

Excise Taxes Newsletter

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CIGARETTE AND TOBACCO PRODUCTS TAXES

1. You must have your Cigarette and Tobacco Products Retailers License in hand to start business

The California Cigarette and Tobacco Products Licensing Act of 2003 (the Act) requires that every retailer that sells, or purchases for sale, cigarettes or tobacco products must first be licensed by the Board of Equalization (BOE). Even if you have submitted an application and the licensing fee to the BOE (\$100 for each retail location), legally you cannot sell cigarettes or tobacco products until you receive your Cigarette and Tobacco Products License. Any sales or purchases of cigarettes or tobacco products for resale without a valid license constitutes a violation of the Act, which may result in the seizure of your product, and an assessment of a penalty or fine.

Additionally, the license must be renewed annually by completing and returning a renewal application. There is no charge for retailers to renew a license. Please be sure to conspicuously display your valid license in a manner visible to the public. Failure to display your license may result in a suspension and/or revocation of your license and/or a fine.

For more information about the Act, please visit our website at www.boe.ca.gov.

2. Cigarette and Tobacco Products Retailers: Remember to retain your invoices

Please remember that you must retain purchase invoices for your resale stock of cigarettes and tobacco products for a period of four years. Twelve months of invoices *must* be kept at the retail location for at least one year after purchase and shall be available upon request during the normal business hours for inspection and copying by BOE staff or by a law enforcement agency. Any retailer found in violation or any person who fails, refuses, or neglects to retain or make available invoices for inspection is in violation of the Act and can also be cited.

The invoices that you receive from licensed distributors or wholesalers under the Act must include the following information:

- The name of the wholesaler or distributor from whom you purchased the cigarettes or tobacco products.
- The address, telephone number and license number of the wholesaler or distributor.

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- The amount of California excise taxes the distributor or wholesaler owes or paid on the sale of the cigarettes or tobacco products. However, a distributor that is *also* a retailer or manufacturer may include a statement that reads, "All California cigarette and tobacco products taxes are included in the total amount of this invoice."
- An itemized list of the cigarettes or tobacco products purchased from the licensed distributor or wholesaler.
- Your name, address and retailer's license number.
- The date of the sale.

Reminder: The Revenue and Taxation code does not allow cigarette and tobacco products to be sold between retailers. (Revenue and Taxation code section 30478.)

3. Do you purchase cigarettes or tobacco products from out-of-state vendors?

If you purchase cigarettes or tobacco products from a vendor located outside of California and that vendor does not collect the appropriate California excise tax from you, then you owe the excise tax. This is true whether the product is purchased for your own use or for resale.

Retailers may only purchase cigarettes and tobacco products from California licensed wholesalers or distributors that hold valid cigarette and tobacco licenses issued by the BOE.

Wholesalers may only purchase cigarettes and tobacco products from California licensed distributors that hold valid cigarette and tobacco licenses issued by the BOE.

Distributors may purchase cigarettes and tobacco products from out-of-state or in-state vendors. Distributors must report and pay the excise tax to BOE.

Please note: Manufacturers and original importers of cigarette and tobacco products manufactured outside the United States should not charge the excise tax to licensed cigarette and tobacco products distributors. The distributor is responsible for the tax. Licensed distributors may be subject to additional excise taxes if the manufacturer or original importer erroneously collects the excise tax.

Before making purchases of any cigarette or tobacco product, please check the California Tobacco Directory to ensure that the product is authorized for sale (see Article 4).

4. Remember to check the California Tobacco Directory

Please remember to refer to the Attorney General's California Tobacco Directory list of manufacturers and brand families that are certified as being in compliance with California law. All licensees should be aware that it is illegal to sell cigarettes and roll-your-own products that are not listed in the California Tobacco Directory. This list is compiled and published by the Office of the Attorney General and can be viewed at www.ag.ca.gov/tobacco/directory.php.

Distributors are further advised that it is illegal to put a state tax stamp on cigarettes or pay the tax on roll-your-own products unless the manufacturer and the brand family are authorized for sale and listed on the California Tobacco Directory.

It is illegal to offer, possess, or import for personal consumption any cigarette or roll-your-own tobacco unless the manufacturer and brand family are listed in the California Tobacco Directory. Violators of the law are subject to civil and criminal penalties, and products not listed on the directory can be seized as contraband.

