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SALES OF CIGARETTES AND TOBACCO PRODUCTS IN CALIFORNIA

LICENSE REQUIREMENTS
FOR RETAILERS

**CALIFORNIA STATE
BOARD OF EQUALIZATION**

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What is a cigarette?

A cigarette¹ is defined as a rolled product for smoking of any size or shape that:

- Is made of any tobacco, flavored or not, and
- Has a wrapper made of paper or another material.

Exception: Products wrapped in tobacco or with a cover made mostly of tobacco (for example, cigars) are not cigarettes when they weigh more than three pounds per thousand sticks. Instead, these products are considered tobacco products.

What is a tobacco product?

“Tobacco products”² include, but are not limited to:

1. All forms of cigars (including little cigars);
2. Smoking or pipe tobacco (including shisha), chewing tobacco and snuff;
3. Any product containing, made of, or derived from any amount of tobacco that is intended for human consumption;
4. Any product containing, made of, or derived from any amount of nicotine that is intended for human consumption and sold with or without a delivery device or system (for example, eLiquid with nicotine);
5. Electronic cigarettes or any device or delivery system sold in combination with nicotine for a single price; and
6. Any component, part, or accessory of an electronic cigarette that is used during the operation of the device when sold in combination with nicotine (for example, a battery used in the operation of the device sold with nicotine for a single price).

These items are subject to the tobacco products tax imposed by the Cigarette and Tobacco Products Tax Law³ upon the first distribution in this state.

For more information on the cigarette and tobacco products taxes, please refer to publication 93, *Cigarette and Tobacco Products Taxes*, located at www.boe.ca.gov/pdf/pub93.pdf.

Tobacco products do not include cigarettes or any product that the U.S. Food and Drug Administration has approved as cessation products or for other therapeutic purposes (for example, nicotine patches).



¹ Revenue and Taxation Code section 30003.

² Revenue and Taxation Code sections 30121 and 30131.1.

³ Part 13 (commencing with section 30001) of Division 2 of the Revenue and Taxation Code.

What is the expanded definition of a tobacco product for retail licensing purposes?

As of June 9, 2016, California state law expanded the definition of a tobacco product,⁴ for cigarette and tobacco products retail licensing purposes, to include:

1. Any product containing, made of, or derived from nicotine that is intended for human consumption;
2. Any electronic smoking or vaping device that delivers nicotine or other vaporized liquids; and
3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

Examples include, but are not limited to, electronic cigarettes, atomizers, vaping tanks or mods, and eLiquid or eJuice.

Who is required to have a license?

Retail sellers of cigarettes and tobacco products in California must have a valid California Cigarette and Tobacco Products Retailer's License prior to purchasing tax-paid products from California licensed distributors or wholesalers and prior to making retail sales of cigarettes or other tobacco products to consumers (Cigarette and Tobacco Products Licensing Act of 2003).⁵

Effective January 1, 2017, retail sellers of any products that fall under the expanded definition of a tobacco product are required to obtain a California Cigarette and Tobacco Products Retailer's License. In addition, retailers of these products must conspicuously display the license at their retail location(s) in a manner visible to the public.

A separate license is required for each location or vending machine from which retail sales of cigarettes or tobacco products are made. You must obtain a separate license for any new location you add that requires a license.

An initial license application fee per location is required. Beginning January 1, 2017, an annual license renewal fee also applies. For fee rates, please visit the Board of Equalization (BOE) website at www.boe.ca.gov/sptaxprog/tax_rates_stfd.htm.

Note: You must obtain a distributor's license before you purchase untaxed cigarettes or tobacco products from an out-of-state seller who does not have a license issued under the Cigarette and Tobacco Products Licensing Act of 2003. A wholesaler's license is required if you purchase tax-paid cigarettes or tobacco products for resale to other retailers. A distributor's or a wholesaler's license is required for distributing or wholesaling any products that fall under the expanded definition of a tobacco product when the product is distributed in combination with nicotine. The current fee rates for a distributor's or a wholesaler's license can be found at www.boe.ca.gov/sptaxprog/tax_rates_stfd.htm.



⁴ Business and Professions Code section 22950.5(d).

⁵ Division 8.6 (commencing with section 22970) of the Business and Professions Code.

Can a mobile seller get a retailer's license for sales of cigarettes and other tobacco products?

