State of California

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Memorandum

To: Mr. Randy Silva, Chief
Investigations Division (MIC:42)

Date: November 20, 2014

From: Pamela Mash
Tax Counsel
Tax and Fee Programs Division (MIC:82)

Subject: How the term "itemized" is defined
Assignment No. 14-411

I am writing in response to your August 26, 2014, email to Assistant Chief Counsel Robert Tucker in which you request clarification on the meaning of the term "itemized" for the purposes of Business and Professions Code sections (section) 22978.4 and 22979.6.

Section 22978.4 requires, in part, that distributors and wholesalers include an itemized listing of the cigarettes or tobacco products sold on each invoice for the sale of cigarettes or tobacco products. (Bus. & Prof. Code, § 22978.4, subd. (a)(5).) Similarly, section 22979.6 requires, in part, that manufacturers and importers include an itemized listing of the cigarettes or tobacco products sold on each invoice for the sale for distribution, wholesale, or retail sale of cigarettes or tobacco products. (Bus. & Prof. Code, § 22979.6, subd. (a)(4).)

The term "itemized" is not defined in the Business and Professions Code or in any other relevant statutes or regulations. Itemize is defined in the dictionary as the term used to "state each item or article separately." (Black's Law Dict. (6th ed. 1990) p. 833.)

An invoice is sufficiently itemized and states each item separately if the description is detailed enough to identify the specific items in question without ambiguity. As related to cigarettes, the description must include the name of the brand family and the style of the cigarettes. The brand family is the manufacturer's cigarette trade name (that is, the name given to the product). Within a cigarette brand, the various styles are marketing names for different types of products. Some cigarettes are further described by flavor, filter, and packaging. For example, Sonoma brand cigarettes are available in 14 different styles. "Sonoma Blue 100 Soft," "Sonoma Non-Filter King Soft," and "Sonoma Menthol Green King Box" are three styles currently on the market. As evident by their names, they are completely different styles of cigarettes, with different flavors, filters, and packaging. An invoice for the sale of these three products listing simply "Sonoma" does not describe with any detail or specificity the cigarettes that were sold; the sale might have been for any one of them or any one of the other 11 different styles of Sonoma brand cigarettes available for purchase. Therefore, for the purpose of complying with the invoice requirements of sections 22978.4 and 22979.6, an itemized list of cigarettes sold must include the brand and style names, and the cigarettes must be further identified by flavor, filter, and/or packaging when applicable. The number of cartons or packs sold and the sale price also must be included on the invoice.

Similarly, other tobacco products (OTP) must be identified by brand, type of tobacco (such as pipe, cigars, and roll-your-own), flavor, packaging (such as pouches, tins, and boxes), and quantity. For example, Swisher Sweets are a popular brand of OTP. They are available in many different types, including cigarillos, blunts, giants, and slims. The various types are available in a number of different flavors (such as strawberry, peach, white grape) and different types of packaging (such as box of 16, pack of 2 cigars, pack of 3 for 2 minis). An invoice for the sale of one of the many different types, flavors, and packaging of Swisher Sweets products listing simply "Swisher Sweets" does not describe with any specificity the OTP that actually were sold; the sale might have been for any one of the hundreds of variations of types, flavors, and packaging offered by Swisher Sweets. Therefore, for the purpose of complying with the invoice requirements of sections 22978.4 and 22979.6, an itemized list of OTP sold must include the brand, type, flavor, and packaging. The quantity of OTP sold and the sale price also must be included on the invoice.

We note that industry is aware of the requirement to provide invoices with an itemized list of cigarettes and OTP sold, and licensed and legitimate distributors and wholesalers have been providing this detailed description on their invoices since the California Cigarette and Tobacco Products Licensing Act of 2003 went into effect in 2004. This opinion does not place any new or additional burdens on distributors, wholesalers, manufacturers, or importers.

Please let me know if you have any questions about the information provided here or would like further assistance regarding this matter.

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cc: Mr. Mike Loretta (MIC:42)