5. Information regarding federal ban on flavored cigarettes

Effective September 22, 2009, cigarettes that contain certain characterizing flavors are considered adulterated and the manufacture, import, and sale of these products are banned under the Federal Food, Drug, and Cosmetic Act amended by the Family Smoking Prevention and Tobacco Control Act (FSPTCA). The FSPTCA provides the Food and Drug Administration (FDA) with regulatory authority over the manufacture, marketing, and distributing of tobacco products. Specifically, section 907(a)(1)(A) established a tobacco product special rule for cigarettes that states in part:

...a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke.

These products can no longer be manufactured, imported, or sold in the United States and could be seized by federal, state or local law enforcement authorities. For general information regarding the FDA's Tobacco Program and the ban on flavored cigarettes, please refer to the FDA's website at www.fda.gov/TobaccoProducts/default.htm.

Cigarettes banned by the FSPTCA have been and may continue to be removed from the California Tobacco Directory by California's Attorney General. As a reminder to all Cigarette and Tobacco Products Licensees, please refer to the California Tobacco Directory provided at: <http://ag.ca.gov/tobacco/directory.php> for a list of cigarette manufacturers and brand families that are authorized for sale in California.

If you have any questions regarding this notice, please call the Taxpayer Information Section at 800-400-7115 (TDD/TTY: 800-735-2929). Customer service representatives are available weekdays from 8:00 a.m. to 5:00 p.m. Pacific Time, except state holidays.

ALCOHOLIC BEVERAGES

6. Distilled Spirits Distributors: Be sure to complete both sides of your tax return

The BOE frequently receives tax returns filed by licensed Distilled Spirits Distributors who fill out lines 9 and 10 incorrectly on the back of their returns [Statement-II, BOE 501-DS (S1B)].

When you file your monthly or quarterly *Distilled Spirits Tax Return* (BOE-501-DS), be sure to submit an affidavit and complete documentation for unintentional destruction (by fire, earthquake, floods, breakage in transit, or accident, or other means) when the exact quantity destroyed is known (line 9).

Report losses unaccounted for (subject to tolerance limits of one tenth of one percent of total sales) on line 10 (one tenth of one percent is the equivalent of one gallon allowed loss for every 1,000 gallons of reported sales). (See the Alcoholic Beverage Tax Regulation 2550).

Copies of alcoholic beverage tax regulations are available on our website in PDF format at www.boe.ca.gov/sptaxprog/sptaxregs.htm. For more information, please call our Excise Taxes staff at 800-400-7115.

NATURAL GAS SURCHARGE

7. Natural Gas Surcharge Program

The natural gas surcharge is a per-therm surcharge collected on natural gas consumed in California.

You are required to register with the BOE if you are a public utility corporation. In addition, each person who consumes natural gas delivered directly to them by an interstate pipeline shall register with the BOE.

Every public utility gas corporation and every person consuming natural gas transported by a provider other than a public utility gas corporation must file a return, on or before the last day of the month following each calendar quarter, for the preceding quarterly period.

If you would like more information about the natural gas surcharge law or if you have questions about how to register, visit our website at www.boe.ca.gov and type the words "Natural Gas Surcharge Law" in the search field, or contact us at 800-400-7115.

EMERGENCY TELEPHONE USERS SURCHARGE

8. Emergency Telephone Users (911) Surcharge, new informational publication now available

Publication 39A, Emergency Telephone Users (911) Surcharge is designed to provide basic information about California's Emergency Telephone Users Surcharge Program. The publication addresses recent changes in the law, which expanded the definition of "toll telephone service" and

extended the 911 surcharge to include Voice over Internet Protocol (VoIP) services. If you would like to receive a copy of publication 39A, you may call us at 800-400-7115 or visit our website www.boe.ca.gov/pdf/pub39a.pdf.

GENERAL INTEREST

9. Annual Taxpayers' Bill of Rights hearings

Do you have suggestions for improving our services? Do you want us to look more closely at a tax or fee issue? If you do, come share your ideas and concerns with our Board Members at the annual Taxpayers' Bill of Rights hearings. You may present your proposal orally or in writing.

The annual hearings for business taxes and fees and property taxes will be held in Sacramento and in Culver City in the spring of 2010. Visit our website at www.boe.ca.gov/meetings/heartra.htm or contact the Taxpayers' Rights Advocate for details.

Although you are not required to make advance arrangements to speak, it would help us to prepare if you contact the Taxpayers' Rights Advocate Office at 888-324-2798 beforehand to let us know your topic. If your proposal is complex or extensive, we encourage you to submit it in advance and then summarize it in your oral presentation.

For more details, please call the Taxpayers' Rights Advocate Office or visit us at www.boe.ca.gov (click on the tab "Your Rights" and choose "Taxpayers' Rights Advocate"), where you can also view the Advocate Office's 2008-09 Annual Report, which will be available soon.

