

Memorandum

To: Honorable Betty T. Yee, Chairwoman, First District
Honorable Judy Chu, Ph.D., Vice-Chair, Fourth District
Honorable Bill Leonard, Second District
Honorable Michelle Steel, Third District
Honorable John Chiang, Controller

Date: May 9, 2007

From: Kristine Cazadd
Chief Counsel 

Subject: **Item J - Chief Counsel Matters, June 1, 2007, Board Meeting Request to Publish Amendments to Regulation 4703 of the Cigarette and Tobacco Products Licensing Act of 2003**

Staff hereby requests publication of amendments to Regulation 4703 of the Cigarette and Tobacco Products Licensing Act of 2003 Regulations (Licensing Act Regulations).

Background

On March 22, 2007, Regulations 4500 through 4703 were approved by the Office of Administrative Law (OAL) and became effective on April 21, 2007. While approval was pending at OAL, industry raised with staff a new concern regarding whether Regulation 4703 was 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. Staff agreed to address this concern at this time because staff and interested parties are in agreement that the clarification should be made.

Present Action Item

The attached proposed amendments to Regulation 4703 provide the requested clarification. These proposed amendments were circulated to the same interested parties that participated in the expedited Business Taxes Committee (BTC) process that culminated in the initial promulgation of the Licensing Act Regulations, including Regulation 4703, to provide the interested parties an opportunity to make comments or objections. The interested parties were informed that, if no objections were made, staff would be requesting publication of the amendment at the Board's May/June 2007 meeting. No objections or comments have been made. Therefore, staff is requesting authorization to begin the formal rulemaking process for these proposed amendments to Regulation 4703.

Anticipated Future Action Item

Additionally, as stated during the expedited BTC process for the Licensing Act Regulations, staff anticipates, as these now effective regulations are put into practice, that experience will identify various other refinements to these regulations that will need to be made. Accordingly, staff will be requesting later this year a BTC process, involving at least one interested parties meeting, to discuss and propose further amendments to the Licensing Act Regulations.

KC/ef

H:/Business/Special/Finals/MGB/CCM/CCM-Reg. 4703

Attachments

APPROVED: 

Ramon J. Hirsig
Executive Director

- cc: Mr. Ramon Hirsig (MIC:73)
- Ms. Lynn Bartolo (MIC:56)
- Mr. Gil Haas (MIC:42)
- Ms. Monica Brisbane (MIC:82)

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), The 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 in the lawful possession of 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.