No. A "mobile location" does not meet the statutory definition of a retail location. If you operate from a catering truck, lunch wagon, or other mobile facility, you do not qualify for a California Cigarette and Tobacco Products Retailer's License and, therefore, cannot sell cigarettes or tobacco products from your truck, wagon, or other mobile facility in California. For more information on this topic, please see www.boe.ca.gov/pdf/Mobile_Seller_Letter.pdf.

When does my license expire?

The retailer's license is valid for a 12-month period from the date of issuance, is not transferable, cannot be prorated, and must be renewed annually. If you add another retail location, your license will be renewed for that location based on a 12-month period beginning in the month the retailer's license for the first retail location was obtained. BOE will send you an email and paper renewal reminder notice prior to the expiration of your license(s). You must complete and submit the renewal application online with the BOE to maintain your Cigarette and Tobacco Products Retailer's License. Effective January 1, 2017, payment of the renewal fee is required simultaneously with your renewal application. If you fail to renew your license and pay the renewal fee timely, your license will expire. Please remember, you may not sell cigarettes and/or tobacco products without a valid Cigarette and Tobacco Products Retailer's License.

How do I apply for and renew my license?

You can apply for and also renew your license using the BOE's online services at www.boe.ca.gov. If you do not have a computer, the online services are available in the BOE's field offices. Please contact the Customer Service Center at 1-800-400-7115 (TTY: 711), Monday through Friday from 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays, if you have any questions or would like more information about how to apply for or renew your license online.

How do I pay my license and/or renewal fees?

You can make your payment online directly from your bank account or by credit card, paper check, or money order. For more information, visit the BOE's website at www.boe.ca.gov/electsrv/payment.htm.

I have a seller's permit. Am I still required to obtain this retailer's license?

Yes. The cigarette and tobacco products licensing requirement is in addition to other permits and licenses issued by the BOE. You must apply for and maintain a California seller's permit to be issued a Cigarette and Tobacco Products Retailer's License and to renew the license each year.

The state license is required by the Cigarette and Tobacco Products Licensing Act of 2003. This law does not replace any local cigarette and tobacco products retail license you may also be required to obtain. Additionally, some local jurisdictions have policies that cap the number or restrict the density of tobacco retailers within a geographical area. Before completing and submitting an application for a Cigarette and Tobacco Products License or license renewal, retailers are advised to check with their local health department for any local tobacco licensing requirements, which may be more restrictive.

RESPONSIBILITIES OF RETAILER'S LICENSE HOLDERS

What are my responsibilities as a holder of a retailer's license?

- Conspicuously display your license at each retail location so that it is visible to the public.
- Keep complete and legible cigarette and tobacco products invoices at each licensed location for at least one year after the date of purchase. The invoices must be kept at the same location as the inventory.
- Keep purchase invoices for cigarettes and tobacco products for four years.
- Allow BOE staff or law enforcement officers to review your cigarette and tobacco products purchase invoices upon request.
- Purchase and sell only those cigarettes and roll-your-own tobacco (RYO) authorized for sale in California as listed on the Office of the Attorney General's California Tobacco Directory (Directory) oag.ca.gov/tobacco/directory.

For more details regarding your responsibilities, the BOE offers instructor-led seminars for retailers selling cigarettes and tobacco products. See www.boe.ca.gov.

Sell-off period. A distributor or wholesaler is required to notify its licensed retailers when the California Attorney General recommends removal of a tobacco manufacturer or brand family from the Directory.

A licensed retailer is allowed to possess, transport, and sell tax-stamped cigarettes or tax-paid RYO removed from the Directory for no more than 60 days from the effective date of the manufacturer or brand family's removal from the Directory. After the 60-day sell-off period, the cigarettes and RYO tobacco are subject to seizure and destruction by the BOE.

Purchase invoice requirements. The invoices you receive from distributors and/or wholesalers must be legible and include the information below:

- The name, address, telephone number, and license number of the distributor or wholesaler from whom you purchased the cigarettes or tobacco products.
- The amount of California cigarette and tobacco products taxes due to the BOE by the distributor on the cigarettes or tobacco products listed on the invoice.

Note: A licensed distributor who is also a licensed retailer or

manufacturer may include the following statement instead of providing the amount of cigarette and tobacco products taxes due to the BOE: "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

- An itemized list of the cigarettes or tobacco products purchased. Cigarettes must be listed by the brand and style names, flavor, filter, and/or packaging when applicable, number of cartons or packs sold, and the sales price. Tobacco products must be listed by brand, type (such as pipe, cigars, or RYO tobacco), flavor, packaging (such as pouches, tins, or boxes), quantity sold, and sales price.
- Your name, address, and Cigarette and Tobacco Products Retailer's License number.
- The date you purchased the cigarettes or tobacco products.