10. Know your rights

As a taxpayer, you have many rights under the law, including the right to:

- Receive information and assistance to help you comply with the law.
- Be treated fairly and courteously, and receive prompt service.
- Appeal a decision or claim a refund as allowed by law.

Of course, along with these rights, you have certain responsibilities, including the responsibility to:

- Stay informed about tax laws and regulations.
- Report and pay taxes and fees when due.
- Maintain adequate records.

For more information about your rights, you may wish to order *publication 70, Understanding Your Rights as a California Taxpayer* at www.boe.ca.gov/pdf/pub70.pdf.

11. Sign up for email notification of proposed new annotations

Annotations are summaries of the conclusions reached in selected legal opinions issued by the BOE's Legal Department

and do not have the force and effect of law, but they do provide helpful guidance. Annotations address various legal issues involving application of property tax, sales and use tax and the many special taxes and fees administered by the BOE. Annotations assist you in locating legal opinions of particular interest to you and provide insight into how BOE Legal Counsel apply statutory and regulatory law to specific factual situations. However, following the advice provided in an annotation does not constitute reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest, or penalty (see Article 12).

Sales and Use Tax and Special Tax and Fee annotations are published in the Business Taxes Law Guide (Sales and Use Tax) and at various locations in Volumes 3 and 4 (Special Taxes and Fees) of the BTLG.

Anyone may request Current Legal Digests (CLD) of proposed annotations and the backup legal correspondence associated with annotations of interest. CLDs for Special Tax and Fee annotations are posted on the BOE's web site. All four volumes of the BTLG, CLD's of proposed Sales and Use Tax and Special Tax and Fee annotations, and the backup legal opinions for these annotations are available online at www.boe.ca.gov/info/annotations.html. Click on "Special Taxes" under "Proposed Annotations—Current Legal Digests" to register online to receive notice of new Special Tax and Fee CLDs by email. Click on "Sales and Use Tax" to register to receive notice of new Sales and Use Tax CLDs.

12. Get your answers in writing

The excise tax and fee laws can be complex, and you are encouraged to put your tax question in writing. Not only will that give us more information on which to base our advice to you, it may protect you from owing tax, penalty and interest charges that are due if the BOE determines you were given erroneous information. Such protection is not available for advice provided to you verbally, in person or over the telephone. For relief to apply, your request for advice must be in writing, must identify you as the taxpayer or feepayer and must fully describe the specific facts and circumstances of the activities or transaction for which the advice is requested. Relief does not apply if you rely on written advice that is given to someone else, even if your transactions are similar. Please send your requests for tax advice directly to the Excise Taxes Division. For more information, please visit our website at www.boe.ca.gov/pdf/boe8.pdf to download a copy of **BOE-8, Get It in Writing!**

Note: Although **BOE-8** references California Revenue and Taxation code section 6596 of the Sales and Use Tax Law, other special tax and fee programs have similar applicable statutes.

13. Civil behavior in trying times

Some observers have noted that civility is decreasing in our society as our lives become more complex. We know that you may find yourself frustrated with the difficulties of the tax law or pressed for time when dealing with our staff. Still, we ask that you treat our employees just as you would like to be

treated in a business situation. Any statement or gesture made to a Board of Equalization employee that seems remotely like a threat—even a statement made in jest—will be referred to our Internal Security and Audit Division for investigation.

14. Ethics at work—"thank you" is enough

We'd like to remind you that Board policy prevents our employees from accepting gifts of any type. So if you're grateful to someone for going the extra mile to help you with a complicated issue, a simple "thank you" will do. You can also use our online Customer Service Survey form at www.boe.ca.gov/info/survey.htm to express yourself.

ADDITIONAL ONLINE ARTICLES

15. Pay the full amount due or tell us why you can't

FOR MORE INFORMATION

Board Member contact and website. Visit our website: www.boe.ca.gov for Board Member information, legislative summaries, regulations, forms and publications, translated publications, and more.

Taxpayer Information Section: 800-400-7115

TDD/TTY: 800-735-2929

Representatives are available to help you from 8:00 a.m. to 5:00 p.m., Pacific time, M-F, except state holidays.

Excise Taxes Division

Mailing address:

Excise Taxes Division, MIC:56
State Board of Equalization
PO Box 942879
Sacramento, CA 94279-0056

Phone: 916-327-4208

Fax: 916-323-9497

Tax Evasion Hotline. Call toll-free to report suspected tax evasion, 888-334-3300.

Taxpayers' Rights Advocate. Call toll-free for help with problems you have been unable to resolve through normal channels, 888-324-2798.