorized to seize counterfeit cigarette and tobacco products that are possessed, stored, owned or for sale by a retailer, distributor, wholesaler, manufacturer, importer, or any other person.

(2) The Board is not authorized to return seized counterfeit cigarettes and tobacco products as defined in this part as such products are illegal under California law.

(f) Additional grounds for seizure. The California Cigarette and Tobacco Products Tax Law at Revenue and Taxation Code section 30436 sets forth additional circumstances under which cigarettes or tobacco products may be seized by the Board and forfeited to the state.

Note: Authority: Section 22971.2, Business and Professions Code.
Reference: Sections 22971 subdivisions (l) and (m), 22974.3, subdivisions (a) and (b), 22978.2, subdivision (a) and (b) and 22980.2, subdivision (c); Revenue and Taxation Code sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Business and Professions Code.

INITIAL STATEMENT OF REASONS
NON-CONTROLLING SUMMARY

Amend Regulation 4703 of Chapter 9.5, Cigarette and Tobacco Products Licensing Act of 2003

Regulation 4703. Seizures and Forfeitures.

Regulation 4703 outlines the situations when cigarettes or tobacco products may be seized under certain statutes and that such seized products are forfeited to the state unless a timely petition for release of seized property is filed. The regulation further describes what evidence can be provided that may result in the return of seized property.

Specific Purpose and Necessity Rationale - GOVERNMENT CODE 11346.2(b)(1)

The purpose of the proposed amendments is to provide further clarification that licensed distributors are excluded from seizures of unstamped cigarettes (including cigarettes stamped with another state's tax stamp) and/or untaxed tobacco products and to clarify that in the absence of an applicable exemption from tax or other lawful possession of unstamped product under the Revenue and Taxation Code (e.g., Revenue and Taxation Code sections 30102 through 30106 or 30431), unstamped cigarettes and/or untaxed tobacco products are subject to seizure.

In response to the recent promulgation of Regulations 4500 through 4703 (Cal. Code Regs., tit. 18, §§ 4500-4703), interested parties have raised with the Board of Equalization (BOE) a concern regarding whether Regulation 4703 is sufficiently clear in stating that licensed distributors are excluded from seizures of unstamped cigarettes (including cigarettes stamped with another state's tax stamp) and/or untaxed tobacco products. BOE agrees that further clarification is needed to address the interested parties' concern and to further clarify when unstamped cigarettes and/or tobacco products are subject to seizure. Therefore, these amendments are necessary to further clarify and assist the understanding of persons from whom product may be seized.

Alternatives Considered

No alternatives were considered. The only alternative option would be not to implement the amendments. The proposed amendments provide further guidance to licensees who are regulated under the Cigarette and Tobacco Products Licensing Act of 2003.

Initial Determination

The Board has made an initial determination that the proposed amendments will not have a significant adverse economic impact on private business or persons. The amendments are proposed to interpret, implement, and make specific the authorizing statutes. These proposed amendments will provide further clarity for licensees.