Cigarettes and tobacco products transferred between stores. Generally, the transfer of cigarettes and tobacco products is 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 and license number on the invoice, a detailed description of the items transferred including type of packaging, flavor and/or style, and the quantity transferred.

ENFORCEMENT

License display. If you do not conspicuously display your license at each retail location where you sell cigarettes or tobacco products, you are subject to a penalty of \$500 for each occurrence.

Records. You must keep and maintain legible, accurate, and complete records, including purchase invoices for your resale stock of cigarettes and tobacco products (including products under the expanded definition of a tobacco product when sold or purchased in combination with nicotine), for four years. The most recent twelve months of invoices must be kept at the retail location for at least one year after the date of purchase. Failure to maintain records and provide them upon request to BOE staff or a law enforcement agency may result in a misdemeanor citation punishable by a fine of up to \$5,000 and/or imprisonment for up to one year in a county jail.

Inspections. BOE staff has authority to inspect any location where cigarettes or tobacco products are sold, produced, or stored, or at any site where there is evidence of illegal activities (Revenue and Taxation Code section 30435). Consequently, BOE staff and law enforcement officers can inspect retail locations and seize any untaxed cigarettes and/or tobacco products, including cigarettes without stamps, with stamps from other states, or with counterfeit tax stamps. Any person who refuses to allow an inspection is guilty of a misdemeanor

and is subject to a fine. Any retailer in possession of untaxed cigarettes or tobacco products is subject to fines and penalties, such as suspension of the license.

Note: The inspection activities noted above, including possession and display of a valid license, apply to all products included in the expanded definition of a tobacco product when sold in combination with nicotine. For more information about BOE's inspections and your rights, see publication 152, *Cigarette and Tobacco Product Inspections*, at www.boe.ca.gov/pdf/pub152.pdf.

Suspension or revocation of license. During the suspension period or after the effective date of the revocation of a license, you are prohibited from selling, gifting, or displaying for sale cigarettes or tobacco products.

Additionally, a retailer whose license is suspended is required to post the *Notice of Suspension* at the retail location where the infraction/violation occurred for the duration of the suspension period. A retailer whose license is revoked is required to post the *Notice of Revocation* at the retail location subject to the revocation for a 30-day period from the effective date of the revocation. Failure to post the suspension or revocation notices will result in a \$1,000 penalty for each offense.

Continued sales or gifting of cigarettes or tobacco products during a suspension period or after the effective date of revocation is a misdemeanor and will result in the seizure and forfeiture of all cigarettes and tobacco products in the person's possession.

A person who continues to display cigarettes or tobacco products for sale after receiving a notice of suspension or revocation is also subject to a civil penalty of \$1,000 for each offense.

Illegal purchases. It is illegal for retailers to purchase cigarettes or tobacco products (including products under the expanded definition of a tobacco product when purchased in combination with nicotine) from another retailer or any seller who is not licensed under the California Cigarette and Tobacco Products Licensing Act of 2003. If you make an illegal purchase, your cigarettes or tobacco products may be seized, your license may be suspended or revoked, and you may be subject to fines, imprisonment, or both.

To verify the license of a California cigarette and tobacco products distributor or wholesaler, visit the BOE's website at <https://efile.boe.ca.gov/boewebservices/verification.jsp>. You may also verify a license using mobile devices at <https://efile.boe.ca.gov/m/svs>.

Illegal sales. It is illegal for retailers to sell cigarettes or tobacco products in this state without a seller's permit and a Cigarette and Tobacco Products Retailer's License or when their license has been suspended or revoked under the Cigarette and Tobacco Products Licensing Act of 2003. If you make illegal sales of cigarettes or tobacco products, BOE staff or law enforcement agencies may seize all of your cigarettes and tobacco products, which will not be returned to you.

FOR MORE INFORMATION
go online www.boe.ca.gov
or call the
BOE Customer Service Center
1-800-400-7115 ▪ TTY:711

To contact your Board of Equalization Member, see
www.boe.ca.gov/members/board.htm.

Taxpayers' Rights Advocate

Call toll-free 1-888-324-2798 for help with problems you have not been able to resolve through normal channels (such as speaking to a supervisor).



Note: This publication summarizes the laws and regulations in effect at the publication date as noted on the cover. However, changes in the law or regulations may have occurred since that time. If there is a conflict between the publication and the law or regulations, decisions will be based on the law and regulations and not this publication.